



Topic: City Council Regular Meeting

You are invited to a Zoom webinar or in person meeting. Note: Due to the lifting of Covid safety restrictions on June 9th the city is now required to provide a physical location for all meetings. A computer screen with a microphone and speaker will be set up in council chambers and at least one council member, staff member or the mayor will be present, but most council members and staff will not be present in person but will be participating via Zoom.

Topic: 1st Regular City Council Meeting of this month

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83273254975?pwd=aGJhcW1aVEpFc2lDVWpXOEU5cUJvdz09>

Passcode: 172825

Or One tap mobile:

US: +12532158782,,83273254975#,,,,*172825# or +16699006833,,83273254975#,,,,*172825#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 253 215 8782 or +1 669 900 6833 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 832 7325 4975

Passcode: 172825

International numbers available: <https://us02web.zoom.us/j/83273254975?pwd=aGJhcW1aVEpFc2lDVWpXOEU5cUJvdz09>



CITY OF LANGLEY DRAFT COUNCIL AGENDA

Tuesday September 6, 2022 @ 5:30 P.M.

CALL TO ORDER – 5 minutes

- 1. Opening Words**
- 2. Roll Call**

SPECIAL INFORMATION ITEM

1. Coles Valley Development Application Process Legalities, City Attorney Mike Kenyon, Mayor Scott Chaplin, and Community Planning Director Meredith Penny – 15 minutes (to be held at 5:35 pm due to prior obligation of legal counsel)

CONSENT AGENDA (The CONSENT AGENDA consists of routine items that normally do not require further Council discussion.) – 2 minutes

1. Approval of Claim Warrants Nos. - and EFTs in the amount of \$ 17,049.25.... 4-10
2. Approval of Payroll Warrants Nos. 34949 - 34951 in the amount of \$50,143.77 11
3. Approval of Liquor License for Whidbey Island Fairgrounds and Event Center 12

APPROVAL OF AGENDA – 3 minutes

APPROVAL OF MINUTES – 3 minutes

1. Approval of Council Meeting Minutes of 05/16//2022 13-19

PUBLIC COMMENT PERIOD* – 10 - 20 minutes

PRESENTATION/GUEST SPEAKER/COMMISSION REPORTS

1. Ethics Board Presentation – Lily Fox – 5 minutes
2. Climate Crisis Action Committee – Chair Linda Irvine – 5 minutes

MAYOR'S REPORT – 10 minutes

1. Review of 2022 Budget Narrative – update on 2023 budget process
2. Whidbey Camano Tourism Committee (Joint Tourism Committee) update

ORDINANCES/RESOLUTIONS

1. Ordinance repealing section 18.22.190 of the Langley Municipal Code, wireless communications facilities; adopting a new chapter 18.23 of the Langley Municipal Code related to wireless communications facilities; providing for the severability; and establishing an effective date - 2nd reading – Community Planning Director, Meredith Penny– 10 minutes 20-80

NEW BUSINESS

1. Presentation to Council on Safe Streets and Roads for all, Action Plan funding partnership opportunity – PWAC Chair Dominique Emerson – -10 minutes
 - a. Memo requesting approval to submit a letter to Island Regional Transportation Planning Organization 81
 - b. Proposed Letter to send to U.S. Department of Transportation 82
2. Initial discussion on the process for reviewing the Port of South Whidbey zoning code amendment application to add housing as an allowed use in the Fairgrounds Overlay – Community Planning Director Meredith Penny, Mayor Scott Chaplin, and Executive Director of the Port of South Whidbey Stan Reeves, – 20 minutes
 - a. Planning Staff Report on zoning Code amendment application 83-84
 - b. Compass Rose Planning Fairgrounds Amendment Scope of Work and Cost Estimate 85-86
 - c. Draft Letter of Explanation to Liz Chaffin, Island County ARPA Manager ... 87-89
 - d. Resolution 736 – Small Works and Consultant Roster 90-94

UNFINISHED BUSINESS

1. Discussion and Approval of 2023 Council Work Plan – Council Member, Rhonda Salerno – 15 minutes 95
2. Presentation to Council on Lexipol’s Description of Services and Customer Toolkit Policy PowerPoint – Chief of Police Tavier Wasser - 10 minutes 96-116

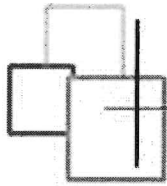
COUNCIL REPORTS– 15 minutes

1. Council Member Harolynne Bobis – 3 minutes
2. Council Member Rhonda Salerno – 3 minutes
3. Council Member Thomas Gill – 3 minutes
4. Council Member Craig Cry – 3 minutes
5. Council Member Gail Fleming – 3 minutes

ADJOURN

***Public Comment:** This is the time on the agenda where Council welcomes comments on subjects of concern or interest that are not on the agenda or to make known that a member of the public wishes to comment on a particular agenda item at the time the item is being discussed. Please state your name and address so this can be recorded and limit your comments to 3 minutes.

Thank you for participating! **If reasonable accommodation of a disability is needed, please contact Darlene Baldwin at (360) 221-4246 ext. 17 at least 48 hours prior to this meeting.**



Voucher Directory

Fiscal : 2022 - September
 Council Date : All

Vendor	Number	Reference	Account Number	Description	Amount
Compass Rose Planning	0			2022 - September - 1st Council Meeting	
		Invoice -1019			
			001-000-110-558-60-40-01	Professional Fees/reimbursible	\$1,950.00
		Total Invoice -1019			\$1,950.00
	Total 0				\$1,950.00
Total Compass Rose Planning					\$1,950.00
Darrel Duhm	0			2022 - September - 1st Council Meeting	
		Invoice - 8/30/2022 11:37:07 AM			
			001-000-030-514-20-42-01	Travel Transportation/Meals/Lodging	\$664.70
		Total Invoice - 8/30/2022 11:37:07 AM			\$664.70
	Total 0				\$664.70
Total Darrel Duhm					\$664.70
Davido Consulting Group, Inc	0			2022 - September - 1st Council Meeting	
		Invoice -42556			
			405-000-000-594-34-60-06	CIP W-5 Edgecliff (Furman-Wilkinson) Main	\$1,305.64
			408-000-000-594-34-60-03	RR-8 W71-W70 (Al Anderson Rd) LIP 14	\$591.35
			409-000-000-594-34-60-01	Capital expenditures - grant	\$16,163.76
		Total Invoice -42556			\$18,060.75
	Total 0				\$18,060.75
Total Davido Consulting Group, Inc					\$18,060.75
De Lage Landen Financial Services	0			2022 - September - 1st Council Meeting	
		Invoice - 8/22/2022 3:52:06 PM			
			001-000-010-513-10-40-01	Professional Services	\$29.48
			001-000-030-514-20-40-02	Professional Services	\$135.63
			001-000-070-521-20-40-01	Professional Services	\$129.73
			001-000-100-518-30-40-01	Professional Services	\$17.69
			001-000-110-558-60-40-00	Professional Services	\$35.38
			001-000-120-558-50-40-00	Professional Services	\$29.48
			001-000-150-576-80-40-00	Professional Services	\$11.79
			001-000-180-518-80-40-01	Professional Services	\$5.90
			101-000-000-543-10-40-01	Professional Services	\$41.28

Vendor	Number	Reference	Account Number	Description	Amount
			104-000-000-536-10-40-00	Professional Services	\$5.90
			401-000-000-534-10-40-01	Professional Services	\$64.87
			402-000-000-535-10-40-01	Professional Services	\$64.87
			403-000-000-531-10-40-01	Professional Services	\$17.70
			Total Invoice - 8/22/2022 3:52:06 PM		\$589.70
	Total 0				\$589.70
Total De Lage Landen Financial Services					\$589.70
Edge Analytical Labs					
	0			2022 - September - 1st Council Meeting	
			Invoice - 22-24616		
			401-000-000-534-10-40-04	SDWA Testing	\$616.97
			402-000-000-535-10-40-04	Sewer Plant Testing	\$0.00
			Total Invoice - 22-24616		\$616.97
			Invoice -22-24607		
			401-000-000-534-10-40-04	SDWA Testing	\$616.00
			402-000-000-535-10-40-04	Sewer Plant Testing	\$0.00
			Total Invoice -22-24607		\$616.00
	Total 0				\$1,232.97
Total Edge Analytical Labs					\$1,232.97
Grainger					
	0			2022 - September - 1st Council Meeting	
			Invoice - 9408945138		
			401-000-000-534-10-47-01	Repairs & Maintenance	\$117.07
			Total Invoice - 9408945138		\$117.07
			Invoice -9416505726		
			401-000-000-534-80-31-01	Parts, Chemicals & Supplies	\$64.56
			Total Invoice -9416505726		\$64.56
			Invoice -9426492782		
			001-000-150-576-80-30-01	Supplies	\$223.58
			Total Invoice -9426492782		\$223.58
	Total 0				\$405.21
Total Grainger					\$405.21
I-Com					
	0			2022 - September - 1st Council Meeting	
			Invoice - Q\$ 2022-03		
			001-000-070-521-20-40-02	Dispatch Services/icom	\$5,755.74
			Total Invoice - Q\$ 2022-03		\$5,755.74
	Total 0				\$5,755.74
Total I-Com					\$5,755.74

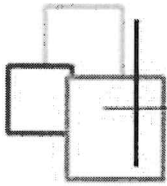
Vendor	Number	Reference	Account Number	Description	Amount
Island Shakespeare Festival	0			2022 - September - 1st Council Meeting	
		Invoice - 8/22/2022 1:43:55 PM			
			105-000-000-557-30-49-03	Island Shakespeare Festival	\$3,072.40
		Total Invoice - 8/22/2022 1:43:55 PM			\$3,072.40
	Total 0				\$3,072.40
Total Island Shakespeare Festival					\$3,072.40
Kenyon Disend PLLC	0			2022 - September - 1st Council Meeting	
		Invoice -1092313			
			001-000-000-511-60-40-02	Professional Services	\$4,754.51
			001-000-110-558-60-40-03	Professional Svcs Legal	\$1,476.50
			001-000-110-558-60-42-02	Training Registration	\$111.00
			001-000-120-558-50-40-00	Professional Services	\$266.00
			001-000-150-576-80-40-00	Professional Services	\$74.00
		Total Invoice -1092313			\$6,682.01
	Total 0				\$6,682.01
Total Kenyon Disend PLLC					\$6,682.01
Lamson, Fred	0			2022 - September - 1st Council Meeting	
		Invoice - Refund for Cemetary Plot			
			104-000-000-594-36-60-00	Repurchase Cemetery Plots	\$750.00
		Total Invoice - Refund for Cemetary Plot			\$750.00
	Total 0				\$750.00
Total Lamson, Fred					\$750.00
Lewin Education and Consulting	0			2022 - September - 1st Council Meeting	
		Invoice - 36			
			001-000-005-511-60-48-06	Training Registration Cost Dismantling Systemic Racism	\$1,200.00
		Total Invoice - 36			\$1,200.00
	Total 0				\$1,200.00
Total Lewin Education and Consulting					\$1,200.00
Madsen Enterprise Inc.	0			2022 - September - 1st Council Meeting	
		Invoice -2433			
			401-000-000-534-80-40-01	Reimbursable Water Installation and Permit Review	\$815.25
		Total Invoice -2433			\$815.25
	Total 0				\$815.25
Total Madsen Enterprise Inc.					\$815.25

Vendor	Number	Reference	Account Number	Description	Amount
Orca Network / Langley Whale Ctr.	0			2022 - September - 1st Council Meeting	
		Invoice - 8/18/2022 3:10:49 PM			
			105-000-000-557-30-49-04	Whale Museum	\$7,341.32
		Total Invoice - 8/18/2022 3:10:49 PM			\$7,341.32
	Total 0				\$7,341.32
Total Orca Network / Langley Whale Ctr.					\$7,341.32
PACE Engineers, Inc.	0			2022 - September - 1st Council Meeting	
		Invoice - 84157			
			001-000-110-558-60-40-01	Professional Fees/reimbursible	\$762.50
			402-000-000-535-10-40-02	Engineering	\$790.00
		Total Invoice - 84157			\$1,552.50
	Total 0				\$1,552.50
Total PACE Engineers, Inc.					\$1,552.50
Puget Sound Energy	0			2022 - September - 1st Council Meeting	
		Invoice - 8/30/2022 11:23:58 AM			
			001-000-000-511-60-46-01	Utilities	\$49.81
			001-000-010-513-10-46-01	Utilities	\$16.73
			001-000-030-514-20-46-01	Utilities	\$103.47
			001-000-070-521-20-46-01	Utilities	\$56.32
			001-000-100-518-30-46-01	Utilities	\$7.84
			001-000-110-558-60-46-01	Utilities	\$17.74
			001-000-120-558-50-46-01	Utilities	\$17.66
			001-000-150-576-80-46-04	Parks-Utilities/waste Disposal	\$187.81
			001-000-180-518-80-46-01	Utilities	\$4.13
			101-000-000-543-10-47-00	Utilities	\$63.00
			104-000-000-536-10-46-01	Utilities-Cemetery	\$5.68
			105-000-000-557-30-46-01	Utilities/VIC & R/R	\$67.51
			401-000-000-534-10-46-01	Utilities-Water Dept.	\$1,605.55
			402-000-000-535-10-46-01	Utilities-Sewer Dept.	\$762.41
		Total Invoice - 8/30/2022 11:23:58 AM			\$2,965.66
	Total 0				\$2,965.66
Total Puget Sound Energy					\$2,965.66
Quill Corporation	0			2022 - September - 1st Council Meeting	
		Invoice - 8/22/2022 3:59:49 PM			
			001-000-010-513-10-30-01	Office/operational Supplies	\$3.12
			001-000-030-514-20-30-01	Supplies	\$14.37
			001-000-070-521-20-30-01	Supplies-Printing	\$14.37
			001-000-100-518-30-30-01	Facilities Maint. Supplies	\$1.87
			001-000-110-558-60-30-01	Supplies	\$3.75

Vendor	Number	Reference	Account Number	Description	Amount
			001-000-120-558-50-30-01	Supplies	\$3.12
			001-000-150-576-80-30-01	Supplies	\$1.25
			001-000-180-518-80-30-01	supplies	\$0.62
			101-000-000-543-10-30-01	Supplies	\$5.00
			104-000-000-536-10-30-01	Supplies	\$0.62
			401-000-000-534-10-30-01	Supplies	\$6.87
			402-000-000-535-10-30-01	Supplies	\$6.87
			403-000-000-531-10-30-01	Supplies	\$0.65
			Total Invoice - 8/22/2022 3:59:49 PM		\$62.48
	Total 0				\$62.48
Total Quill Corporation					\$62.48
Robert Half					
	0			2022 - September - 1st Council Meeting	
			Invoice - 60555949		
			001-000-030-514-20-40-02	Professional Services	\$4,180.00
			Total Invoice - 60555949		\$4,180.00
			Invoice - 60624318		
			001-000-030-514-20-40-02	Professional Services	\$4,180.00
			Total Invoice - 60624318		\$4,180.00
			Invoice -60603244		
			001-000-030-514-20-40-02	Professional Services	\$4,180.00
			Total Invoice -60603244		\$4,180.00
	Total 0				\$12,540.00
Total Robert Half					\$12,540.00
Shred-IT c/o Stericycle, Inc					
	0			2022 - September - 1st Council Meeting	
			Invoice - 8/29/2022 2:02:37 PM		
			001-000-010-513-10-40-01	Professional Services	\$1.50
			001-000-030-514-20-40-02	Professional Services	\$8.24
			001-000-070-521-20-40-01	Professional Services	\$8.24
			001-000-110-558-60-40-00	Professional Services	\$3.74
			001-000-120-558-50-40-00	Professional Services	\$0.75
			001-000-150-576-80-40-00	Professional Services	\$2.25
			001-000-180-518-80-40-01	Professional Services	\$0.75
			101-000-000-544-90-40-01	Professional Services	\$8.24
			104-000-000-536-10-40-00	Professional Services	\$0.75
			105-000-000-557-30-40-00	Professional Services	\$5.24
			401-000-000-534-10-40-01	Professional Services	\$17.23
			402-000-000-535-10-40-01	Professional Services	\$11.98
			403-000-000-531-10-40-01	Professional Services	\$5.99
			Total Invoice - 8/29/2022 2:02:37 PM		\$74.90
	Total 0				\$74.90
Total Shred-IT c/o Stericycle, Inc					\$74.90

Vendor	Number	Reference	Account Number	Description	Amount
Sound Publishing Inc	0			2022 - September - 1st Council Meeting	
		Invoice -swr960719			
			001-000-030-514-20-40-02	Professional Services	\$51.00
		Total Invoice -swr960719			\$51.00
		Invoice -WNT960713			
			001-000-030-514-20-40-02	Professional Services	\$51.00
		Total Invoice -WNT960713			\$51.00
	Total 0				\$102.00
Total Sound Publishing Inc					\$102.00
United Business Machines	0			2022 - September - 1st Council Meeting	
		Invoice -INV479344			
			001-000-010-513-10-40-01	Professional Services	\$4.48
			001-000-030-514-20-40-02	Professional Services	\$19.69
			001-000-070-521-20-40-01	Professional Services	\$20.58
			001-000-100-518-30-40-01	Professional Services	\$2.68
			001-000-110-558-60-40-00	Professional Services	\$5.37
			001-000-120-558-50-40-00	Professional Services	\$4.48
			001-000-150-576-80-40-00	Professional Services	\$1.79
			001-000-180-518-80-40-01	Professional Services	\$0.90
			101-000-000-544-90-40-01	Professional Services	\$6.26
			104-000-000-536-10-40-00	Professional Services	\$0.90
			401-000-000-534-10-40-01	Professional Services	\$9.84
			402-000-000-535-10-40-01	Professional Services	\$9.84
			403-000-000-531-10-40-01	Professional Services	\$2.69
		Total Invoice -INV479344			\$89.50
	Total 0				\$89.50
Total United Business Machines					\$89.50
USABlueBook	0			2022 - September - 1st Council Meeting	
		Invoice -80106			
			401-000-000-534-80-31-01	Parts, Chemicals & Supplies	\$1,310.84
		Total Invoice -80106			\$1,310.84
		Invoice -80806			
			401-000-000-534-80-31-01	Parts, Chemicals & Supplies	\$1,973.43
		Total Invoice -80806			\$1,973.43
	Total 0				\$3,284.27
Total USABlueBook					\$3,284.27

Vendor	Number	Reference	Account Number	Description	Amount
Vision Municipal Solutions	0			2022 - September - 1st Council Meeting	
		Invoice - 09-10651			
			001-000-180-518-80-32-04	Software and IT	\$484.65
		Total Invoice - 09-10651			\$484.65
		Invoice - 09-10730			
			001-000-180-518-80-32-04	Software and IT	\$679.03
		Total Invoice - 09-10730			\$679.03
		Invoice - 09-10745			
			001-000-180-518-80-32-04	Software and IT	\$572.00
		Total Invoice - 09-10745			\$572.00
		Invoice -09-11007			
			001-000-180-518-80-32-04	Software and IT	\$25.33
		Total Invoice -09-11007			\$25.33
	Total 0				\$1,761.01
Total Vision Municipal Solutions					\$1,761.01
Western Facilities Supply	0			2022 - September - 1st Council Meeting	
		Invoice - 43597A			
			402-000-000-535-10-30-01	Supplies	\$96.88
		Total Invoice - 43597A			\$96.88
	Total 0				\$96.88
Total Western Facilities Supply					\$96.88
Grand Total		Vendor Count	23		\$71,049.25



Payroll Register

Number	Name	Fiscal Description	Cleared	Amount
<u>34949</u>	CITY OF LANGLEY	2022 - August - 2nd Council Meeting	8/22/2022	\$10,788.31
<u>34950</u>	National Fraternal Order of Police	2022 - August - 2nd Council Meeting		\$147.00
<u>34951</u>	AFLAC WORLDWIDE HEADQTRS	2022 - August - 2nd Council Meeting		\$213.42
<u>DCP 0801-081522</u>	STATE TREASURER	2022 - August - 2nd Council Meeting	8/17/2022	\$651.49
<u>Direct Deposit Run - 8/16/2022</u>	Payroll Vendor	2022 - August - 2nd Council Meeting		\$32,956.43
<u>DRS 0801-081522</u>	DEPT OF RETIREMENT	2022 - August - 2nd Council Meeting	8/23/2022	\$5,387.12
				\$50,143.77



Register

Fiscal: 2022
 Deposit Period: 2022 - August
 Check Period: 2022 - August - 2nd Council Meeting

Number	Name	Print Date	Clearing Date	Amount
Whidbey Island Bank	092310847			
Check				
<u>34949</u>	CITY OF LANGLEY	8/16/2022		\$10,788.31
<u>34950</u>	National Fraternal Order of Police	8/16/2022		\$147.00
<u>DCP 0801-081522</u>	STATE TREASURER	8/17/2022	8/17/2022	\$651.49
<u>DRS 0801-081522</u>	DEPT OF RETIREMENT	8/23/2022	8/23/2022	\$5,387.12
		Total	Check	\$16,973.92
		Total	092310847	\$16,973.92
WIB	002352			
Check				
<u>Direct Deposit Run - 8/16/2022</u>	Payroll Vendor	8/17/2022		\$32,956.43
		Total	Check	\$32,956.43
		Total	002352	\$32,956.43
		Grand Total		\$49,930.35

WASHINGTON STATE LIQUOR AND CANNABIS BOARD - LICENSE SERVICES
1025 UNION AVE SE - P O Box 43075
Olympia WA 98504-3075
specialoccasions@lcb.wa.gov Fax: 360-753-2710

TO: MAYOR OF LANGLEY

AUGUST 25, 2022

SPECIAL OCCASION #: 071862

THE LANGLEY CHAMBER OF COMMERCE
208 ANTHES AVENUE
LANGLEY, WA 98260

DATE: SEPTEMBER 30, 2022

TIME: 5:30 PM - 9:30 PM

PLACE: WHIDBEY ISLAND FARIGROUNDS AND EVENTS CENTER - 819 CAMANO AVENUE, LANGLEY

CONTACT: INGE MORASCINI (DOB: 2.24.1955) 360-221-6765

SPECIAL OCCASION LICENSES

* __ Licenses to sell beer on a specified date for consumption at a specific place.

* __ License to sell wine on a specific date for consumption at a specific place.

* __ Beer/Wine/Spirits in unopened bottle or package in limited quantity for **off** premise consumption.

* __ Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objections to the issuance of the license. If additional time is required please advise.

- | | | |
|--|-----------|----------|
| 1. Do you approve of applicant? | YES _____ | NO _____ |
| 2. Do you approve of location? | YES _____ | NO _____ |
| 3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? | YES _____ | NO _____ |

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>	YES _____	NO _____
LAW ENFORCEMENT	_____	YES _____	NO _____
HEALTH & SANITATION	_____	YES _____	NO _____
FIRE, BUILDING, ZONING	_____	YES _____	NO _____
OTHER:	_____	YES _____	NO _____

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

Council Meeting Minutes
Monday May 16, 2022

Meeting was called to order by Mayor Scott Chaplin at 5:30pm

Land Acknowledgement

ROLL CALL

In attendance: Mayor Scott Chaplin; Council Member Harolynne Bobis; Council Member Rhonda Salerno; Council Member Thomas Gill; Council Member Craig Cyr; Council Member Gail Fleming; Darlene Baldwin, Interim City Clerk; Meredith Penny, Planning Director, Randi Perry, Public Works Director and Tavier Wasser, Chief of Police

APPROVAL OF CONSENT AGENDA

Motion to Approve Consent Agenda

Motion: Council Member Thomas Gill
2nd: Council Member Harolynne Bobis

Motion Passed unanimously

APPROVAL OF AGENDA

Motion to Approve Agenda

Motion: Council Member Rhonda Salerno
2nd: Council Member Thomas Gill

Discussion:

Move Executive Session to end of meeting
Move Public Comment from New Business c. to Unfinished Business a.
Add Public comment on Zero Waste and Public Comment
Add Doug Coutts to beginning of New Business

Motion Passed unanimously with adjustments

UNFINISHED BUSINESS

1. Council Discussion on Public Comment Guidelines

Discussion:

Council Member Thomas Gill, suggests that council assume there is going to be public comment on agenda items to streamline the process and for Special Meetings have public comment decided at that meeting since single topic meeting

Council Member Craig Cyr, agrees with Council Member Gill's idea on expecting the public to share and suggests public comment time is changed from 5 minutes to 3 minutes per person

Council Member Gail Fleming agrees with both Council members Gill and Cyr. Brought up option that when there is a topic with several people sharing the same thing, to ask that a spokesperson be picked

Council Member Rhonda Salerno reminder on taking public comment from those who want to send in ahead to be read. Idea to add to website directions on how to call in or write in to have comments submitted and included in council discussion

Public Comment:

Steph Christensen – likes to be able to make public comment when questions have not been answered and agrees 3 minutes is plenty

Motion to Approve Public Comment Guidelines

Motion: Council Member Rhonda Salerno
2nd: Council Member Thomas Gill

Discussion:

Council Member Thomas Gill suggests adding a page to website that has guidelines as ordinances are updated or changed

Council Member Craig Cyr, Guidelines for Public Comments should be its own page

Motion Passed unanimously

NEW BUSINESS

1. Requesting letters of support from the City Council for three projects: 6 Pickleball Courts; Artificial Turf Field and an Outdoor Amphitheater. Grants are being applied for, Doug Coutts, Executive Director of Parks, and Recreation Island County

Discussion:

Council Member Craig Cyr, question on artificial turf.
Answer-Looking at using ground up olive pits

Council Member Gail Fleming, question on drainage

Answer-material will be permeable so there will be drainage

Motion to Authorize writing letters of support for 3 Parks and Recreation Projects

Motion: Council Member Craig Cyr
2nd: Council Member Rhonda Salerno

Motion Passed unanimously

2. Authorize Mayor Chaplin to sign a contract with The Watershed Company to assist with the Critical Areas Ordinance Update - Meredith Penny, Planning Director

Motion to Approve the contract with Watershed Company

Motion: Council Member Rhonda Salerno
2nd: Council Member Thomas Gill

Discussion:

Council Member Rhonda Salerno, concerns with raising SEPA threshold when there is rising water and suggest taking SEPA threshold out of contract

Council Member Gail Fleming, concern about changing SEPA threshold
Answer-will be coming back to council for discussion and approval

Motion Passed unanimously

3. Report and Discussion of recent tree removal permits and next steps – Meredith Penny, Planning Director & Council Member Rhonda Salerno

Rhonda Salerno - 2 Large trees were taken down without a permit or an arborist report. Request that council requests that a stern letter go out to the company that came into Langley and cut down two trees without a permit

Meredith Penny – Furman Ave property owners provided two reports after the fact stating the trees were diseased so an after the fact permit was issued, these trees were on public property. Three trees on Woodside Lane need a GEO report and Steep Bluff buffer report before approval.

Discussion:

Council Member Craig Cyr, what is the recourse when someone takes down a tree without a permit? He suggests we need stiffer fines

Council Member Gail Fleming, Is there a fine? Suggests a replacement size requirement be put in place when large trees are removed

Council Member Thomas Gill, suggests homeowners and companies both have penalties for removing trees without a permit

Council Member Harolynne Bobis, agrees with fining homeowners and companies

Mayor Scott Chaplin, staff will meet to discuss and will come back to council with ideas

4. Council Agenda: Additional Standing Item and Modification, proposed changes to meeting agendas – Council Member Craig Cyr
 - a. Change Flag Salute to Recognition. Recognition could then be a place holder for flag salute, poem, land acknowledgment to give some flexibility
 - b. Add Guest Speaker
 - c. Change the time that Council discusses if they will continue the meeting or not from 10:30pm to 9:30pm

Discussion:

Council Member Thomas Gill, liked idea and shared a few suggestions

Council Member Gail Fleming, would like Executive Session to stay at end of meeting

Council Member Rhonda Salerno, shared that the Mayor can set Executive Sessions outside of Council Meetings and suggests that some of the comment wording be updated

Council Members Craig Cyr and Rhonda Salerno will meet and bring an updated agenda to next council meeting

5. Introduction of the Zero Waste Ordinance – Council Member, Rhonda Salerno
 - a. Memo Zero Waste
 - b. 818 Resolution Climate Change
 - c. Support Letter from CCAC
 - d. Washington State Measures – Single-Use Plastics
 - e. Final Letter to Chamber
 - f. Public Survey
 - g. Lodging Survey

h. Restaurant and Business Survey

Discussion:

Council Member Craig Cyr, have all lodging businesses been communicated with?

MAYORS REPORT

1. Finishing up on a public records request
2. Good work has been going on between the Finance and Personnel Committee, past Clerk/ Treasurer Monica Felici, Darrel Duhm and Interim City Clerk Darlene Baldwin
3. Another case of Covid, 3 cases in the last few weeks for staff.
4. Getting ideas for Juneteenth and those will be brought to next council meeting
5. Hybrid in person and Zoom meetings are set to start June 9th

STAFF REPORTS

1. Randi Perry, Director of Public Works
 - a. Overview of Public Works Activity
 - b. Update on Langley Infrastructure Projects
 - c. Emergency call outs
 - d. PWAC Meeting overview
 - e. Public Work Coordination with Private Development
2. Meredith Penny, Director of Planning
 - a. Update on Ongoing Projects
 - i. Affordable Housing Ad Hoc Advisory Committee
 - ii. Housing Action Plan
 - iii. Critical Areas Ordinance Update
 - iv. Wireless Code Update
 - b. Update on Permit Applications
 - i. Land Use Permits
 - ii. Anticipated Land Use Applications
 - c. Active Building Permits
3. Tavier Wasser, Chief of Police
 - a. Laws were updated 7/2021, working on updating Langley to comply
 - i. Lexipol is a company that would be useful in keeping Langley's policy manual up to date
 - b. Vehicles are needing work to keep running well
 - c. Working on Fight for Kids, a Community Outreach Program
 - d. Focusing on mental health inclusion
 - e. Island County is trying to implement a new mental health program called Navigation Program. This is a statewide recovery program

COUNCIL REPORTS

1. Council Member Harolynne Bobis

- a. Met with Claudia Walker about Juneteenth, requested theme from DSR: Celebrate, Educate and Agitate.
- b. Doing celebration during the week so families can be together on 6/19

2. Council Member Rhonda Salerno

- a. Been working on Zero Waste and other projects
- b. Will get back to working on public comment policy

3. Council Member Thomas Gill

- a. Attended Port of SW Meeting
 - Clinton dock replacement is on the work schedule.
 - Fairgrounds grant extended till 2023.
 - Still working on Shoreline Maintenance Program.
 - Working on permit for restroom and kitchen remodel.
 - Lady Washington coming to Marina
 - Evergreen State boat moored at Nichols

4. Council Member Craig Cyr

- a. Thankful to SW Record for article in paper. Scheduling Juneteenth 6/16
- b. Thanks to Mayor Chaplin on opening statement regarding gun violence
- c. Island Transit has had 5 cases of Covid lately, trouble with hiring during this time. Route expansion is on hold currently.

4. Council Member Gail Fleming

- a. Attended joint PWAC/PAB Meeting
- b. Attended Historic Preservation Commission
- c. Attended Parks and Open Space Commission

EXECUTIVE SESSION-Discuss litigation or potential litigation with the governing body's attorney (RCW 42.30.110(1)(i))

Session will be for 45 minutes

Session began at 7:35pm

Session ended at 8:20pm

ADJOURNMENT-8:20 pm Mayor Scott Chaplin

Langley, Washington ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANGLEY, WASHINGTON, AMENDING SECTION 18.01.040 OF THE LANGLEY MUNICIPAL CODE, DEFINITIONS; REPEALING SECTION 18.22.190 OF THE LANGLEY MUNICIPAL CODE, WIRELESS COMMUNICATIONS FACILITIES; ADOPTING A NEW CHAPTER 18.23 OF THE LANGLEY MUNICIPAL CODE RELATED TO WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in 1997, Langley Municipal Code (“LMC”) Section 18.22.190, was adopted by Ordinance No. 754; and

WHEREAS, in the two and one-half decades since 1997, revolutionary changes have occurred in wireless technology, in public concerns about, and research findings on, wireless radiation’s effects on living beings, and in judicial and legal understandings of the federal regulatory framework within which municipal authorities and wireless companies must operate and as such updates to Langley’s regulatory framework are needed; and

WHEREAS, the recent introduction into the consumer market of the millimeter wave wireless technology, featuring shorter wavelengths that create bigger bandwidths to contain more data per second, and signals more tightly focused to a line directly aimed at, or reflected by, citizen equipment represents another current significant technical development; and

WHEREAS, the rollout of this technology with strong Federal funding involvement has accelerated the deployment of millimeter wave networks nationwide; and

WHEREAS, millimeter wave wireless technology are categorized as “small-cell” facilities often mounted on existing power poles, or on their own interconnected mini-towers, in a Distributed Antenna System (DAS); and

WHEREAS, wireless developers prefer these small-cell facilities to be more closely spaced with each other and with town structures, which can cause issues of property value, aesthetics, and neighborhood character to arise; and

WHEREAS, the City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire; and

WHEREAS, the City formally recognizes that, as has been interpreted by federal courts, when it enacted the federal Telecommunications Act of 1996 (TCA), Congress chose to preserve

local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in *Sprint Spectrum L.P. v. Willoth*, 176 F3d 630 (2nd Cir.1999), *Sprint Telephony PCS LP v. City of San Diego*, 543 F3d 571 (9th Cir. 2008); *T-Mobile USA Inc. v. City of Anacortes*, 572 F3d 987 (9th Cir. 2009), and their progeny, and the City has relied upon such federal courts' interpretations of the TCA in enacting this Chapter; and

WHEREAS, the City similarly embraces the federal courts' determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d. 529 (2nd Cir. 2005); and

WHEREAS, this includes preserving to local governments, including the City, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community; and

WHEREAS, consistent with the balancing of interests which the United States Congress intended to embed with the TCA, Chapter 18.23 is intended to serve as a Smart Planning Provision, designed to achieve the four (4) simultaneous objectives of:

- (a) enabling personal wireless service providers to provide adequate personal wireless services throughout the City so that City residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while
- (b) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage,
- (c) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the City's communities, residential areas, and individual homes, and
- (d) complying with all of the legal requirements which the TCA imposes upon the City, when the City receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities; and

WHEREAS, to achieve the objectives stated herein, the City seeks to employ the "General Authority" preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsections of 47 U.S.C.A. §332(c)(7)(B) of the TCA.

WHEREAS, the deployment of small cell installations is known to have both positive and negative impacts on communities, some of the negative impacts can include:

- (a) Lowering the market value of property from which large or small cell installations can be seen;
- (b) Negatively affecting neighborhood and town character;

- (c) Posing threats to the public health, safety, and welfare through operating noise, or falling over or having falling parts in storm;
- (d) Unsightly tree-trimming or tree/bush removal, as millimeter wave signals can be blocked by foliage; and

WHEREAS, this code takes all of these concerns into account and prioritizes the “least intrusive” facility location possible.

WHEREAS, denser residential areas are specified in this ordinance as the least desirable location for wireless transmitting facilities due to negative impacts already stated, with public use districts and central business districts having a higher preference; and

WHEREAS, a Ninth Circuit Court judgment (Portland vs. FCC) affirmed that “intrusive” can include undesirable degradation of “aesthetics,” and “village character,”; and

WHEREAS, protection of property values and personal safety is also one of Langley’s paramount obligations; and

WHEREAS, permitting and yearly administration costs for Personal Wireless Service Facilities (PWSFs) are not specified in this code, they are in no way prevented by it and they are supported by the Federal Communications Commission (FCC); and

WHEREAS, 47 CFR 1 Section 332(c)(7) states there is a minimum “safe harbor” dollar amount the FCC supports without question for jurisdictions to charge for the permitting and yearly supervision of PWSFs; specifically it states, “reasonable [as of 2018] approximation of the state or local government’s costs...related to and caused by the deployment” while excluding “excessive and arbitrary consulting fees or other costs”; additionally, the FCC adds that “a locality could prevail in charging fees that are above this level by showing that such fees are...(1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory;” and the FCC “recognizes local variances in costs”; and

WHEREAS, inflation since 2018 is considerable, so a higher amount for these costs is expected and would be documented by the permitting authority; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Repealer. LMC Section 18.22.190 is hereby repealed in its entirety.

Section 2. New LMC Chapter 18.23 (Wireless Communication Facilities), Created and Adopted. A new Chapter 18.23 of the Langley Municipal Code is hereby adopted as set forth in Exhibit A attached hereto and incorporated by this reference as if fully set forth herein.

Section 3. LMC 18.01.040, Amended. LMC Section 18.01.040 is hereby amended to delete and repeal the definitions of “Wireless communications antenna array,” “Wireless communications

facility,” and “Wireless communications service,” all as set forth therein. The remainder of LMC 18.01.040 shall remain in full force and effect as currently adopted or hereafter amended.

Section 4. Findings, Adopted. The City Council adopts the Planning Advisory Board’s Findings of Fact attached hereto as Exhibit B, as their own findings and conclusions pertaining to these issues.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Codification of Amendments. The City Council authorizes the City Clerk to correct any non-substantive errors herein, codify the amendments, and publish the amended code.

Section 7. Effective Date. This Ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five days from the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON,
AT A REGULAR MEETING THEREOF, THIS ____ DAY OF _____, 2022**

CITY OF LANGLEY

Scott Chaplin, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael R. Kenyon, City Attorney
Clerk

Darlene Baldwin, Interim City

EXHIBIT A

Amendments to Langley Municipal Code Chapters:
18.01 and 18.22 LMC.

Addition of new Langley Municipal Code Chapter:
18.23 LMC

CHAPTER 18.01 INTRODUCTION

Sections:

- 18.01.010 Purpose.
- 18.01.020 Scope.
- 18.01.030 Rules for interpretation.
- 18.01.040 Definitions.

18.01.010 Purpose

...

18.01.020 Scope

...

18.01.030 Rules for Interpretation

...

18.01.040 Definitions

“Accessory building” means a building which is subordinate to the principal building, and is incidental to the use of the principal building on the same lot. Examples include sheds, shops, garages, greenhouses and barns.

...

“Winery” means a business licensed by the state of Washington that makes and sells wine at wholesale or retail, and includes an on-site location for consumer tasting and purchase.

~~“Wireless communications antenna array” means one or more rods, panels, dices or similar devices used for the transmission or reception of radio frequency signals through electromagnetic energy, which may include:~~

- ~~1. Antennas equal to or less than 15 feet in height; and~~
- ~~2. Parabolic antennas equal to or less than 39.37 inches (one meter) in diameter with an area not more than 50 square feet in aggregate.~~

~~“Wireless communications facility” means any unstaffed facility for the transmission and/or reception of radio frequency signals through electromagnetic energy, usually consisting of an equipment shelter or cabinet, a support structure used to achieve the necessary elevation, and the transmission and reception devices or antennas.~~

~~“Wireless communications service” means the providing or offering for rent, sale or lease, or other value received, the transmittal of information between or among points by satellite or similar facilities, with or without benefit of any closed transmission medium.~~

“Workforce housing” means housing that is affordable for households with incomes between 80 percent and 120 percent (or less) of the area median income (AMI), regardless of tenure.

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Chapter 18.22
General Provisions and Standards

Sections:

- 18.22.010 Scope.
- 18.22.020 Landscaping design and tree retention.
- 18.22.030 Yards.
- 18.22.040 Fences and hedges.
- 18.22.045 View preservation.
- 18.22.050 Accessory buildings.
- 18.22.055 Water conservation.
- 18.22.060 Home occupations.
- 18.22.065 Residential-zone offices.
- 18.22.070 Short-term rentals – General.
- 18.22.080 Violation – Penalty.
- 18.22.085 Repealed.
- 18.22.090 Day care centers.
- 18.22.095 Commercial development adjacent to single-family residential zoning districts.
- 18.22.100 Outside storage.
- 18.22.110 Vehicle parking.
- 18.22.115 Electric vehicle charging stations.
- 18.22.120 Barrier-free access.
- 18.22.130 Parking requirements.
- 18.22.140 Design and construction requirements – Parking.
- 18.22.150 In-home family day care.
- 18.22.155 Accessory dwelling units.
- 18.22.160 Essential public facilities.
- 18.22.165 Adult family home.
- 18.22.170 Comprehensive plan/concurrency and consistency required.
- 18.22.180 Cottage housing.
- 18.22.190 ~~Wireless communications facilities.~~ Repealed.
- 18.22.200 Clustered residential development (CRD).
- 18.22.210 Retirement living facilities, nursing or convalescent facilities, and congregate care facilities.
- 18.22.220 Condominium binding site plan.
- 18.22.230 Design guidelines for townhouse units.
- 18.22.240 Temporary housing.
- 18.22.250 Green building standards – Purpose.
- 18.22.255 Green building standards – Setbacks.
- 18.22.260 Green building standards – Height.
- 18.22.265 Green building standards – Solar access.
- 18.22.270 Green building standards – Maximum lot coverage.
- 18.22.280 Boardinghouse.
- 18.22.290 Tiny home (multifamily).

...

~~18.22.190 Wireless communications facilities.~~

The following provisions apply to wireless communications facilities:

~~A. Wireless communication antenna arrays are permitted in any zone as long as they are located upon an existing structure (sign structures are not considered structures for this purpose) that provides sufficient elevation for the array's operation without the necessity of constructing an apparatus to extend the antenna array more than 15 feet above the highest point of the structure.~~

~~B. The following limits apply to the number of arrays on a structure:~~

~~1. All residential zones: one.~~

~~2. Commercial zones: three.~~

~~3. Public use zone: three.~~

~~C. Installation on city property is subject to execution of the necessary agreement(s) with the city.~~

~~D. Landscaping and Screening. Equipment shelter and cabinets and other on the ground ancillary equipment shall be screened by the use of shrubs that achieve sufficient height and fullness upon maturity to screen such facilities.~~

~~E. Color and Lighting. The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure.~~

~~F. Setback Requirements. All equipment shelters, cabinets or other in the ground ancillary equipment shall meet the setback requirements of the zone in which the equipment is located.~~

~~G. Electromagnetic field/radio frequency radiation standards shall conform to such standards as are required by the Federal Communication Commission's regulations.~~

~~H. Co-Location of Facilities. It is the policy of the city to encourage the co-location of antenna arrays of more than one wireless communication service provider on a single support structure.~~

~~I. Discontinuance of Use. Any wireless communication facility that is no longer needed and its use is discontinued shall be reported immediately by the service provider to the city. Discontinued facilities shall be completely removed within six months and the site restored to the preexisting condition.~~

...

CHAPTER 18.23
PERSONAL WIRELESS FACILITIES

Sections:

- §18.23 Personal Wireless Service Facilities
- §18.23.010 Purpose and Legislative Intent
- §18.23.020 Definitions; Word Usage
- §18.23.030 Application Types
- §18.23.040 Shot Clock Periods
- §18.23.050 Shot Clock Tolls, Extensions
& Reasonable Delay Periods
- §18.23.060 Application Requirements
- §18.23.070 Design Standards
- §18.23.080 Hearing Examiner Initial Review
- §18.23.090 Hearings and Public Notice
- §18.23.100 Factual Determinations to be Rendered
by the Hearing Examiner
- §18.23.110 Retention of Consultants
- §18.23.120 Setback Requirements
- §18.23.130 Height Restrictions
- §18.23.140 Use Restrictions and Variances
- §18.23.150 Environmental Impacts
- §18.23.160 Historic Site Impacts
- §18.23.170 *Force Majeure*
- §18.23.180 *Eleventh Hour* Submissions
- §18.23.190 Prohibition Against Illegally Excessive Emissions & RF Radiation Testing
- §18.23.200 Bond Requirements & Removal of Abandoned Facilities and Reclamation
- §18.23.210 ADA Accommodations
- §18.23.220 Siting Hierarchy
- §18.23.230 General Provisions

§18.23 Personal Wireless Service Facilities

This Chapter 18.23 is intended to repeal and replace all previous versions of, and amendments to, Section 18.22.190 “Wireless communications facilities” of the Municipal Code of the City of Langley (“Municipal Code”), all of which are hereby repealed and replaced in their entirety by this Chapter 18.23 et. seq., as of the effective date hereof.

No Personal Wireless Service Facility (PWSF) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this Chapter.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF, the City shall require a special use permit pursuant to the provisions of this section, which shall be applied for in accord with the procedure set forth within Chapter 18.34 “Design Review”, unless otherwise provided herein below.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a special use permit.

Each application for a special use permit under this chapter and each individual PWSF for which an application for a special use permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a Distributed Antenna (DAS) System.

§18.23.010 Purpose and Legislative Intent

The purpose of this section is to promote the health, safety, and general welfare of the residents of the City of Langley and to preserve the scenic, historical, natural, and man-made character and appearance of the City, consistent with Sections 18.01.010 and 18.01.020 of the Municipal Code, while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other personal wireless service facilities consistent with applicable federal, state and local laws and regulations.

Consistent with the balancing of interests which the United States Congress intended to embed with the federal Telecommunications Act of 1996 (hereinafter “the TCA”), Chapter 18.23 is intended to serve as a *Smart Planning Provision*, designed to achieve the four (4) simultaneous objectives of: (a) enabling personal wireless service providers to provide adequate personal wireless services throughout the City so that City residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while (b) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (c) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the City’s communities, residential areas, and individual homes, and (d) complying with all of the legal requirements which the TCA imposes upon the City, when the City

receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The City also seeks to ensure that, in applying this section, the Design Review Hearing Examiner (the “Hearing Examiner”) is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Hearing Examiner to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.

To achieve the objectives stated herein, the City seeks to employ the “General Authority” preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsections of 47 U.S.C.A. §332(c)(7)(B) of the TCA.

§18.23.020 Definitions; Word Usage

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. If, and to the extent that the definitions set forth herein are inconsistent with any other definitions elsewhere within the Municipal code, the definitions herein shall supersede any conflicting definitions set forth elsewhere within the Municipal Code, and the definitions set forth herein below shall control and apply to Chapter 18.23 and all subsections herein.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE

A facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.

ACHP

The federal Advisory Council on Historic Preservation.

ADEQUATE COVERAGE

As determined by the Hearing Examiner, adequate coverage means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service.

APPLICANT

Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a special use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.

APPLICATION

Refers to all necessary and required documentation and evidence that an applicant must submit to receive a special use permit, building permit, or other approval for personal wireless service facilities from the City.

CELL TOWER

A free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

CEQ

The Council on Environmental Quality was established under NEPA.

CFR

The Code of Federal Regulations

CITY

The City of Langley

COLOCATION and/or CO-LOCATE

To install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

COMPLETE APPLICATION, COMPLETED APPLICATION

An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the City Planning Official or the City's expert or consultant or the Hearing Examiner determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the City Planning Official, Hearing Examiner or the City's expert or consultant or the Hearing Examiner.

COMPLEX

The entire site or facility, including all structures and equipment, located at the site.

DBM (dBm)

DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can typically range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.

DEPLOYMENT

The placement, construction, or substantial modification of a personal wireless service facility.

DISTRIBUTED ANTENNA SYSTEM, DAS

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

EFFECTIVE PROHIBITION

A finding by the Hearing Examiner that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Hearing Examiner deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.

ELEVENTH HOUR SUBMISSIONS

An applicant's submission of new and/or additional materials in support of an application within forty-eight (48) hours of the expiration of an applicable shot clock (as is hereinafter defined), or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Hearing Examiner to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

ENURE

To serve to the use, benefit, or advantage of a person or party.

EPA

The United States Environmental Protection Agency.

FAA

The Federal Aviation Administration, or its duly designated and authorized successor agency.

FACILITY

A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

FCC

The Federal Communications Commission.

GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

HEARING EXAMINER

An Examiner appointed by the City Council pursuant to sections 18.037.020 and 18.37.030 of the Municipal Code.

HEIGHT

When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

HISTORIC STRUCTURE

Any structure that would meet the definition of a regulated structure as defined in this Chapter.

ILLEGALLY EXCESSIVE RF RADIATION or ILLEGALLY EXCESSIVE RADIATION

RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

IN-KIND REPLACEMENT

The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

MACROCELL

A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 199 feet in height.

MAINTENANCE or ROUTINE MAINTENANCE

Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

MUNICIPAL CODE

The City of Langley Municipal Code, as the term has been codified in Chapter 1.01.

NECESSARY or NECESSITY or NEED

What is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a need or a necessity.

NEPA

The National Environmental Policy Act, 42 U.S.C. §4321 et seq.

NHPA

The National Historic Preservation Act, 54 U.S.C. §300101 et seq, and 36 CFR Part 800 et seq.

NODE, DAS NODE

A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

NOTICE ADDRESS

An address, which is required to be provided by an applicant at the time it submits an application for a special use permit, at which the City, Hearing Examiner and/or City Planning Official can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

NOTICE OF INCOMPLETENESS, NOTICE OF INCOMPLETE APPLICATION

A written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a PWEF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

NOTICE OF EFFECTIVE PROHIBITION CONDITIONS

A written notice which is required to be provided to the Town at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, Hearing Examiner or body of the Town, would constitute an “effective prohibition” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

OCCUPATIONAL/CONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

PERSONAL WIRELESS SERVICE/PERSONAL WIRELESS SERVICES

Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

PERSONAL WIRELESS SERVICE FACILITY, PERSONAL WIRELESS SERVICES FACILITY or PWSF

A facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

PROBATIVE EVIDENCE

Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Hearing Examiner, as the finder-of-fact in determining whether to grant or deny applications for special use permits under this provision of the Municipal Code.

REPAIRS

The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without

the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

RF

Radiofrequency.

RF RADIATION

Radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.

SECTION 106 REVIEW

A review under Section 106 of the National Historic Preservation Act.

SEPA

The State Environmental Policy Act

SETBACK

For purposes of special use permit applications, a setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a special use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

SHOT CLOCK

The applicable period which is presumed to be a reasonable period within which the City is generally required to issue a final decision upon an application seeking special use permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.

SITE DEVELOPER or SITE DEVELOPERS

Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to *wireless carriers*. Unlike *wireless carriers*, site developers generally do not provide personal wireless services to end-use consumers.

SMALL CELL

A fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

SMALL WIRELESS FACILITY (SWF)

A personal wireless service facility that meets all of the following criteria

- (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto;
- (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume;
- (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;
- (d) The facility is not located on tribal land; and
- (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

SPECIAL USE PERMIT

The official document or permit granted by the Hearing Examiner pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

STATE

The State of Washington.

STEALTH or STEALTH TECHNOLOGY

A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

STRUCTURE

A pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

SUBSTANTIAL EVIDENCE

Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

TCA

The Telecommunications Act of 1996, 47 U.S.C. §332(c)

TOLLING or TOLLED

The pausing of the running of the time period permitted under the applicable shot clock for the respective Type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was

mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to *resume* running, as opposed to causing the shot clock to begin running *anew*.

TOWER, TELECOMMUNICATIONS TOWER

Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.

UNDERTAKING

Any application for a special use permit seeking Hearing Examiner approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

WIRELESS CARRIERS or CARRIER

Companies that provide Personal Wireless Services to end-use consumers.

ZONING APPEALS

Refers to appeals made to the Hearing Examiner as provided in Chapter 18.37.

§18.23.030 Application Types

There shall be four (4) specific types of applications for special use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. It shall be the obligation of any applicant to explicitly and correctly identify which type of application they are filing.

1. Type I Applications Colocations of Small Wireless Facilities

Type I applications shall be limited to applications wherein an applicant seeks to co-locate a new small wireless facility, as defined in this chapter, by installing new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.

Type I applications shall require applicants to obtain a special use permit and site plan approval from the Hearing Examiner.

2. Type II Applications Co-locations which do not meet the definition of a Small Wireless Facility.

Type II applications shall be limited to applications wherein an applicant is seeking to co-locate new personal wireless service equipment by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex, which does not meet the definition of a small wireless facility or which will not meet the definition of a small

wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure.

Type II applications shall require applicants to obtain a special use permit and site plan approval from the Hearing Examiner.

3. Type III Applications New Small Wireless Facilities

Type III applications shall be limited to applications seeking to install and/or construct a new small wireless facility as defined in Section §18.23.20 hereinabove.

Type III applications shall require applicants to obtain a special use permit and site plan approval from the Hearing Examiner.

4. Type IV Applications New Towers and All Other Wireless Facilities

Type IV applications shall include applications for the installation of a new telecommunications tower, personal wireless service facility, complex, structure, or equipment, which does not meet the criteria for Type I, Type II, or Type III applications.

Type IV applications shall require applicants to obtain a special use permit and site plan approval from the Hearing Examiner.

§18.23.040 Shot Clock Periods

To comply with the requirements of Section 47 U.S.C. 332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth herein below shall be presumed to be reasonable periods within which the Hearing Examiner shall render determinations upon special use permit applications for personal wireless service facilities.

The Hearing Examiner shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period list below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Hearing Examiner and/or City's controls, as addressed within subsections §18.23.150; §18.23.160; §18.23.170; §18.23.180 herein below.

1. Type I Applications Colocations of Small Wireless Facilities
Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Hearing Examiner shall issue a written decision upon a Type I application within sixty (60) days from the date when the City receives a Type I application.

Upon receipt of a Type I application, the City Planning Official shall review the application for completeness. If the City Planning Official determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise

defective, then, within **ten (10) days** of the City's receipt of the application, the City Planning Official, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the City Planning Official shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the City Planning Official shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the City Planning Official to remedy the issues the City Planning Official identified in the Notice of Incomplete Application, which had been mailed to the applicant. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running upon receipt by the City.

If upon receipt of any additional materials from the applicant, the City Planning Official determines that the application is still incomplete and/or defective, then the City Planning Official shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

2. Type II Applications Colocations on existing Towers, Structures or other Facilities which do not meet the definition of a Small Wireless Facility. Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Hearing Examiner shall issue a written decision upon a Type II application within ninety (90) days from the date when the City receives a Type II application.

Upon receipt of a Type II application, the City Planning Official shall review the application for completeness. If the City Planning Official determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, the City Planning Official, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the City Planning Official shall advise the applicant, with reasonable clarity of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the City Planning Official shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the City Planning Official to remedy the issues the

City Planning Official identified in the Notice of Incomplete Application, which had been mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running upon receipt by the City.

If upon receipt of any additional materials from the applicant, the City Planning Official determines that the application is still incomplete and/or defective, then the City Planning Official shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the City. The shot clock shall once again be tolled, and the same procedure provided hereinabove shall be repeated.

3. Type III Applications New Small Wireless Facilities
Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Hearing Examiner shall issue a written decision upon a Type III application within ninety (90) days from the date when the City receives a Type III application.

Upon receipt of a Type III application, the City Planning Official shall review the application for completeness. If the City Planning Official determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **ten (10) days** of the City's receipt of the application, the City Planning Official, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address which the applicant has provided.

Within such Notice of Incompleteness, the City Planning Official shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the City Planning Official shall toll the 90-day shot clock, which *shall start running anew* if and when the applicant tenders an additional submission to the City Planning Official to remedy the issues the City Planning Official identified in the Notice of Incomplete Application, which had been mailed to the applicant.

If upon receipt of any additional materials from the applicant, the City Planning Official determines that the application is still incomplete and/or defective, then the City Planning Official shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock *shall then be tolled*, unless and until the applicant files its supplemental and/or corrected materials, at which time the shot clock shall then *resume* running.

4. Type IV Applications New Towers and All Other Wireless Facilities
One Hundred Fifty (150) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Hearing Examiner shall issue a written decision upon a Type IV application within one hundred fifty (150) days from the date when the City receives a Type IV application.

Upon receipt of a Type IV application, the City Planning Official shall review the application for completeness. If the City Planning Official determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, City Planning Official, or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the City Planning Official shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the City Planning Official shall toll the 150-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the City Planning Official to remedy the issues the City Planning Official identified in the Notice of Incomplete Application, which had been mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running upon receipt by the City.

If upon receipt of any additional materials from the applicant, the City Planning Official determines that the application is still incomplete and/or defective, then the City Planning Official shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

§18.23.050 Shot Clock Tolls, Extensions & Reasonable Delay Periods

Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within Section §18.23.040 hereinabove shall generally be presumed to be sufficient periods within which the Hearing Examiner shall render decisions upon special use permit applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Hearing Examiner, and the Hearing Examiner shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

1. Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error

As provided for within Section §18.23.40 hereinabove, in the event that the City Planning Official deems an application incomplete, the City Planning Official shall send a Notice of Incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the City Planning Official mails a Notice of Incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Hearing Examiner is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the City receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically *resume* running, but shall not be deemed to start running *anew*.

The applicable shot clock period shall, once again, be tolled if the City Planning Official thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the City, from the applicant, up to that point.

2. Shot Clock Extension by Mutual Agreement

The Hearing Examiner, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Hearing Examiner shall include the Hearing Examiner's authority to request, at any time, and for any period of time the Hearing Examiner may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Hearing Examiner, the applicant, or any relevant third party, to complete any type of Undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Hearing Examiner, to the extent that any such Undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law, and/or the requirements of any provision of the Municipal Code, including but not limited to this Chapter.

In response to any request by the Hearing Examiner, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Hearing Examiner shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Hearing Examiner within the hearing process.

3. Reasonable Delay Extensions of Shot Clock Periods

The City recognizes that there may be situations wherein, due to circumstances beyond the control of the City and/or the Hearing Examiner, the review and issuance of a final decision upon a special use permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section §18.23.40 hereinabove.

If, despite the exercise of due diligence by the City and the Hearing Examiner, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Hearing Examiner shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

Reasonable delays which may constitute proper grounds for extending the presumed sufficient periods for rendering determinations under the applicable shot clock periods may include, but are not necessarily limited to, those set forth within Sections §18.23.150; §18.23.160; §18.23.170; §18.23.180 herein below.

§18.23.060 Application Requirements

Applications for special use permits under this section shall be made to the City Planning Official, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

If the City Planning Official determines that the application is defective or incomplete, they shall promptly mail a **Notice of Incompleteness** to the applicant, in accord with §18.23.40 to toll the applicable shot clock, to ensure that the City and the Hearing Examiner are afforded sufficient time to review and determine each respective application.

Each application shall include the following materials, the absence of any one of which listed hereinbelow, shall render the respective application incomplete:

1. Special use permit and Site plan Applications

Completed applications for a special use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

2. Filing Fees

The appropriate filing fees then being charged by the City for applications for special use permit applications and other related applications.

3. A “Notice Address”

A “Notice Address,” that being a specific address to which the City, Hearing Examiner, and/or City Planning Official may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, co-applicant, and/or their attorney, to comply with any requirement under this section as well as any local, state and/or federal law

4. Proof of Authorization for Site Occupancy

Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, they shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

5. A Drawn-To-Scale Depiction

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the City Planning Official to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

6. Site plan

The applicant shall submit a site plan and site plan application in accordance with Chapter 18.27 of the Municipal Code. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new Facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

7. Engineer's Report

To the extent that an application proposes the co-location of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

8. Environmental Assessment Form

A completed environmental assessment form (EAF) and a completed visual EAF addendum.

9. Visual Impact Analysis

A completed visual impact analysis, which, at a minimum, shall include the following:

(a) Small Wireless Facilities

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

(i) A "Zone of Visibility Map" to determine locations from where the new facility will be seen.

(ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or

absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

10. Alternative Site Analysis

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a special use permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.

- (c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.
- (d) a demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

11. FCC Compliance Report

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable. Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the *General Population Exposure Limits* or the *Occupational Exposure Limits*. If the applicant and/or their engineer are asserting that the *Occupational Exposure Limits* apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

12. FCC License

A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the City.

13. Effective Prohibition Claims

The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is “necessary” to remedy one or more significant gaps in a carrier’s personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff’s 66-page report is made a part of this Chapter as Appendix 1. The City considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Hearing Examiner to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Chapter and the statutory requirements of the TCA.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Hearing Examiner or the City that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the City, (b) that the applicant’s proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Hearing Examiner would constitute an “effective prohibition” under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

“Notice of Effective Prohibition Conditions”

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Hearing Examiner to reasonably determine: (a) whether or not the conditions alleged by the respective applicant exist, (b) whether there exists a significant gap or gaps in an identified wireless carrier’s personal wireless services within the City, (c) the geographic locations of any such gaps, and (d) the geographic boundaries of such gaps, to enable the Hearing Examiner to determine whether granting the respective application would be consistent with the requirements of

this Chapter and the legislative intent behind same, and whether or not federal law would require the Hearing Examiner to grant the respective application, even if it would otherwise violate the City's Municipal Code, including, but not limited to, this Chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

(a) Drive Test Data and Maps

If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the City and the Hearing Examiner with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test,
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded and
- (iii) each signal strength recorded, measured in DBM, for each frequency.

Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

- (iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of - 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at - 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

(b) Denial of Service and/or Dropped Call Records

If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency, or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the City, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

14. Estimate for Cost of Removal of Facility

A written estimate for the cost of the decommissioning, removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein

15. Property Owner Consent & Liability Acknowledgement

A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its special use permit application and acknowledge the potential landowner's responsibility, under section §18.23.110 for engineering, legal and other consulting fees incurred by the City.

§18.23.070 Design Standards

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility.

1. Small Wireless Facilities

Small Wireless Facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and non-wooden poles shall conform to the following criteria:

(a) Proposed antenna and related equipment shall meet:

- (i) design standards which the City may maintain and update as needed, provided that the City makes its designed standards publicly available for

review by any potential applicant seeking approval for the installation of an SWF within the City, and

- (ii) National Electric Safety Code (NESC) standards; and
- (iii) National Electrical Code (NEC) standards.

(b) Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

(c) Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible if allowed by the pole owner. The number of conduits shall be minimized to the extent technically feasible. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWF's attached to pre-existing wooden and non-wooden poles, but shall additionally conform to the following criteria:

(a) The City prefers that wireless providers and site developers install SWF's on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.

(b) To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.

(c) The height of replacement poles and new poles shall conform with the height limitations applicable to the district within which the applicant seeks to install their proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

2. Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

- (a) The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.
- (b) Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.
- (c) Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
- (d) Notwithstanding the height restrictions listed elsewhere in this Chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.
- (e) Accessory Structures
 - (i) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Hearing Examiner to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.
 - (ii) Accessory structures shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
 - (iii) No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone shall be

posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the City and/or Municipal Code.

- (f) Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.
- (g) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this Chapter prior to the approval of the special use permit use.
- (h) Screening.
 - (i) Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.
 - (ii) Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Hearing Examiner.
 - (iii) The applicant shall demonstrate to the approving Hearing Examiner that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.
- (i) Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers necessary. No exterior lighting shall spill from the site in an unnecessary manner.
- (j) Access.
 - (a) Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

- (b) To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.
- (k) Parking. Parking shall be provided to assure adequate emergency and service access. The Hearing Examiner shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.
- (l) Fencing. The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Hearing Examiner. The Hearing Examiner may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

§18.23.080 Hearing Examiner Initial Review

1. Initial Review

Upon their acceptance of an application that appears to be complete, the City Planning Official shall transmit the application to the Hearing Examiner for initial review.

The Hearing Examiner shall then conduct an initial review to consider whether or not to establish itself as Lead Agency pursuant to SEPA and/or NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Hearing Examiner will be required to be made after the Hearing Examiner has declared itself to serve as Lead Agency and during the process of the Planning Hearing Examiner considering a SEPA determination of environmental significance. That consideration of granting any required variances by the Hearing Examiner is done concurrently with the Hearing Examiner's review and consideration of special use permit and site plan approval.

The Hearing Examiner shall then conduct a public hearing upon each application, and render its determinations in accord with Sections §18.23.090 and §18.23.100 herein below, and shall ultimately determine whether or not to grant each applicant a special use permit and/or site plan approval.

§18.23.090 Hearings and Public Notice

1. Public Hearings

The Hearing Examiner shall conduct a public hearing upon each special use permit application, consistent with the procedures in Section §18.36.060, except the Hearing Examiner shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Hearing Examiner under the requirements of the TCA.

2. Required Public Notices

The Hearing Examiner shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Hearing Examiner shall cause to be published a

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

Each “Notice of Public Hearing for New Wireless Facility shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special use permit, and the date, time, and location of the hearing.

Each “Notice of Public Hearing for New Wireless Facility” shall be published both: (a) in one or newspapers in the manner set forth within, and consistent with Section §1.16.010 and §18.36.020 and by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

For Type I and Type III applications, notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Hearing Examiner shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any property line of the property upon which the applicant proposes to install its facility.

For Type II and Type IV applications, the applicant shall mail such notices of public hearing to all property owners whose real properties are situated within 1,500 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility.

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

§18.23.100 Factual Determinations to be Rendered by the Hearing Examiner

1. Evidentiary Standards

In determining special use permit applications for personal wireless service facilities, the Hearing Examiner shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Hearing Examiner to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence which the Hearing Examiner may require an applicant to produce, are the following:

- (a) where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Hearing Examiner can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Hearing Examiner is required to determine;
- (b) where the Hearing Examiner deems it appropriate, the Hearing Examiner can require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Hearing Examiner, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;
- (c) where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Hearing Examiner may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Hearing Examiner to assess the existence of such significant gaps accurately, and/or

whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application.

- (d) where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Hearing Examiner may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

The Hearing Examiner shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Hearing Examiner shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Hearing Examiner to determine the accuracy of any factual allegations asserted by each respective applicant.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Hearing Examiner.

2. Factual Determinations

To decide applications for special use permits under this section, the Hearing Examiner shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Hearing Examiner shall render local zoning determinations according to Section (a) hereinbelow.

Then, if, and only if, an applicant asserts claims that: (a) its proposed wireless facility or installation is necessary to remedy a significant gap in personal wireless services for an explicitly identified wireless carrier, and (b) that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps, the Hearing Examiner shall additionally render TCA determinations, in accord with Section (b) hereinbelow.

The Hearing Examiner shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations.

Each factual determination made by the Hearing Examiner shall be based upon Substantial Evidence.

For purposes of this provision, “Substantial Evidence” shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence which the Hearing Examiner may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Hearing Examiner may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the City, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the City, its residents, and property owners, and not applicants.

If, and to the extent that the Hearing Examiner fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Hearing Examiner.

(a) Local Zoning Determinations

The Hearing Examiner shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this Chapter.

(i) Compliance with Chapter 18.36

Whether the proposed installation will meet each of the conditions and standards set forth within Chapter 18.36 in the absence of which the Hearing Examiner is not authorized to grant a special use permit.

(ii) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties that are located adjacent to, or in close proximity to, the proposed site, or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(iii) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to the proposed site, or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(iv) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(v) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(vi) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of The City

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the City including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the City.

(vii) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icfall, debris fall, and fire.

(viii) Most Preferred Site on Hierarchy

Whether the site chosen by the applicant for its proposed facility is situated in the most preferred District within the hierarchy of preferred Districts set forth within section §18.23.220, and whether the applicant has established before the Hearing Examiner that it is not feasible for the applicant's proposed new facility to be siting in a more preferred District listed within such section.

(ix) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Hearing Examiner determines that the proposed facility would not meet the standards set forth within Chapter 18.36, or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the City and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Hearing Examiner shall deny the respective application for a special use permit unless the Hearing Examiner additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections (b) and (c) immediately hereinbelow.

(b) TCA Determinations

In cases within which an applicant has filed a “Notice of Effective Prohibition Conditions,” the Hearing Examiner shall make three (3) additional factual determinations, as listed herein below:

(i) Adequate Personal Wireless Services Coverage

Whether the specific wireless carrier has adequate personal wireless services coverage within the geographic areas for which the applicant claims a significant gap exists in such coverage.

(ii) Significant Gap in Personal Wireless Services of an Identified Carrier

Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City.

In rendering such determination, the Hearing Examiner shall consider factors including, but not necessarily limited to (a) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (b) whether any such alleged gap is relatively large or small in geographic size, (c) whether the number of the carrier’s customers affected by the gap is relatively small or large, (d) whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or (d)

overall, whether the gap is relatively insignificant or otherwise relatively *de minimis*.

A significant gap cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

(iii) Least Intrusive Means of Remediating Gap(s) in Service

Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Hearing Examiner based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Hearing Examiner shall consider factors including, but not necessarily limited to: (a) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location, (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation (c) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (d) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas, (e) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or (f) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations, such as the installation of multiple shorter installation, instead of a single microcell facility.

(c) Finding of Effective Prohibition or Lack of Effective Prohibition

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Hearing Examiner affirmatively determines that the applicant has failed to establish either: (i) that an identified wireless carrier suffers from a significant gap(s) in its personal wireless services within the City, and/or (ii) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps, then the Hearing Examiner may deny the application pursuant to Section (b) hereinabove, and such denial shall not constitute an "Effective Prohibition."

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Hearing Examiner affirmatively determines that the applicant has established both: (i) that an identified wireless carrier suffers from a significant gap in personal wireless services within the City, and (ii) that the proposed installation is the least intrusive means of remedying such significant gap or gaps, then the Hearing Examiner shall grant the application, irrespective of any determinations the Hearing Examiner may make pursuant to Section (b) hereinabove, because any such denial would constitute an “effective prohibition.”

§18.23.110 Retention of Consultants

1. Use of Consultants

Where deemed reasonably necessary by the Hearing Examiner and/or the City, the Hearing Examiner and/or the City may retain the services of professional consultants to assist the Hearing Examiner in carrying out its duties in deciding special use permit applications for personal wireless service facilities. Where the Hearing Examiner uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the City for such services. In no event shall that responsibility be greater than the actual cost to the City of such engineering, legal, or other consulting services.

2. Advance Deposits for Consultant Costs

The City and/or Hearing Examiner may require advance periodic monetary deposits held by the City on account of the applicant or landowner to secure the reimbursement of the City's consultant expenses. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After audit and approval of itemized vouchers by the City Comptroller as to reasonableness and necessity of the consultant charges, the City may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the City shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between City officers or employees and the City's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the City Council. Consultants shall undertake no review on any matter scheduled before the Hearing Examiner until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing

agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing Hearing Examiners in connection with comparable applications for land use or development.

The City may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to assist the Hearing Examiner in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the City or its residents; (b) assessing potential adverse environmental impacts such as those identified within a SEPA process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, to enable the Hearing Examiner to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

4. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the City Council shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the City in connection with the review and consideration of a special use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the City Council on reasonable advance notice.

5. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the City. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the City for funds expended to compensate services rendered to the City under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the City for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the City to be due. In the event of failure to reimburse the City for such fees, the following shall apply:

The City may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) in such actions shall be responsible for the reasonable and necessary attorney's fees expended by the City in prosecuting such action.

Alternatively, and at the sole discretion of the City, a default in reimbursement of such engineering, legal and consulting fees expended by the City shall be remedied by charging such sums against the real property that is the subject of the special use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the City. Such charges shall be levied and collected simultaneously and in the same manner as City-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the City Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§18.23.120 Setback Requirements

1. Small Wireless Facilities

- (a) The minimum setback from any residential dwelling or structure shall be 150 feet within the Public Use (P-1) and Central Business (CB) Districts, unless the facility is being installed upon a pre-existing utility pole or other utility structure.
- (b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of 300 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.

2. Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility

- (a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.
- (b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located, in the Schedules of Regulations for Nonresidential and Residential

Districts of this Chapter, and such additional land if necessary to meet the setback requirements of this Section.

- (c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to one hundred ten (110%) percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning districts.
- (d) In addition to the above required setbacks from property lines, Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of 300 feet from any residential dwelling or structure in all zones.

§18.23.130 Height Restrictions

1. Small Wireless Facilities

Personal Wireless Service Facilities which meet the definition of a small wireless facility shall not exceed a maximum height of 60 feet above ground elevation in the Public Use (P-1), and Residential Single Family 15000 (RS 15000) Districts, and shall not exceed a maximum height of 45 feet within all other zoning districts.

2. Non-Small Wireless Facilities

Personal Wireless Service Facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of 150 feet above ground elevation in the Public Use (P-1) District, 100 feet above ground level in the Central Business (CB) and Residential Single Family 15000 (RS 15000) Districts, and 75 feet above ground level in all other zoning districts.

§18.23.140 Use Restrictions and Variances

1. Use Restrictions by Application Type and Zoning District

Type I applications No Use Variance Required

Type I applications for co-location of a small wireless facility shall be a permitted use which shall not require a use variance, but shall require an applicant to obtain both a special use permit and site plan approval from the Hearing Examiner, and a building permit.

Such applications shall additionally require a variance if the proposed facility does not meet the setback requirements or height limitations set forth elsewhere in this Chapter 18.23 and its subdivisions. The applicant shall be required to submit an application for such variance to the Hearing Examiner. The Hearing Examiner shall thereafter make findings as required under Section 18.30.020, and shall then either (a) grant the application for a variance, or (c) deny the application for a variance.

Type II applications No Use Variance Required Unless Determined Otherwise by Hearing Examiner

Type II applications for colocations of a wireless personal services facility, which do not meet the definition of a small wireless facility, shall require a special use permit, site plan approval, and a building permit, but shall not require a use variance, unless the Hearing Examiner, in their sole discretion, determines that the proposed colocation will increase the overall intrusiveness of the site to a sufficient extent that its presence would no longer be compatible with the surrounding properties and/or surrounding community, in which case the Hearing Examiner shall issue a decision determining that the applicant shall be required to obtain a variance in accord with Chapter 18.30.

In rendering a determination of whether or not a variance shall be required, the Hearing Examiner shall consider, among other things: (a) the physical size, number, and potential intrusiveness of each new item of equipment to be installed as part of the proposed colocation, (b) the extent to which the installation of such equipment is to require or effectuate a significant physical expansion of the size or area of the facility or complex, (c) the extent to which the addition of such additional equipment will likely increase the adverse aesthetic impact of the facility, and/or any other potentially significant adverse impacts which are likely to cause a significant increase in the overall intrusiveness of the wireless facility, and/or its compound or complex, such that it will no longer be reasonably compatible with the use of nearby or surrounding properties and/or that its presence would be incompatible with the character and use of the nearby properties and/or surrounding community.

If the Hearing Examiner determines that a variance is required for a specific proposed facility, then the applicant shall be required to file an application for a variance to the Hearing Examiner. The Hearing Examiner shall thereafter make findings as required under Section 18.30.020, and shall then either (a) grant the application for a variance, or (c) deny the application for a variance.

Type III Applications No Use Variance Required

Applications for installing new Small Wireless Facilities that meet the criteria for Type III applications shall be considered a special use permit use in all Districts. They shall require a special use permit, site plan approval and a building permit but shall not require a use variance.

Such applications shall additionally require a variance if the proposed facility does not meet the setback requirements or height limitations set forth elsewhere in this Chapter 18.23 and its subdivisions. The applicant shall be required to submit an application for such variance to the Hearing Examiner. The Hearing Examiner shall thereafter make findings as required under Section 18.30.020, and shall then either (a) grant the application for a variance, or (c) deny the application for a variance.

Type IV Applications Variance Requirements

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility shall be a permitted use in Public Use (P-1), Central Business (CB), and Residential Single Family 15000 (RS 15000) Districts, which shall not need a use variance, but shall require a special use permit, site plan approval and a building permit.

Such applications shall additionally require a variance if the proposed facility does not meet the setback requirements or height limitations set forth elsewhere in this Chapter 18.23 and its subdivisions. The applicant shall be required to submit an application for such variance to the Hearing Examiner. The Hearing Examiner shall thereafter make findings as required under Section 18.30.020, and shall then either (a) grant the application for a variance, or (c) deny the application for a variance.

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility in all districts other than a CB, NB or P-1 District, shall be a prohibited use which shall require a use variance, special use permit, site plan approval and building permit.

Such applications shall additionally require a variance if the proposed facility does not meet the setback requirements or height limitations set forth elsewhere in this Chapter 18.23 and its subdivisions. The applicant shall be required to submit an application for such variance to the Hearing Examiner. The Hearing Examiner shall thereafter make findings as required under Section 18.30.020, and shall then either (a) grant the application for a variance, or (c) deny the application for a variance.

§18.23.150 Environmental Impacts

If, and to the extent that, the Hearing Examiner determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of SEPA and/or the NEPA, then the Hearing Examiner shall be expected to comply with the requirements of SEPA in determining both (a) the extent of adverse impacts upon the environment and/or historic properties and (b) what mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or districts.

If a respective applicant fails to obtain a review from the State of Washington Department of Ecology (“DOE”) and/or NEPA and opinion letters from the DOE and the FCC pertaining to its proposed installation prior to a first public hearing before the Hearing Examiner for the respective application, then the Hearing Examiner may make direct requests to the DOE and the FCC for their review of the application. The Hearing Examiner may request DOE and the FCC’s review and input in completing the statutorily-required environmental impact analysis pursuant to SEPA and NEPA.

In addition, the Hearing Examiner shall comply with the statutory requirements of SEPA to complete a SEPA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Hearing Examiner acts with reasonable diligence in completing its SEPA and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§18.23.160 Historic Site Impacts

The Hearing Examiner shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the requirements of the City's historic preservation law and comprehensive plan and SEPA.

If, and to the extent that, the Hearing Examiner determines that a proposed installation bears the potential for a significant adverse impact upon a historic site or a historic district within the meaning of SEPA and/or the NHPA (especially if the historic site at issue is listed upon the national register of historic places), then the Hearing Examiner shall comply with the requirements of both SEPA and City Municipal Code in determining both: (a) the extent of adverse impacts upon the historic properties, and (b) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a DOE and/or a Section 106 review under NHPA, and opinion letters from DOE and the FCC pertaining to its proposed installation prior to a first public hearing before the Hearing Examiner for the respective application, then the Hearing Examiner shall make direct requests to DOE and the FCC for their review of the application. They shall request DOE and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to SEPA and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the City recognizes each application for a special use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Hearing Examiner shall comply with the statutory requirements of SEPA to complete a SEPA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Hearing Examiner acts with reasonable diligence in completing its SEPA and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§18.23.170 Force Majeure

In the event that the rendering of a final decision upon a special use permit application under this section is delayed due to natural and/or unnatural events and/or forces which are not within the control of the City or the Hearing Examiner, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

§18.23.180 Eleventh Hour Submissions

In the event that an applicant tenders eleventh-hour submissions to the City and/or the Hearing Examiner in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Hearing Examiner at such late point in the proceedings, the Hearing Examiner shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Hearing Examiner shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Hearing Examiner, even if such review or services extend beyond the applicable shot clock period, so long as the Hearing Examiner completes such review and retains and secures such expert services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

§18.23.190 Prohibition Against Illegally Excessive Emissions and RF Radiation Testing

As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of Wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the City and/or the general public to illegally excessive levels of RF Radiation.

The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §18.23.020, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the City, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the City may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the City by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Hearing Examiner or any other Hearing Examiner or representative of the City is subject to modification or revocation by the Hearing Examiner following a public hearing.

1. Initial Certification of Compliance with Applicable RF Radiation Limits

Within forty-five (45) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the City Planning Official a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby Facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the City Planning Official.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The City may require, at the applicant's expense, independent verification of the results of the analysis.

2. Random RF Radiofrequency Testing

At the operator's expense, the City may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The City may cause such random testing to be conducted as often as the City may deem appropriate. However, the City may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the City shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

The engineer conducting any such testing shall measure the emissions from such facilities, including, but not limited to, the emissions from any individual facility as well as the cumulative emissions from multiple transmitters/facilities which are placed upon the same supporting structure or nearby structures to ascertain whether or not such facility or facilities are individually or cumulatively exposing members of the general public to emissions which exceed the permissible General Population Exposure Limits, or Occupational Exposure limited, which have been set and/or approved by the FCC

If the City at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Hearing Examiner at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the City for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the City to show that, by a preponderance of the evidence, the Facilities' emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the City establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Hearing Examiner shall have the power to, and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Hearing Examiner, Hearing Examiner,

City Planning Official and/or any other representative of the City may have then issued to the owner and/or operator, for the respective facility.

In addition, the Hearing Examiner shall impose a fine of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove, three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Hearing Examiner shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the City for a period of five (5) years.

§18.23.200 Bond Requirements, Removal of Abandoned Facilities and Reclamation

1. Bond Requirement

At, or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Hearing Examiner's engineer shall review this estimate.

Upon receiving a special use permit approval from the Hearing Examiner, and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the City a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time the City has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the facility, upon request by the City, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

2. Removal of Abandoned Facilities

Any personal wireless service facility that is not operated or used for a continuous period of twelve (12) consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with, the facility.

If the facility is not removed within ninety (90) days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

§18.23.210 ADA Accommodations

The City of Langley seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent that they are entitled to same under the Act.

§18.23.220 Siting Hierarchy

Consistent with smarting planning, the City adopts the following hierarchy of most preferred to least preferred zoning districts for the siting and installation of wireless facilities, which are as follows:

1st priority (most preferred) – Public Use District

2nd priority – Central Business District

3rd priority – Residential Single Family 15000

4th priority (least preferred) All other districts

§18.23.230 General Provisions

1. Balancing of Interests

The City formally recognizes that, as has been interpreted by federal, when it enacted the TCA, Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in Sprint Spectrum L.P. v. Willoth, 176 F3d 630 (2nd Cir.1999), Sprint Telephony PCS LP v. City of San Diego, 543 F3d 571 (9th Cir. 2008); T-Mobile USA Inc. v. City of Anacortes, 572 F3d 987 (9th Cir. 2009), and their progeny, and the City has relied upon such federal courts' interpretations of the TCA in enacting this Chapter.

The City similarly embraces the federal courts' determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless

telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in Omnipoint Communications Inc. v. The City of White Plains, 430 F3d. 529 (2nd Cir. 2005). This includes preserving to local governments, including the City, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, “once an area is sufficiently serviced by a wireless service provider, the right to deny applications (for new wireless facilities) becomes broader” Crown Castle NG East LLC v. The Town of Hempstead, 2018 WL 6605857.

It is the intent of the City that this Chapter be applied in a manner consistent with the balancing of interests codified within the TCA.

Consistent with same, the City rejects and shall reject any current and/or future FCC interpretations of any provision of the TCA which are clearly inconsistent with, and/or are clearly contrary to, both the language of the TCA and binding decisions of the United States Court of Appeals.

This includes a rejection of any FCC interpretations inconsistent with Willoth and any claims that the FCA legally prohibits the Hearing Examiner from denying a special use permit application, based solely upon a claim that an applicant desires the installation of its new facility for “densification” of its existing personal wireless services, or to offer a new service, irrespective of whether or not the carrier already possesses adequate coverage within the City, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the City, its property owners, citizens and/or communities.

2. Conflict With Federal or State Laws

To the extent that any provision of this Chapter is found to conflict with any applicable Federal or State law, it is the intent of the City that the remaining portion of this Chapter which has not been found to conflict with such law be deemed to remain valid and in full force and effect.

EXHIBIT B
Planning Advisory Board
Findings of Fact



City of Langley

Planning Advisory Board

To: The Langley City Council

From: Greg Easton, Planning Advisory Board Chair

Meeting Date: July 6, 2022

Subject: Recommendation to the Langley City Council regarding proposed code amendments to section 18.01.040 of the Langley Municipal Code, definitions; repealing section 18.22.190 of the Langley Municipal Code, wireless communications facilities; adopting a new Chapter 18.23 of the Langley Municipal Code related to wireless communications facilities; providing for severability; and establishing an effective date

SUMMARY

During their meeting November 16, 2020, Council recommended staff evaluate and update the City's wireless code. The City of Langley wireless facilities ordinance is outdated with regards to regulations for modern technology and recent guidance. Local organization, Citizen League Encouraging Awareness of Radiation (CLEAR) has raised funds to allow the City to work with Mr. Andrew Campanelli, a professional in the legal field of wireless regulations. A contract has been signed with Mr. Campanelli, who has produced a new draft wireless code for the City. Staff worked with Mark Wahl of CLEAR to give the draft an initial review. After initial changes were addressed, the Planning Advisory Board (PAB) discussed the draft at their May and June meetings and recommend the Langley City Council adopt the proposed ordinance.

FINDINGS

1. In 1997, Langley Municipal Code ("LMC") Section 18.22.190, was adopted by Ordinance No. 754.
2. In the two and one-half decades since 1997, revolutionary changes have occurred in wireless technology, in public concerns about, and research findings on, wireless radiation's effects on living beings, and in judicial and legal understandings of the federal regulatory framework within which municipal authorities and wireless companies must operate and as such updates to Langley's regulatory framework are needed.
3. The recent introduction into the consumer market of the fifth generation ("5G") wireless technology, featuring shorter wavelengths that create bigger bandwidths to contain more data per second, and signals more tightly focused to a line directly aimed at, or reflected by, citizen equipment represents another current significant technical development.
4. The rollout of this technology with strong Federal funding involvement has accelerated the deployment of 5G networks nationwide.

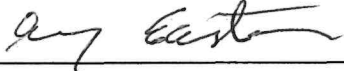
5. 5G wireless technology are categorized as “small-cell” facilities often mounted on existing power poles, or on their own interconnected mini-towers, in a Distributed Antenna System (DAS).
6. Wireless developers prefer these small-cell facilities to be more closely spaced with each other and with town structures, which can cause issues of property value, aesthetics, and neighborhood character to arise.
7. The PAB in its recommendation, seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.
8. The PAB finds that, as has been interpreted by federal courts, when it enacted the federal Telecommunications Act of 1996 (TCA), Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in *Sprint Spectrum L.P. v. Willoth*, 176 F3d 630 (2nd Cir.1999), *Sprint Telephony PCS LP v. City of San Diego*, 543 F3d 571 (9th Cir. 2008); *T-Mobile USA Inc. v. City of Anacortes*, 572 F3d 987 (9th Cir. 2009), and their progeny, and the PAB has relied upon such federal courts’ interpretations of the TCA in their recommendation to City Council.
9. The PAB similarly embraces the federal courts’ determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d. 529 (2nd Cir. 2005).
10. The PAB finds this to include preserving to local governments, including the City, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.
11. The PAB finds, consistent with the balancing of interests which the United States Congress intended to embed with the TCA, that Chapter 18.23 is intended to serve as a Smart Planning Provision, designed to achieve the four (4) simultaneous objectives of:
 - a. enabling personal wireless service providers to provide adequate personal wireless services throughout the City so that City residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while
 - b. minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage,
 - c. preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the City’s communities, residential areas, and individual homes, and

- d. complying with all of the legal requirements which the TCA imposes upon the City, when the City receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.
12. To achieve the objectives stated herein, the PAB recommends employing the “General Authority” preserved to the City under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsections of 47 U.S.C.A. §332(c)(7)(B) of the TCA.
13. The PAB finds that deployment of small cell installations is known to have both positive and negative impacts on communities, some of the negative impacts can include:
 - a. Lowering the market value of property from which large or small cell installations can be seen;
 - b. Negatively affecting neighborhood and town character;
 - c. Posing threats to the public health, safety, and welfare through operating noise, or falling over or having falling parts in storm; and
 - d. Unightly tree-trimming or tree/bush removal, as millimeter wave 5G signals can be blocked by foliage.
14. The PAB finds that this recommended code takes all of these concerns into account and prioritizes the “least intrusive” facility location possible.
15. The PAB finds that denser residential areas to be the least desirable location for wireless transmitting facilities due to negative impacts already stated, with public use districts and central business districts having a higher preference.
16. A Ninth Circuit Court judgment (Portland vs. FCC) affirmed that “intrusive” can include undesirable degradation of “aesthetics,” and “village character.”
17. The PAB finds protection of property values and personal safety as one of Langley’s paramount obligations.
18. The PAB recognizes that permitting and yearly administration costs for Personal Wireless Service Facilities (PWSFs) are not specified in this code, they are in no way prevented by it and they are supported by the Federal Communications Commission (FCC).
19. 47 CFR 1 Section 332(c)(7) states there is a minimum “safe harbor” dollar amount the FCC supports without question for jurisdictions to charge for the permitting and yearly supervision of PWSFs; specifically it states, “reasonable [as of 2018] approximation of the state or local government’s costs...related to and caused by the deployment” while excluding “excessive and arbitrary consulting fees or other costs”; additionally, the FCC adds that “a locality could prevail in charging fees that are above this level by showing that such fees are...(1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory;” and the FCC “recognizes local variances in costs.”
20. The PAB finds inflation since 2018 has been considerable, so a higher amount for these costs is expected and would be documented by the permitting authority.

CONCLUSION

The City of Langley Planning Advisory Board has reviewed the proposed changes to the Langley Municipal Code, deliberated, and considered public hearing testimony, and hereby recommends that the Langley City Council adopt an ordinance to amend section 18.01.040 of the Langley Municipal Code, definitions; repeal section 18.22.190 of the Langley Municipal Code, wireless communications facilities; adopt a new Chapter 18.23 of the Langley Municipal Code related to wireless communications facilities; provide for severability; and establish an effective date.

Respectfully submitted through the Langley Community Planning & Building Department to the Langley City Council, pursuant to RCW 35A.63.020, this 19 day of July, 2022 by,



Greg Easton

Chair, Langley Planning Advisory Board

Enclosures

Exhibit A – Amendments to Chapters 18.01 and 18.22 LMC and new Chapter 18.23 LMC



City of Langley

MEMORANDUM

To: Langley City Council and Mayor Scott Chaplin
From: Randi Perry, Public Works Director
Re: Safe Streets for All Action Plan funding partnership opportunity
Meeting Date: September 6, 2022

This memo is a request for approval to submit a letter of commitment to Island Regional Transportation Planning Organization (IRTPO) for Langley's participation in the safe streets for all action plan grant opportunity.

The Bipartisan Infrastructure Law established the Safe Streets and Roads for All (SS4A) program with an investment of \$5 billion for regional, local, and Tribal investments over the next 5 years (\$1 billion distributed per year) to significantly reduce or eliminate fatal to serious injury collisions. This program provides two types of funding opportunities: Action Plan Grants and Implementation Grants. The city must have a Comprehensive Action Plan to qualify for Implementation Grants. The Langley Municipal Code, six-year TIP (Transportation Improvement Plan) and the City's Comprehensive Plan offer limited planning guidance not adequate to meet the Implementation Grant qualifications. Langley is a walkable community, and it is crucial to prioritize the need of all users to the level previously give to roadway surfaces and vehicles. The Action Plan will provide comprehensive identification of current condition and future multimodal needs.

The Island Regional Transportation Planning Organization (IRTPO) made a motion to be the lead agency in applying for SS4A comprehensive Action Plan funds, with each eligible jurisdiction as a joint applicant. The City of Langley will be one of five eligible jurisdictions participating alongside the IRTPO; the application package due for submittal Sept. 15th, 2022, grant management, bidding and oversight of the project if awarded will be managed by IRTPO staff. Langley will participate in the sections that apply specifically to Langley while also being afforded the opportunity to comment regionally. This joint effort will provide a leadership commitment and directly assist in the process of developing an Action Plan by conducting outreach, data collection, analysis, and other related tasks to support the Safe Systems Approach. This is a benefit to the city as our staffing resources are very limited.

The application request will be \$504,000, with a 20% matching requirement, split proportionately between the five eligible jurisdictions depending on the level of effort required to produce the plan for each participant. The match requirement may be met with the use of other non-federal funding sources or with the use of In-kind contribution as described in 2 CFR § 200.306(b). It is anticipated that this effort will not exceed \$7,500 and payment would be expected in fiscal year 2023 or 2024. To participate in this opportunity the IRTPO requires a letter of commitment from each of the participating jurisdictions.

Additional information regarding this grant can be found at the link: <https://www.transportation.gov/grants/SS4A>

STAFF RECOMMENDS: Council authorize Mayor Chaplin to submit a letter of commitment by September 15, 2022, to participate in the SS4A.



City of Langley

112 Second Street
P.O. Box 366
Langley, WA 98260
(360) 221-4246

SCOTT CHAPLIN
Mayor
mayor@langleywa.org
FAX (360) 221-4265

September 7, 2022

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Safe Streets and Roads for All (SS4A)
DOT-SS4A-FY22-01 - PKG00274330
Support Letter

To Whom it May Concern:

The City of Langley is participating in a joint application to complete a comprehensive Action Plan, centered on eliminating or significant reduction in roadway fatalities and serious injury collisions.

