ORDINANCE NO. 18-019

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADDING CHAPTER 15.26 OF THE PACIFIC GROVE MUNICIPAL CODE REGARDING TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

FACTS

1. The Pacific Grove Municipal Code (PGMC) §23.64.060 allows wireless telecommunication facilities to be permitted in any district, except the O district, subject to first obtaining a use permit under §23.70.080(a).

2. The City deems it necessary and appropriate to provide standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

3. The City by and through its Council and other officials has the authority to adopt such ordinances as it deems necessary and appropriate to assure the health, welfare and safety of its inhabitants, to protect and preserve the City's rights, property and privileges, and to preserve peace, safety and good order.

4. This ordinance amends the Municipal Code to create a new Chapter 15.26, entitled "Telecommunications Facilities in Public Rights-of-Way" to provide for certain standards and regulations relating to the location of telecommunications towers, antennas, and other structures within the City's public rights-of-way, consistent with federal and state law.

5. Notice of the public hearing was published or posted in the Monterey Weekly on December 13, 2019.

6. In the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. The ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. A new Chapter 15.26, entitled "Telecommunications Facilities in Public Rights-of-Way," shall be created, as follows:

CHAPTER 15.26
TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

15.26.010. Authority.
The City derives the authority for this Chapter from the City Charter Articles 4 and 5, and Pacific Grove Municipal Code Chapter 2.04 This Chapter, and any rules, regulations, specifications and agreements adopted pursuant to this Chapter, comply with all applicable federal and state law.

15.26.020 Purpose.
This Chapter establishes a process for managing, and uniform standards for acting upon requests for the placement of wireless telecommunications facilities within the rights-of-way of the City of Pacific Grove consistent with the City's obligation to promote the public health, safety and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the rights-of-way for the placement of wireless telecommunications facilities. The City recognizes the importance of wireless telecommunications facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of wireless telecommunications facilities in its rights-of-way, and this ordinance shall be interpreted consistent with those provisions.

15.26.030 Scope.
(a) In general. Unless exempted, every person who desires to place a wireless telecommunications facility in the rights-of-way or modify an existing wireless telecommunications facility must obtain a wireless placement permit authorizing the placement or modification.

(b) Exemptions. Except as to this 15.26.030 and 15.26.050, this Chapter does not apply to:

(1) The placement or modification of wireless telecommunications facilities on supporting structures owned, or under the control of, the City, the use of which is subject to a contract for use of the facility between the City and the entity or entities that own or control the wireless telecommunications facility;

(2) The placement or modification of wireless facilities by the City or by any other agency of the state solely for public safety purposes.

(3) Modifications to an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility. The City, by wireless regulation, may also exempt

wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the proposed facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the character of a neighborhood or corridor, or to otherwise serve the purposes of this ordinance.

(4) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities.

(5) Installation of a wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles.

(c) Other applicable requirements. In addition to the wireless telecommunications permit required herein, the placement of a wireless telecommunications facility in the public-rights-of-way requires the persons who will own or control those facilities to obtain the franchises and permits required by applicable law, and to comply with applicable law.

(d) Public use. Except as otherwise provided by California law, any use of the right of way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

15.26.040 Definitions.
Terms used in this Chapter shall have the following meanings:

"Application" means a formal request, including all required and requested documentation and information submitted by an Applicant to the City for a wireless placement permit.

"Applicant" means a person filing an application for placement or modification of a wireless telecommunications facility in the rights-of-way.

"Base Station" means the term base station shall have the same meaning as in 47 C.F.R. Section 1.40001, as may be amended.

"Certificate of Completion" means a document that is required from and issued by the City confirming all work described in the Application, as approved: (a) was properly permitted, including, without limitation, all required permits for building, electrical work, street or curb cutting, and excavation; (b) was done in compliance with and fulfillment of all conditions of all permits, including all stated deadlines; (c) was fully constructed or placed as approved and permitted; and (d) was finally inspected by the City, and was approved by the City after said final inspection.

"Rights-of-Way" means any portion of any road or public way which the City has the responsibility to maintain or manage.

"Support Structure" means any structure capable of supporting a base station.

"Tower" means any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

"Underground Areas" means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

"Utility Pole" means a structure in the rights-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

"Wireless Permit" means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the rights-of-way; and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

"Wireless Service Provider" means an entity that provides wireless services to end users.

"Wireless Infrastructure Provider" means a person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the right-of-way.

"Wireless Regulations" means those regulations, adopted pursuant to 15.26.050 and implementing the provisions of this Chapter.

"Wireless Telecommunications Facility, or Facility" means a facility at a fixed location consisting of a base station, any accessory equipment, and the tower, if any, associated with the base station.

15.26.050 Administration.

(a) City Manager. The City Manager or designee is responsible for administering this Chapter. As part of the administration of this Chapter, the City Manager or designee may:

(1) Adopt regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities;

(2) Interpret the provisions of this Chapter.

(3) As part of the foregoing, develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;

(4) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.

(5) Develop forms and procedures for submission of applications for placement or modification of wireless telecommunications facilities, and proposed changes to any support structure consistent with this Chapter;

(6) Collect, as a condition of the completeness of any application, any fee established by resolution of the City Council;

(7) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility, and proposed changes to any support structure;

(8) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;

(9) Subject to appeal as provided herein, determine whether to grant, grant subject to conditions, or deny an application; and

(10) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(b) Appeal.