This joint effort will provide a leadership commitment and directly assist in the process of developing an Action Plan by conducting outreach, data collection, analysis, and other related tasks. This will support a Safe Systems Approach list of projects to significantly reduce or eliminate roadway fatalities/serious injuries for all relevant road users, including motorists, active transportation, and transit.

Sincerely,

Scott Chaplin
Mayor
City of Langley



City of Langley

Planning Department

To: The Langley City Council
From: Meredith Penny, Community Planning Director
Meeting Date: September 6, 2022
Subject: Memorandum

The purpose of this memo is to provide an update on the Port of South Whidbey's zoning code amendment application, an explanation of the City's steps for processing such application, and to request Council consider a budget amendment to split the processing cost with the Port.

On August 11, 2022, Stan Reeves the Executive Director of the Port of South Whidbey submitted an application for a zoning code amendment to the City for initial review prior to official submittal of the materials.

The application requests an amendment to the City's Fairgrounds Overlay, to add housing as an allowed use. To make this change effective, and ensure consistency across the code, this request will also require a change to the underlying Public Use (P-1) zone. In the underlying P-1 zone, if housing is added as an allowed use, staff recommend limiting it to only those P-1 zoned properties which also fall within the Fairgrounds Overlay. In this way, housing would not be allowed in all P-1 zoned properties where housing may not be compatible with the more limited recreation-oriented uses.

Staff have also identified other code sections that may require amendments to remove unnecessary barriers to the Port's ultimate proposed housing project. These staff-identified changes would be processed concurrently with the requested zoning amendment.

At this time, staff do not see amendments to the City's Comprehensive Plan as needed in order to process the zoning code amendment. There are existing policies within the Comprehensive Plan which support the zoning code amendment. If the zoning code amendment is approved, the City may consider adding additional policies to the Comprehensive Plan during the required periodic review and update, to further support the action. As such, zoning code amendments can move forward at any time during the year, and do not have to wait for the yearly Comprehensive Plan docketing process.

The City's fee schedule does not have a flat fee for processing zoning code amendment requests. Instead, it is charged at the hourly rate for the staff time needed to walk it through the process. The City's fee schedule has this rate set at \$75/hr.

Although, this application does not need to wait for the yearly Comprehensive Plan docketing process, it was not on the Planning Department's work plan for the year and would add a considerable amount of work on top of a busy schedule of other items, including the Coles Valley PUD application. Instead, staff have reached out to the former City Planning Director, Brigid Reynolds, who now does contract planning to see if she would be willing to process the application. She also charges \$75/hr. She expressed

willingness to process the application and drew up an estimate of the amount of work this would involve (multiple meetings in front of the Planning Advisory Board, and Council, drafting an ordinance, conducting the SEPA review etc.) and estimated about 100 hours of work for a total of \$7,500. Staff have estimate legal fees for review of the ordinance to be around \$1,500.

At this time, the County is prepared to provide ARPA funding to the Port of South Whidbey of up to \$135,000 for pre-development costs of their housing project. The County is aware though that the City's zoning must be adjusted before the project can move forward. They would like to see the City show a commitment to considering and processing this zoning code amendment by placing it on the City's work plan.

To convey this commitment to the County and to the Port of South Whidbey, staff are recommending Council consider:

- Authorizing the Mayor to sign the attached letter to Liz Chaffin, the ARPA Program Coordinator for Island County;
- Approving staff to move forward with the drafting of a contract with Brigid Reynolds of Compass Rose Planning;
- Waiving the requirement for competitive solicitation per Resolution 736, Section 3, Item 4.c.vii (If approved, the contract with Compass Rose Planning would also be forwarded to the County along with the letter to Liz Chaffin); and
- Authorize the Mayor and staff to bring back a budget amendment to Council to cover half of the application processing cost, including legal review fees, for an amount of \$4,500
 - The other half of the processing costs to be paid by the Port of South Whidbey.

Attachments

- A. Compass Rose Planning Proposed Scope of Work and Cost Estimate for Fairgrounds Amendment
- B. Draft Letter of Explanation to Liz Chaffin, Island County ARPA Program Coordinator
- C. Resolution 736 - Small Works and Consulting Rosters

Compass Rose Planning Services Proposed Scope of Work Fairground Overlay and Related Code Amendments

The City of Langley “Client” agrees to engage Compass Rose Planning “the Consultant” to provide the Client with the following consulting services per item 3 of the original agreement dated December 6, 2021.

The following details the scope of work to prepare two ordinances and five related code amendments to permit multi-family housing use in the Fairgrounds Overlay (Ch. 18.10).

Phase I – Initial Review

- Review application and proposed additional code amendments
- Application to amend the following:
 - Fairgrounds Overlay (Ch. 18.10)
 - P1 (Public Use) zone district (Ch. 18.19)
 - Land Uses (Ch. 18.09)
 - Definitions (Sec. 18.01.040) for secondary use
 - Performance Standards – Multi-family (Ch. 18.25) related to open space
- Determine completeness of application and prepare draft letter to applicant for signature by the Director of Planning.
- Identify additional information required. The initial review has identified the following information as outstanding
 - The list of names and addresses of owners and residents of properties within 500 feet of the subject properties and pre-stamped envelopes for the same.
- Present application to the PAB and Council for confirmation to move forward with drafting code amendments
- Present proposed amendments to PAB and Council for initial input before noticing
- Prepare Notice of Development Application for publishing and distribution by the Director of Planning
- Prepare SEPA determination and notice of 14-day public comment period
 - Director of Planning to sign, publish and distribute the SEPA determination.
- Prepare referral documents to be sent to applicable agencies to include but not limited to the following. Additional agencies to be determined by the Director of Planning and referrals to be sent by the Director of Planning.
 - Island County
 - Island County Fair
 - South Whidbey School District
 - Langley Creates Steering Committee
 - South Whidbey Community Center
 - City of Langley internal referrals
 - Director of Planning to send to Department of Commerce for 60 day or expedited review
 - Director Planning to send for legal review

Phase II – Prepare Draft Ordinance and Staff Report

- Prepare draft ordinance and staff report, incorporating public, agency, PAB, and Council comments
- Incorporate any changes into final draft ordinance and staff report

- Prepare PAB public hearing notice
 - Director of Planning to publish and mail public hearing notice
- Director of Planning will receive all public comments and forward them to the Consultant. The Consultant will maintain a public comment matrix.

Phase III - Adoption

- Present ordinance and code amendments to PAB at public hearing
- Present to Council for 1st and 2nd reading
- Director of Planning to submit approved ordinance and code amendments to the Department of Commerce

Compensation

The estimated number of hours to complete this scope of work is 100 hours at an hourly rate of \$75/hour for a total estimated project cost of \$7,500.

As detailed above the above scope of work includes seven meetings - three PAB meetings including the public hearing and four Council meetings. Meeting attendance is assumed to be remote.

Any additional meetings will be billed at an hourly rate of \$75/hour and any required in-person meeting attendance will be billed time and expenses.

Advisory work completed prior to this signing of this agreement is 3 hours billed at a rate of \$75/hour.

Duration

The term of the Agreement begins August 26, 2022 and will remain in full force and effect until December 31, 2022. The term may be extended with written consent of the parties.

Liz Chaffin
ARPA Program Coordinator
Budget, Island County
PO Box 5000, Coupeville, WA 98239

Ms. Chaffin,

This letter is to provide an update on the Port of South Whidbey's zoning code amendment application and an explanation of the City's steps for processing such application.

Housing Challenges in Langley

The City of Langley strongly supports the Port's application to Island County for American Rescue Plan Act funding to assess the existing infrastructure and rebuild the concession stands on the Fairgrounds with "Workforce Housing" units above.

Langley is negatively impacted by the county-wide lack of affordable housing options for the local workforce. Employers in Langley are consistently dealing with the challenge to hire and retain staff due to the lack of affordable housing on the island. This project will help to provide badly-needed housing for Langley and Whidbey Island's workforce.

According to the City's Comprehensive Plan, it is Langley's goal to "encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing." This planned project would clearly help to fulfill one of Langley's priority goals.

In support of this initiative, the City will work in good faith with the Port to amend the City municipal codes and zoning regulations in order to make this project feasible and compliant from a "land-use" perspective while preliminary planning and design efforts are underway.

Zoning Code Amendment Application and Process

On August 11, 2022, Stan Reeves the Executive Director of the Port of South Whidbey submitted an application for a zoning code amendment to the City for initial review prior to official submittal of the materials.

The application requests an amendment to the City's Fairgrounds Overlay, to add housing as an allowed use. To make this change effective, and ensure consistency across the code, this request will also require a change to the underlying Public Use (P-1) zone. In the underlying P-1 zone, if housing is added as an allowed use, the City will likely limit it to only those P-1 zoned properties which also fall within the

Fairgrounds Overlay. In this way, housing would not be allowed in all P-1 zoned properties where housing may not be compatible with the more limited recreation-oriented uses.

The City has also identified other code sections that may require amendments to remove unnecessary barriers to the Port's ultimate proposed housing project. These staff-identified changes would be processed concurrently with the requested zoning amendment.

At this time, staff do not see amendments to the City's Comprehensive Plan as needed in order to process the zoning code amendment. There are existing policies within the Comprehensive Plan which support the zoning code amendment. If the zoning code amendment is approved, the City may consider adding additional policies to the Comprehensive Plan during the required periodic review and update, to further support the action. As such, zoning code amendments can move forward at any time during the year, and do not have to wait for the yearly Comprehensive Plan docketing process.

The following list outlines the steps needed to process the Port of South Whidbey's request.

1. Receive the application and proposed code amendments.
2. Determine the completeness of the application and issue a letter of either complete or incomplete application.
3. Review the content of the application and determine if additional information is required.
4. Present application to the Planning Advisory Board (PAB) and Council for confirmation to move forward with drafting code amendments
5. Draft code amendments and present to PAB and Council for discussion
6. Issue a Notice of Application and SEPA determination and post the 14-day public comment period notice.
7. Route the draft code amendments to applicable agencies for comment, including Department of Commerce for 14-day review
8. Incorporate public, agency, PAB, and Council comments into a draft ordinance
9. Schedule a public hearing with PAB and publish notice of public hearing
10. Present the ordinance and staff report to PAB at public hearing
11. Present the ordinance, staff report, and PAB recommendation to Council at 1st and 2nd reading
12. Submit approved ordinance to Department of Commerce and publish notice of adoption.

Considerations

The City is committed to considering and processing the Port of South Whidbey's application in accordance with the above procedure. Feedback from the community in initial discussions has been generally positive, but formal public comment still needs to be heard and thoughtful consideration of all implications and details needs to occur. Some of the factors that staff will be bringing forward for discussion with PAB and Council on this proposal include:

- Whether stand-alone multifamily housing should be allowed or instead, whether residential uses should only be allowed when part of a mixed-use development (where housing must be attached/within the same building as another use);
- Whether housing should be permitted as a primary use, secondary use, or conditional use;

- Whether market-rate housing should be allowed, or instead, if only affordable housing (per the definition in LMC 18.01.040) should be allowed, or whether to require a certain percentage of affordable units within a market-rate development; and
- Whether any other concurrent zoning code changes are needed.

Conclusion

To reiterate, the City welcomes the Port's proposal for housing at the Fairgrounds. It represents a creative way to support the Island County Fairgrounds and Events Center through the replacement of the concession stands, while also addressing the City's dire need for workforce housing. Aside from discussion of technicalities, the City anticipates minimal impediments to the processing of this zoning code amendment.

Sincerely,

Mayor Scott Chaplin
City of Langley

DRAFT

RESOLUTION NO. 736

ORIGINAL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANGLEY WASHINGTON, ON THE SUBJECTS OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS AND A CONSULTING SERVICES ROSTER FOR ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONAL SERVICES

WHEREAS, RCW 39.04.155 and other laws regarding contracting for public works by municipalities, allow certain contracts to be awarded by a small works roster process; and

WHEREAS, in order to be able to implement small works roster processes, the City is required by law to adopt a resolution establishing specific procedures;

WHEREAS, RCW 39.80.030 requires that an agency publish in advance that agency's requirement for professional services and that one of the ways to accomplish that notification is to announce generally to the public its projected requirements for any category or type of professional services and request qualification statements to be kept on file with the agency,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. MRSC Rosters. The City wishes to contract with the Municipal Research and Services Center of Washington (MRSC) to adopt for City use those state wide electronic databases for small works roster and consulting services developed and maintained by MRSC and authorizes the Mayor to sign the MRSC Roster Contract. In addition, paper and/or electronic rosters may be kept on file by appropriate City departments.

Section 2. Small Works Rosters

The following small works roster procedures are established for use by the City pursuant to RCW 39.04.155:

1. Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the City may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

2. Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and

necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster.

3. Telephone or Written Quotations. The City shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to a contractor who meets the mandatory bidder responsibility criteria in RCW 39.04.350(1) and may establish supplementary bidder criteria under RCW 39.04.350 (2)

- a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation.
- b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. "Equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

If the estimated cost of the work is from one hundred and fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

- i) publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
 - ii) mailing a notice to these contractors; or
 - iii) sending a notice to these contractors by facsimile or email.
- c) At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;
 - d) A written record shall be made by the City representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

4. Limited Public Works Process. If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the City may award such a contract using the limited public works process provided under RCW 39.04.155 (3). For a limited public works project, the City will solicit electronic or written quotations from a

minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the City may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The City shall maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

5. Determining Lowest Responsible Bidder. The City Council shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City Council may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by Chapter 133, Laws of 2007 (SHB 2010) and who meets any supplementary bidder responsibility criteria established by the City.

6. Award. All of the telephone bids or quotations shall be collected and presented at the same time to the City Council for consideration, determination of the lowest responsible bidder, and award of the contract. However, for budgeted public works projects \$35,000 or under, the Mayor shall have the authority to award and sign the public works contract without City Council approval, provided that the City Council shall ratify the Mayor's approval at the next scheduled City Council meeting by means of the consent agenda. For budgeted public works projects over \$35,000, the City Council shall award all public works contracts prior to the execution of the contract by the Mayor.

Section 3. Consulting Services Rosters

1. Consulting Services. Consulting services are professional services that have a primarily intellectual output or product and include architectural and engineering services as defined in RCW 39.80.020.

2. Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the consulting services roster or rosters and solicit statements of qualifications from firms providing consulting services. Such advertisements will include information on how to find the address and telephone number of a representative of the City who can provide further details as to the City's projected needs for consulting services. Firms or persons providing consulting services shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The

City may require master contracts to be signed that become effective when a specific award is made using a consulting services roster.

3. Professional Architectural and Engineering Services The MRSC Rosters distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services and will announce generally to the public the City's projected requirements for any category or type of professional or other consulting services. The City reserves the right to publish an announcement on each occasion when professional services or other consulting services are required by the agency and to use paper and/or other electronic rosters that may be kept on file by appropriate City departments.

4. Competitive Solicitation All professional service contracts shall be entered into pursuant to competitive solicitation, except for:

- a) The Mayor shall advise the Council of the initiation of the selection of consulting or other professional services utilizing the MRSC Rosters. The Mayor shall identify the services being requested and the funding source for the service.
- b) The City shall evaluate current MRSC roster for the service needed and solicit project proposals from at least three (3) firms. Based upon the project specific criteria established by the City, the firm or individual deemed to be the most highly qualified to provide the services required shall be selected for contract negotiations.

The City shall endeavor that minority and women-owned firms, small businesses, and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation such firms shall be consistent with their general availability within the professional communities involved.

- c) **All professional service contracts shall be entered into pursuant to competitive solicitation, except for:**
 - i) Contracts between a consultant and the City of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than twenty thousand dollars shall have documented evidence of competitive solicitation. Agencies shall not structure contracts to evade these requirements.
 - ii) Contracts by interlocal governmental agreement with the United States, a state, or another political subdivision to fulfill the aforementioned bidding requirements and any purchase or lease made pursuant to said interlocal governmental agreement shall be deemed to have complied with the purchasing procedures of this chapter without the necessity of further bidding;
 - iii) Contracts for legal services including those for City attorney;
 - iv) Emergency contracts;
 - v) Contracts for services exempt from competitive solicitation specifically provided for under any state statute, case law or grant agreement (where the grant recipient is the City);

- vi) Sole source contracts;
 - vii) Any service contract waived by the City Council on a case by case basis, and
 - viii) Contract amendments.
- d) Continuing contracts shall be required to be reviewed and approved by the City Council at least once every three (3) years.

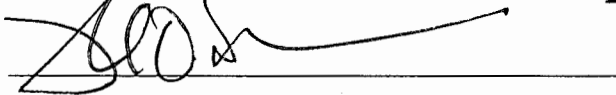
5. Award. For services contracts \$5,000 or less and for services contracts identified in the adopted budget that are \$20,000.00 or less, the Mayor shall have the authority to award and sign the service contract without City Council approval provided that the City Council shall ratify the Mayor's approval at the next scheduled City Council meeting by means of the consent agenda. For services contracts greater than \$5,000 not identified in the adopted budget and for professional services contracts that are over \$20,000.00, the City Council shall award all service contracts prior to the execution of the contract by the Mayor.

Section 4 Contract Review Procedures

The Mayor shall submit proposed contracts in excess of \$5,000 to the City Council and City Attorney for general review. All City proposed contracts shall automatically come under the provisions of this Resolution unless clearly excepted herein. It is the responsibility of the Mayor to resolve any question regarding a proposed contract qualifying as an exception with the City Council prior to its award.

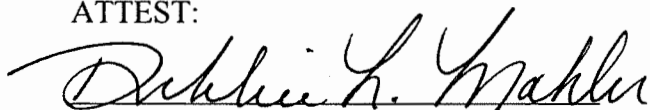
Section 5. Effective Date. The effective date of this Resolution shall be January 1, 2012.

ADOPTED BY THE CITY COUNCIL ON December 5, 2011.



Paul Samuelsson, Mayor

ATTEST:



Debbie Mahler, City Clerk

Council/Mayor Goals 2023	Applicable Comprehensive Plan Goals	Estimated completion date	Status	Staff Involvement	Public Advisory Commissions Involved
Administrative					
Codify Council Member/Mayor Handbook and Commissioners Handbook		Jan-23	In Process	Council Member, Lawyer, Council	Finance and Personnel Committee
Resolve Lawsuits		Unknown	In Process	Mayor, Council, Lawyer	
Update Administrative Policies, Job Descriptions, Evaluation Process		2023	In Process	Mayor, Council	Finance and Personnel Committee
Affordable/Workforce Housing and Zoning					
	Comprehensive Plan Goal 5, 6, 9, 11, 15				
Update Zoning Codes for Multi-Family Infill and PUDs with Inclusionary zoning requirements and update both codes to address the needed changes for our City		2023	In Process	Planning, Mayor, Council	Planning Commission
Create Educational Information on the basics of planning an ADU or Tiny Home		2023		Planning, Mayor, Council, Permit Staff	Planning Commission
Boards and Commissions					
	Comprehensive Plan Goal 10				
Update Individual Ordinances for Commissions to be Consistent, Equitable, Inclusionary and Diverse where needed		Jul-05		Council, Mayor, Planning	All Commissions
Climate Change Action					
	Comprehensive Plan Goal 1, 3, 9,	Ongoing	Planning Phase	Planning, Mayor, Council	Climate Crisis Action Commission
Create a transportation strategy to engage more fossil fuel free technology and usage in Langley					
Update Land Use Ordinances for Zero Waste, Fossil Fuel Free and Green Building and other Climate initiatives				Planning	Climate Crisis Action Commission
Write Grants for Solar Panels on City Buildings					
Dismantling Systemic Racism					
	Comprehensive Plan Goal 6, 9, 10, 12, 13, 15	Ongoing	Begun	Planning, Mayor, Council	Dismantling Systemic Racism Commission
Identifying and Conduct Sexual Harassment Training		2023		Mayor	Ethics Commission, Dismantling Systemic Racism Commission
Environment					
	Comprehensive Plan Goal 1, 3, 5, 6, 9, 10, 11, 12, 14, 15				
Plan for Environmental hazards posed by sea level rise, ground and surface water and bluff failure by Conducting a Hydrogeological/Watershed study for the entire city				Planning, Public Works, Mayor, Council	Planning Commission, Public Works Advisory Commission
Protect and Enhance Natural Environment by Updating Critical Area Ordinance		2023	In Process	Planning	Planning Commission
Langley Municipal Code and Comprehensive Plan Review and Revisions					
	Comprehensive Plan Goal 1, 3, 7, 9, 12, 13	2023	In Process	Planning	Parks and Open Space Commission, CCAC
Update Tree Ordinance		2023	In Process	Public Works, Council, Mayor	Public Works Advisory Commission
Address Speeding and Noise Complaints	Comprehensive Plan Goal 3, 7, 10, 12	2023			
Track Comprehensive Plan Goals and Create Matrix for Evaluation		2023			
Website and Transparency					
	Comprehensive Plan Goal 4, 8, 14	2023	In Process		
Revise and Redesign City Website with "Revise" including Training for Staff		2023	In Process	Council, Mayor, Staff	Website Revision Task Force
Create a more transparent government with the use of video, broadcasting and update of the City Website		Ongoing		Mayor, Staff	

SEP CONSULTING - MEMORANDUM

DATE: 7/29/2022

TO: CHIEF TAVIER WASSER / LANGLEY P.D.

FROM: STEVEN E. PERRY

SUBJECT: DESCRIPTION OF SERVICES

Per our phone call last week, this memo is to confirm that I would be happy to assist your department by performing a property and evidence assessment. For clarity I thought it might be helpful to explain what is included in a typical assessment, but please know I always try to adjust assessments based on your department's specific needs. Upon completion of an agreed upon review would then be followed up by a detailed written report of my observations and recommendations.

Per your request, I am including a list of services I can provide along with my hourly fee and other costs. The following details what I typically perform for an agency during an assessment. Since no two agencies are exactly alike or have the same needs, adjustments can certainly be made to best fit your needs. Should Langley require additional or more customize services, they can also be provided for an additional cost.

1. Analyze any existing memos or audit reports regarding your Property/Evidence Function.
2. Interview appropriate staff, collecting personal observations, and involvement in the evidence process.
3. Attempt to use existing data to compile a better picture of what items are "reportedly" in custody.
4. Learn the exact steps taken at Langley to enter, secure and store evidence from the moment officers take it, to the eventual point of final disposition.
5. Review existing evidence security protocol and vault conditions, determining if/where improvements are needed.
6. Attempt to determine to what degree evidence exists in custody not having appropriate markings (or case references), with detailed recommendations to fix (if needed).
7. Recommend how evidence should be screened/reviewed with goal of final disposition.

8. If time allows while on site, actually begin pulling evidence for final disposition.
9. Establish a process for review & disposal of existing items no longer needed as evidence.
10. Undertake a spot audit of items from each high-risk category (firearms, drugs, cash, and jewelry) along with at least fifteen articles of miscellaneous items of evidence. This would hopefully be a “two way” audit, tracing existing items back to reports, and from reports to the item itself (assuming such data can be obtained). While these numbers can be increased for an additional cost, typically the above process provides a good indicator whether problems exist. If for some unforeseen reasons problems are found to exist, you and I would immediately discuss options.
11. Review protocol for securely processing wet items, and items requiring packaging and transport for laboratory review, along the process of receiving and storing those items back into evidence.
12. Review locations and protocol for temporarily housing vehicles for evidence processing.
13. Determine where improvements are necessary to meet industry “best practices,” and WASPC accreditation requirements.
14. Ascertain if/how existing staff can correct existing problems or if outside assistance is recommended.
15. Use the above gained information to provide a prioritized list or “blueprint” for Langley P.D. to correct any existing problems and assure timely and efficient evidence management in the future. Each recommendation would include specific steps to accomplish the individual goal.
16. The above-described blueprint would be one piece of a more comprehensive detailed report of my observations, findings, suggestions, and recommendations.
17. Expand any of the above functions or provide additional review or other assistance while on site at the request of the Chief of Police.

While “on site” analysis is obviously required, to reduce costs I attempt to review available data remotely and conduct interviews via phone and Email both prior to and after the site visit. Normally I can perform the “on site” portion in one day. My time actually spent in Langley will be minimal when compared to the time spent analyzing, interviewing, and preparing reports for the Chief of Police.

While on site, as the current evidence custodian I would need Officer Liggett’s dedicated assistance and continual presence. I am more than willing to work around Langley’s work schedule, selecting a day of your choosing in order to assure his presence.

My standard hourly rate is \$120 plus travel costs. Should you require me at some future date to testify in court, the hourly rate would be \$150. As you will see, when I provide an assessment, I significantly bundle costs to save the agency money. The cost for services #1 through #16 would be \$1,250.00 plus travel.

Travel cost is simply mileage reimbursement based on current WA. State OFM rates, ferry fares and local hotel costs for two nights.

It does not appear that any local hotels honor the state per diem rate, and their rates fluctuate based on availability and date. Should you wish to proceed with the assessment, once a site visit date is established, we would need to add the most economical local room rate available at that time. Travel costs would therefore be \$334.50 plus hotel.

Should you wish additional work, costs would be proportionally higher. Examples would be if you wished a more comprehensive audit or wanted a more “hands on” approach to help with an existing evidence problem. While I’m hopeful this won’t be necessary, I am willing to help where I can. Obviously, any needed increase in project scope including amount of time on scene would be mutually agreed upon prior to occurring.

I understand that in addition to evidence, there has not been much, if any, prior attention given to the retention & destruction of investigative records. This situation creates potential liability issues for the department/city and should be addressed. If desired, since I’m already in Langley I could return to the P.D. the next morning for a partial day helping establish a retention protocol, and potentially even starting the process as a form of instruction for you or your staff. Should you wish this service, the added fee would be \$480.00.

Should the above processes not be what you are interested in, just let me know so we can discuss an alternative approach.

Please advise if you want to schedule an assessment, or if I can provide any additional information.



CUSTOMER TOOLKIT - POLICY



Lexipol Customer Toolkit - Policy

How to Use This Guide

Law enforcement policy is a complex and often misunderstood area of local government operations. Community members without a background in law enforcement may believe that policies are largely the same across the country, that agencies are provided with policies by government organizations, and that agencies have access to the extensive resources required to keep policies up to date with changing legislation and evolving practices.

The reality, as you know, is much different. This toolkit is designed to give you comprehensive information about Lexipol and law enforcement policy that will make it easier for you to hold productive conversations with your community members and your personnel, building a shared foundation from which to understand your agency's policies.

Potential uses of the resources in this toolkit include:

- **Sharing with your officers and staff** so all members are informed about the services Lexipol provides your agency, how your agencies policies are developed and maintained, and how they can communicate about policies to interested community members
- **Incorporating into town halls, community meetings, social media and other outreach** to your residents, supporting your efforts in transparency around your agency's operations as well as showcasing how your agency is keeping up with current discussions around police reform and related policy
- **Integrating into your citizen's academy, policy review committee or law enforcement review board** to help key stakeholders understand how your policies align with best practices and state and federal law

Looking for something that's not here? We welcome your feedback. Reach out to your Customer Success Manager or email info@lexipol.com anytime.

Lexipol Customer Toolkit - Policy

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- [General Services at Lexipol \(infographic\)](#)
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- [Policy Development Processes \(infographic\)](#)
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- [Understanding Lexipol's Approach to Policy](#)
- [Use of Force Website](#)
- [Police Reform Webinar Series](#)
- [Community Review of Police Policy \(white paper\)](#)
- [Presidential Executive Order & Lexipol \(ebook\)](#)
- [U.S. Mayors Conference Recommendations
& Lexipol \(ebook\)](#)

Lexipol Customer Toolkit - Policy

About Lexipol – How We Support First Responders and Communities

Lexipol empowers first responders and their communities to best serve the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support for first responders and government leaders, helping address public safety challenges and improve the quality of life for all community members.

We are the experts in comprehensive policy, training and wellness information, tools and services designed to clearly advocate for the entire community, including members of the community, first responders and government leaders, while providing transparent and proven response recommendations, the highest standards for conduct and clear direction for those on the front lines.

Lexipol provides the customers we serve with constitutionally sound policies that comply with federal and state laws and delivers timely policy updates as laws and best practices change, allowing any-sized department to have a team of experts at their fingertips.

We provide a foundation for agencies, leaders and communities to come together to make the smartest and safest decisions possible while considering their unique needs and circumstances.

Lexipol Customer Toolkit - Policy

About Lexipol – The Work We Do Every Day

The following is a bit more detail about the work we do and the value we bring your agency and your community, every day.

- We monitor the constantly evolving landscape for key legislative changes, new legal precedents and best practices across all levels of government, taking the burden of staying current off your department and allowing you to focus on serving and protecting your community.
- In 2021, our team reviewed over 15,000 pieces of legislation.
- Our policy and training content help more than 8,000 public safety agencies and municipalities like yours operate at the highest standards.
- Our services augment your internal staff and resources, freeing up time for other operational priorities.
- We partner with public safety associations and organizations across the country to equip public safety leaders like you with technology and data that improves efficiency and operational excellence.
- While our policies are built on best practices, they are flexible enough to allow your agency to easily customize the content for your community's needs, and our system facilitates collaboration among stakeholders (agency leaders, legal counsel, etc.).
- Your community members can feel confident your agency is up to date with the latest insights and information to help your officers make the best decisions to keep them safe and secure.

Lexipol Customer Toolkit - Policy

General Services Offered at Lexipol

Lexipol empowers first responders and their communities to best serve the needs of their residents safely and responsibly. While law enforcement policy is a cornerstone of our services, we also provide online training (PoliceOne Academy), wellness resources (Cordico), grant services (PoliceGrantsHelp and GrantFinder) and industry news (Police1). Together, these services empower law enforcement agencies to serve their communities safely, professionally and effectively.

This infographic summarizes the different types of products and work Lexipol provides agencies across the country every day. It's easy to read and easy to share to help your personnel and your community members understand your agency's investment in Lexipol.

Download the infographic file at <https://info.lexipol.com/lexipol-trusted-resource>

LEXIPOL

THE TRUSTED EXPERT TO ENHANCE COMMUNITY PUBLIC SAFETY

Lexipol empowers first responders and their communities to best serve the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support for first responders and government leaders, helping address public safety challenges and improve the quality of life for all community members.

OUR COMMUNITY ENGAGEMENT

Trusted by more than **8,100** public safety agencies and municipalities, Lexipol policies and training are extensively researched and reflect the latest state and federal laws, designed to protect all equally.

From 2-person departments to agencies with more than 2,500 sworn, Lexipol ensures first responders have the most updated policies, training and wellness resources so they can safely, compassionately and responsibly serve their residents and communities.

OUR POLICY WORK

We provide a foundation for agencies, leaders and communities to stay informed and operate in alignment with public safety best practices, laws and regulations. Our industry experts and attorneys spend over **480 hours** a week ensuring policies are continuously updated to reflect changes in state and federal law.

Our policies can be implemented as is or used by agencies as a foundation to build on.

OUR TRAINING CAPABILITIES

With more than **3,300** high-quality accredited training courses easily accessible through our platform, our training solutions are designed for learning anywhere, any time and are backed by tracking and management tools that enhance accountability and compliance. We prepare personnel of all ranks and roles to provide professional response and service to their communities and emphasize the importance of treating all citizens equally, protecting and preserving life.

OUR WELLNESS SUPPORT

We help agencies proactively address the emotional health and wellbeing of personnel and their families. Our confidential, **24/7 access** to wellness tools and support includes self-assessments and connection to local mental health providers screened and approved by the agency. These health and wellness training tools are regularly updated and cover more than **60 key topics**, including fatigue, anger management, posttraumatic stress and loss.

OUR GRANT ASSISTANCE

Our team of expert grant writers, researchers and project managers is invested in helping our customers find, apply for and win grant funding. Agencies who use Lexipol's grant services have a **40% success rate** in getting funded, compared with the national average of just 17%. Our services range from GrantFinder, which provides a real-time, online database of more than 10,000 federal, state, corporate and foundation grants, to our Grant Assistance Platform, a monthly grant retainer service.

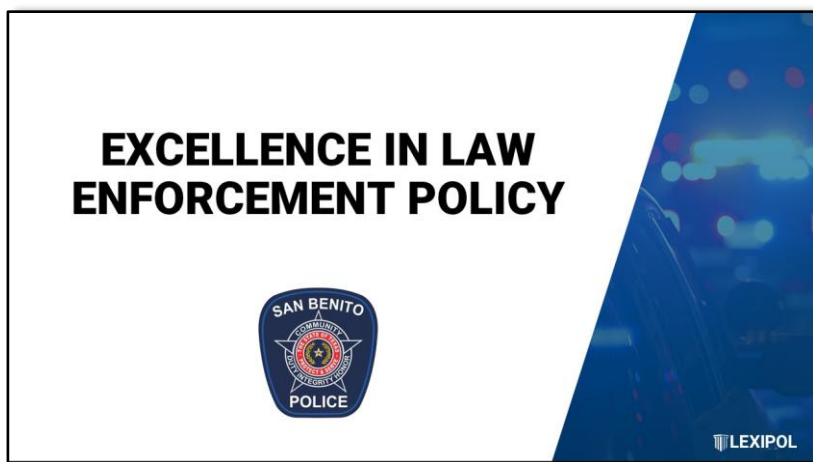
YOUR RESOURCE

We provide more than **2 million** first responders and local government officials with policy, training, wellness support, grant assistance, and news and analysis resources to help them operate at a higher standard. Through our websites Police1, FireRescue1, EMS1, Corrections1 and Gov1, we help public safety professionals stay current on evolving issues and access important information on the go.

Learn more about how Lexipol's policy, training, wellness and grant assistance solutions can help your agency.
Visit www.lexipol.com or email info@lexipol.com.

Lexipol Customer Toolkit - Policy

Introducing Your Community Stakeholders to Lexipol



An investment in Lexipol's Law Enforcement Policies and Training solution demonstrates your agency's commitment to hold officers to high standards, stay up to date on changes in legislation and best practices, and provide community members with transparency into your policies.



During initial implementation of Lexipol policies or when meeting with key stakeholders at any time after implementing our policies, you may want to present an overview of Lexipol, the services we provide your agency, and how these services help you protect the rights of community members and use taxpayer resources wisely.



We've put together a short PowerPoint presentation as a starting point. You can customize the presentation for your needs. And we're always here to help you obtain information to answer your community stakeholders' questions.

To obtain a version of this presentation that you can customize for your agency, please contact your Implementation Specialist, Customer Success Manager or customersupport@lexipol.com.

Policy Development Process

Lexipol provides fully developed, state-specific policies researched and written by subject matter experts and vetted by attorneys. Our policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Our comprehensive policy solution streamlines policy maintenance, issuance, acknowledgment and training, freeing up your time to focus on serving your community.

This infographic breaks down the components of Lexipol's policy management platform and provides an overview of our 5-step process for updating policy content. It's easy to read and easy to share with community stakeholders, elected officials, media or others who may have questions about how Lexipol develops and maintains policy content.

Download the infographic file at <https://info.lexipol.com/lexipol-policy-management>

LEXIPOL

POLICY MANAGEMENT, DEVELOPMENT AND UPDATING PROCESSES

Lexipol provides fully developed, state-specific policies researched and written by subject matter experts and vetted by attorneys. We provide more than 2 million first responders and local government officials with policies, training, wellness support and grant assistance.

Our policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate.

POLICY MANAGEMENT

Lexipol's comprehensive policy solution streamlines policy maintenance, issuance, acknowledgment and training, freeing up your time to focus on serving your community.

How Do We Help You Manage Your Policies?

- POLICY & UPDATES**
Our legal and policy content development teams monitor thousands of pieces of new legislation, statutes and case law on the state and federal levels, looking for anything that impacts policy content. These experts author policies and updates using a 5-step process of analysis, development, testing, release and maintenance.
- TRAINING**
Our Daily Training Bulletins use a proven system of solid, realistic, ongoing and verifiable training to help personnel learn to apply policies and improve their ability to make well-reasoned decisions. Each training takes just minutes to complete and includes a test question to measure comprehension.
- ONLINE & MOBILE PLATFORM**
Our online Knowledge Management System (KMS) provides electronic policy acknowledgment tracking, automatic archiving of policy versions and efficient distribution of policies and training to staff. Additionally, our web-based platform and mobile app provides 24/7 access to your policies.
- PROFESSIONAL SERVICES**
We help you complete your policy manual 5 times faster than if you were to go it alone. With Lexipol, you obtain customized policy implementation assistance from professionals who average 35 years of experience in public safety.
- DOCUMENT STORAGE**
Lexipol's Supplemental Publication Service (SPS) stores your procedures, training manuals and other documents and integrates them with your agency's policies, creating one platform for easy reference of all your policy-related documentation.
- ACCREDITATION SUPPORT**
Lexipol's Accreditation Workbench significantly reduces the time and effort needed to successfully prepare for and execute an accreditation assessment. The Accreditation Workbench links Lexipol policy content to standards, typically addressing 85 to 95% of the policy-related standards, and provides a robust tool set to help you manage the accreditation process.

What Is Our Policy Updating Process?

When laws change, your policies need to change, too. Trusted by more than 4,500 public safety agencies and municipalities, Lexipol's policy solutions provide constitutionally sound policies that comply with all federal and state laws while also ensuring they are regularly updated in response to changes.

Here's how we make it happen:

- Our legal team and policy content experts monitor numerous sources of information to identify new legislation, court decisions and regulations at the state and federal level.
- We author the recommended changes and deliver them to you through our online platform, with email notification to you.
- Our online platform shows you the changes in mark-up form, with the updated language side-by-side with the previous version—so you know instantly what's changing.
- You also receive Release Notes that explain the changes and reason behind them.
- Using your local process for legal and community review, you can accept, reject or customize each policy update. Then, it's just a few more clicks to issue the update to your personnel.

Discover why Lexipol is the best risk management solution to protect your community. Visit www.lexipol.com or email info@lexipol.com.

Lexipol Customer Toolkit - Policy

Hidden Cost of Policies

Policies are central to public safety agency operations, but the costs to create, update and train on policies are not always obvious. Legislation is consistently updated and new case law established, requiring constant monitoring and updating of agency policy.

Community leaders often vastly underestimate the costs of policy development and maintenance and the law enforcement agency's available resources.

This infographic can help you communicate to community members, elected officials and other stakeholders the value of your Lexipol subscription and the need to have a trusted partner in your agency's policy management.

Download the infographic file at <https://info.lexipol.com/Hidden-Cost-of-Policies>

THE HIDDEN COST OF POLICY MAINTENANCE

What are you spending now to create, update and train on your policies?

Many public safety agencies underestimate the costs of policy development and maintenance. If you're doing it on your own, you may be spending a lot of time and resources—with less-than-satisfactory results.

The two biggest hidden costs are **Staff Resources** and **Lawsuits, Claims and Personnel Grievances**.

1 Staff Resources

When internal staff are tasked with policy maintenance, salary and overtime costs can quickly add up.

- Developing New Policies
- Developing Policy Training
- Legal Review Fees
- Tracking Policy Acknowledgments
- Reviewing Legislation and Case Law
- Developing Policy Updates

Key Factors to Control Staff Costs

- Track policy acknowledgments electronically
- Partner with a trusted source to keep up with legislation and case law
- Use experienced, objective policy developers

2 Lawsuits, Claims & Personnel Grievances

Policy-related legal and administrative actions taken against your agency can cost millions in settlements, awards and legal fees.

- Attorney Fees
- Settlements and Payouts
- Producing Documentation (e.g., training records)
- Preparing for Depositions and Court Appearances
- Responding to Citizen Complaints
- Damage to Reputation

Key Factors to Control Legal and Administrative Costs

- Ensure policies meet all relevant state and federal laws
- Keep policies up to date
- Train staff on all policies and policy updates
- Manage training and policy records electronically

How does Lexipol help reduce hidden policy-related costs?

Lexipol provides a comprehensive policy management solution

- State-specific customizable policies authored by policy experts and attorneys
- Continuous monitoring of legislation, case law and industry trends
- Electronic policy updates with explanatory notes
- Scenario-based training delivered and tracked electronically
- Easily accessible policy archives
- Electronic policy acknowledgment tracking

Take Control of Policy Management

Don't let the hidden costs of inefficient policy development, maintenance and training interfere with your organizational priorities. When you choose Lexipol to manage your policies, you'll give your staff more time to focus on what they do best. Take control and get on the path to policy management peace of mind today!

www.lexipol.com/request-a-demo **LEXIPOL**

Lexipol Customer Toolkit - Policy

Understanding Lexipol's Approach to Policy

Lexipol is a unique resource for police, fire and other first response agencies across America. Because of that, there are a range of common mistakes that writers, speakers and others make about who we are and the services we provide – particularly when it comes to creating and refining policy. Following are some foundational concepts that govern our approach to public safety policy as well as some common misconceptions about Lexipol.

Foundational Concepts

1. **Good policy is essential.**

Good policy provides everyone – officers, supervisors, local officials and community members – with clear expectations of how first responders will approach critical topics. The overall mission of public safety professionals is the preservation of life, and Lexipol develops policy to support that goal. While no collection of policies can predict every variation of every scenario officers will face throughout their career, clear and consistent policies set standards for conduct and provide the foundation for accountability that communities expect. Equally important is keeping this policy up to date to reflect changing legislation and evolving best practices.

2. **Policy must be inclusive.**

The worst policy is one created in a vacuum. For decades, many departments created their own policies in isolation, often with inadequate resources and a limited perspective. This is particularly common given that about half of all police departments across America have less than 10 uniformed officers. Even in larger agencies understaffing is common, and all officers are needed to fill operational functions, leaving few resources for the development of policy.

Lexipol provides departments, both large and small, with policy language that reflects the thinking of communities across the nation and the latest changes in legislation and law—efforts that are beyond the reach of most agencies. Additionally, Lexipol's analysis serves as a confident starting point for discussions involving community stakeholders in the development of policies that reflect local needs, concerns and aspirations.

3. **Policy needs continual reinforcement.**

The second-worst policy is one that no one remembers, particularly in a high-stress situation. That's why constant and consistent training is essential to make desired actions and responses as second nature as possible. Lexipol provides a range of training and instruction for police, fire, dispatch, EMS and other first responders to empower personnel to respond consistently and per-policy, even in the most difficult situations.

Lexipol Customer Toolkit - Policy

Understanding Lexipol's Approach to Policy

Law enforcement policy is a complex and sometimes emotional subject. Without clear, concise information, community stakeholders can draw inaccurate conclusions about your agency's policies. Understanding that such misconceptions exist can help you communicate more accurately with your community about the value Lexipol brings to your agency and your residents.

Common Inaccurate Statements

"Lexipol's top goal is 'legally defensible' policies."

Not true. While ensuring policies are "legally defensible" is necessary because policy must comply with applicable laws and regulations, Lexipol has a higher goal:

*Lexipol empowers first responders and their communities
to best serve the needs of their residents safely and responsibly.*

Drawing on the expertise of our staff, which includes hundreds of professionals spanning the full range of public safety—including police chiefs, correctional facility commanders, fire chiefs, EMS leaders, trainers and instructors, and wellness experts—Lexipol provides a depth of necessary services to help agencies better serve their communities, including policies and policy training, but also online learning, wellness resources and grant services.

"Lexipol policies discourage community involvement."

False. Lexipol actively encourages communities to get involved, and our policies provide a solid starting point for local conversations. Our "[Community Review of Law Enforcement Policy](#)" guide is provided to assist law enforcement agencies and community members with a process of community review and development of policy that is efficient, positive and meaningful for all involved.

Lexipol provides departments, both large and small, with policy language that reflects the thinking of communities across the nation and the latest changes in legislation and law—efforts that are beyond the reach of most agencies. Additionally, Lexipol's analysis serves as a confident starting point for discussions involving community stakeholders in the development of policies that reflect local needs, concerns and aspirations.

"Lexipol opposes other organizations' model policies."

Not necessarily. Many voices and organizations propose innovative alternatives to current policies, many of which deserve further local discussion.

However, it does no good for an agency to adopt a policy that ultimately violates state or federal laws or the U.S. Constitution, exposes the agency and its taxpayers to unnecessary liability, conflicts with other policies and/or is unworkable in real-world operations. Lexipol takes on the responsibility of properly analyzing new ideas and routinely updating our policies based on such insight.

Lexipol Customer Toolkit - Policy

Understanding Lexipol's Approach to Policy

"Lexipol is opposed to police reform and accountability and instead focuses on limiting liability."

Not true; in fact, we see reform, accountability and limiting liability as working together. Every public agency has a fiduciary responsibility to conduct its business legally, ethically and in a way that mitigates risk and liability for taxpayers. Sound policies help make this happen and are essential in holding personnel accountable.

Lexipol is committed to continuous quality improvement in law enforcement. In August 2020 we issued a set of important changes to our use of force policy that included restricting the carotid restraint to uses where deadly force is authorized, enhancing the duty to intercede, and requiring de-escalation tactics when time and circumstances permit. Lexipol has also [held a series of webinars](#) about police reform, [launched a website](#) to provide transparency into our use of force policy positions, and [developed a guide](#) to help community members contribute to review of law enforcement policy.

"Lexipol's policies discourage de-escalation techniques."

False. Lexipol's Use of Force Policy requires officers to use de-escalation tactics when time and circumstances permit. These tactics include crisis intervention techniques, requesting appropriate backup, and verbal persuasion to reduce the intensity of the situation. In addition, de-escalation is included in Lexipol policies addressing civil commitments, crisis intervention incidents, conducted energy device deployments (e.g., TASER) and civil disputes. Besides policy content, Lexipol supports de-escalation and other approaches that minimize conflict through dozens of webinars, training courses, articles and other resources to help officers perfect those skills. For detailed information on Lexipol's policy positions on de-escalation and other use of force aspects, please visit our [Police Use of Force website](#).

"Lexipol's immigration violations policy allows officers to use a person's lack of English proficiency as a factor in determining whether to detain an individual."

False. Lexipol's policy on Immigration Violations makes no reference to the use of or lack of English proficiency when detaining individuals suspected of *criminal* violation of federal immigration law, and the policy prohibits officers from detaining *any individual* for a *civil* violation of federal immigration law. Additional policies prohibit bias-based policing and require authors to accommodate persons with limited English proficiency.

"Lexipol copyrights its policies, which prevents agencies from sharing them or retaining them if they end their contract with Lexipol."

Not true. Lexipol's policies are a proprietary product and protected under U.S. copyright law, but we do not restrict agency leaders from sharing their policies with other agencies or the public. Lexipol grants agencies that purchase our policies the right to use and customize the policies and the right to display the final policy documents on publicly accessible websites. Agencies that end their contracts with Lexipol are provided with documentation on how to download their policies so they can continue to use them even after the contract has expired.

Lexipol Customer Toolkit - Policy

Use of Force Website & Resources



In response to the increased intensity of the national conversation surrounding police use of force, Lexipol created a website centered on police use of force policy to educate and foster conversation between law enforcement professionals and their communities. This knowledge base outlines Lexipol's current use of force policy positions as well as information about how the policies were developed.

Lexipol built this resource with the goal of increasing transparency and engagement between law enforcement professionals and their communities. With clearly outlined policy positions, Lexipol seeks to inform conversations and involve stakeholders in efforts to create safer communities.

On the [Use of Force site](#), users can download a copy of Lexipol's national use of force policy as well as position papers on the more prominent aspects of police use of force such as de-escalation and shooting at moving vehicles. With content created for both law enforcement professionals and community members, the site serves as an informational hub for all stakeholders, including links to articles, webinars and more to expand on key topics.

Visit our Use of Force website at <https://useofforce.lexipol.com/>.

Lexipol Customer Toolkit - Policy

Police Reform Webinar Series



Following the unprecedented events of 2020, Lexipol held a [webinar series](#) covering three critical topics in police reform: use of force, response to people in crisis and tactical training. This series stresses how law enforcement agencies must be an engaged partner in police reform discussions and how such decisions impact agency policies and training. The recorded events are free and open to law enforcement and interested community members.

Webinars in this series include:

Use of Force: Policy or Tactics? [VIEW NOW](#)

This webinar uses recent cases to shed light on the differences between policy and tactics, encourage viewers to consider how their actions may be construed by others, and identify ways officers can make decisions that minimize use of force and enhance officer safety.

Response to People in Crisis: Mitigating Harm & Enhancing the Safety of All Involved [VIEW NOW](#)

This webinar explores how crisis mitigation requires officers to draw on a different mindset and a different skillset than many other types of response. Tactics to de-escalate such situations and gain insight into the proper perspective to assist them when dealing with a person in crisis are discussed.

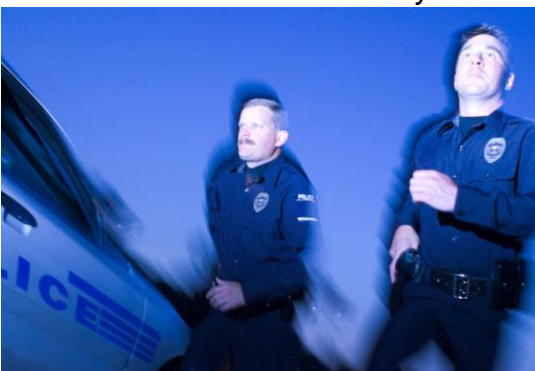
Training “Artifacts”: The Role Training— or Lack of Training—Plays in Poor Decisions [VIEW NOW](#)

This webinar uses contemporary scenarios to lead police administrators, trainers and officers to critically analyze their training to ensure officers are being given the proper skills to handle the difficult decisions they face.

Duty to Intercede Webinar

One of the key takeaways from the in-custody death of George Floyd was the need for agencies to embrace the duty of an officer to intercede.

While Lexipol policy has long included the duty to intercede, we felt additional focus on this concept was needed. In July 2020, we held a free webinar, [“Duty to Intercede: Conceptual, Cultural and Legal Aspects.”](#) The webinar has had more than 23,000 views and is regularly used as a training resource in agencies across the United States.



Lexipol Customer Toolkit - Policy

Community Review of Law Enforcement Policy



In communities across the country, citizens are becoming increasingly aware of and involved in law enforcement policy. Lexipol welcomes this trend; our policy platform was built to allow each agency to customize its policies to reflect local needs, values and priorities.

Done effectively, community review of law enforcement policy represents an excellent opportunity to bring community members and law enforcement leaders closer together, to build a shared understanding of police practices and community values, and to contribute to the continuous quality improvement process that is the bedrock of contemporary law enforcement.

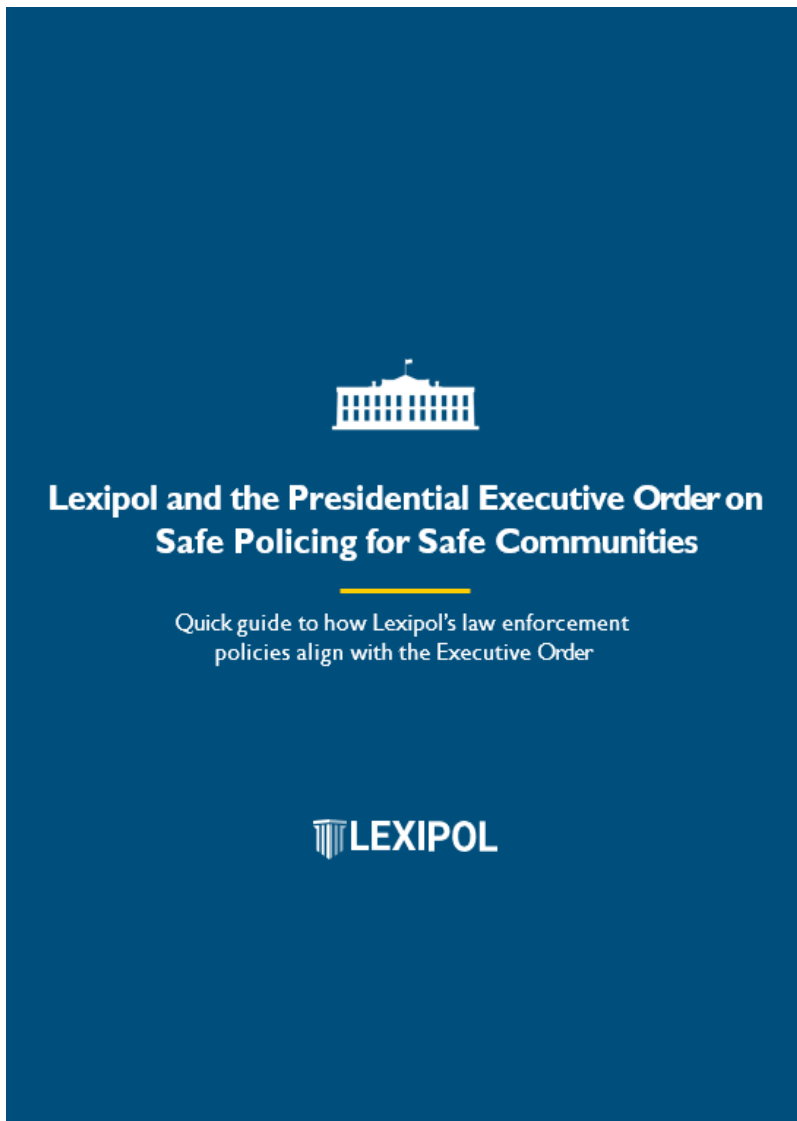
But without taking the time to define and agree on expectations and roles, community review of police policy can go awry, creating frustration and disillusionment.

This guide provides strategies and information for agencies and community members to make the process of community review and development of policy more efficient, more positive and ultimately more meaningful for all involved.

Download the guide at <https://info.lexipol.com/community-review-of-law-enforcement-policy>.

Lexipol Customer Toolkit - Policy

Presidential Executive Order on Safe Policing for Safe Communities



On June 16, 2020, President Donald J. Trump signed the “[Executive Order on Safe Policing for Safe Communities](#).” The executive order’s goal is to ensure that law enforcement agencies continue striving to provide transparent, safe, and accountable delivery of services to communities.

The Executive Order outlined 2 required principles and 11 recommended principles, ranging from recruitment practices to including a duty to intervene in policy. Lexipol conducted a thorough review of our existing policy content against the Executive Order, determining that our policy content already covered all the required and recommended principles.

This quick guide provides details on how Lexipol’s law enforcement policies align with the Executive Order. Download the ebook at <https://info.lexipol.com/safe-policing-for-safe-communities-quick-guide>.

Lexipol Customer Toolkit - Policy

U.S. Mayors Conference Recommendations on Police Reform & Racial Justice



In August 2020, the U.S. Conference of Mayors, a nonpartisan organization representing 1,400 cities with a population of 30,000 or more, released its [Report on Police Reform and Racial Justice](#). The comprehensive and wide-ranging document contains many policy, procedural and cultural recommendations to help law enforcement agencies address long-standing divides between police and communities of color.

As Lexipol staff reviewed the Report on Police Reform and Racial Justice, we were struck with how many of the policy positions are reflected in Lexipol's law enforcement policies, positions we've supported for several years or even since the initial development of our Law Enforcement Policies and Training solution.

This guide provides a quick overview of 10 key policy positions recommended by the U.S. Conference of Mayors and how Lexipol's policy language matches up with those recommendations.

Download the ebook at <https://info.lexipol.com/police-reform-and-social-justice-ebook>.



For more information, visit www.lexipol.com
or call 844-312-9500