(1) Any person adversely affected by the decision of the City Manager may appeal the decision to the City Council, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(2) Where the City Manager grants an application based on a finding that denial would

result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Council. Otherwise, appeals that involve eligible facilities requests, as defined in 47 C.F.R. Section 1.40001, as may be amended, must be filed within five (5) business days of the written decision of the City Manager; all other appeals must be filed within ten (10) business days of the written decision of the City Manager, unless the City Manager extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

(3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

15.26.060. General Standards for Wireless Telecommunications Facilities in the Rights-of-Way.

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.

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

(c) Standards. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located.~~;~~ ***City shall*** ensure~~s~~ that ~~installations~~ ***wireless telecommunications facilities*** are subject to periodic review to minimize the intrusion on the rights-of-way; ~~and ensures~~ ***that*** the City bears no risk, ~~or~~ liability, ***or expense*** as a result of the installations~~,~~; ~~and~~ that ***the facilities*** ~~such use~~ do~~es~~ not inconvenience the public, ***or*** interfere with the primary uses of the public rights-of-way; ***and that the facilities do not***~~, or~~ hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the public rights-of-way or any portion thereof, ***or damage or otherwise unduly interfere with other structures*** ~~or to cause the improvement, modification, relocation, vacation or abandonment of facilities~~ in the rights-of-way.

(d) Concealment. Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

(1) Antennas located at the top of support structures shall be incorporated into the structure or placed within shrouds of a size such that the antenna appears to be part of the support structure.

(2) Antennas placed elsewhere on a support structure shall be integrated into the structure or be designed and placed to minimize visual impacts.

(3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

(4) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

(5) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

(6) No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with FCC regulations governing radio frequency ("RF") emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any permit or lease.

(7) No towers shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas; provided that the City may permit placements where all elements of the wireless telecommunications facility are concealed, and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(8) No permit shall issue except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility; or wireless infrastructure providers with contracts with wireless service providers which require the service provider immediately to use the proposed wireless telecommunications facility.

15.26.070. Application Submission Requirements.

(a) Submission. Unless the wireless regulations otherwise provide, applicant shall submit a paper copy and an electronic copy of any application, amendments or supplements to an

application, or responses to requests for information regarding an application to the City Manager.

(b) Content. An application must contain:

(1) Any information required pursuant to the wireless regulations;

(2) The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless telecommunications facility;

(3) A complete description of the proposed wireless telecommunications facility and the work that will be required to install or modify it (including but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility, and specifications for each element of the wireless telecommunications facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360-degree photo simulations must be provided. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.

(4) If the application is an eligible facilities request, within the meaning of 47 C.F.R. Section 1.40001, as may be amended, the application must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must show that there is an existing wireless telecommunications facility that was approved by the City pursuant to this Chapter. Before and after 360-degree photo simulations must be provided; which and detailed specification of the (1) An application for a permit shall be submitted in the format and manner specified by the wireless facilities regulations, as applicable. For permits for wireless telecommunications facilities, if no form or manner has been specified, applications must contain all information necessary to show that applicant is entitled to the permit requested.

(5) If applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent City from complying with any deadline for action on an application.

(6) Proof that notice has been mailed to owners of all property within 300 feet of the proposed wireless telecommunications facility.

(7) Any required fees.

(c) Fees. For wireless telecommunications facilities, applicant must provide an initial

deposit and agree as part of its application to pay all costs reasonably incurred by City in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on costs the City expects to incur, with a review commencing by the first anniversary of the effective date of this ordinance.

(d) Waivers. Requests for waivers from any requirement of this section shall be made in writing to the City Manager or designee. The same may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

(e) Rejection for Incompleteness. For personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, and local and federal law. If such an application is incomplete, it may be rejected by a written order specifying the material omitted from the application, or the City may notify the applicant of the material omitted and provide an opportunity to submit the missing material.

15.26.080 Termination of Permit/Breach.

(a) For breach. A wireless telecommunications permit may be revoked for failure to comply with the conditions of the permit, franchise or applicable law. Upon revocation, the wireless telecommunications facility must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(b) For installation without a permit. A wireless telecommunications facility installed without a wireless permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(c) Term. A wireless permit, other than a permit issued pursuant to an eligible facilities request, shall be valid for a period of ten (10) years. An eligible facilities permit shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or, at least 90 days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the impact of the wireless telecommunications facility cannot be reduced.

The wireless telecommunications facility must remain in place until it is acted upon by the City, and any appeals from the City's decision exhausted.

(d) Municipal Infraction. Any violation of this ordinance may be enforced pursuant to PGMC Chapters 1.16 and 1.19.

15.26.090 Vertical Infrastructure Controlled By City.
The City, as a matter of policy, will negotiate agreements for use of City owned or controlled light standards and traffic signals in the public rights-of-way. The placement of wireless telecommunications facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

15.26.100 Nondiscrimination.
In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 19th day of December, by the following vote:

AYES: Mayor Peake, Councilmembers Amelio, Garfield, Huitt, McAdams, Smith and Tomlinson.

NOES: None.

ABSENT: None.

APPROVED:

Bill Peake

BILL PEAKE, Mayor

ATTEST:

Sandra Kandell

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney