

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE 16 OF THE STOCKTON MUNICIPAL CODE, CHAPTER 16.44 (COMMUNICATION FACILITIES) AND CHAPTER 16.72, SECTION 16.72.125 (ENCROACHMENT PERMIT) RELATED TO WIRELESS COMMUNICATION FACILITIES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. FINDINGS AND INTENT

1. The City Council is authorized by section 16.212.030 of the Stockton Municipal Code (SMC) to adopt amendments to Title 16 (Development Code) based on the Mandatory Findings of Fact for Development Code Amendments.

- a. Finding #1: The proposed amendment ensures and maintains internal consistency with general land uses, objectives, policies, programs, and actions of all elements of the General Plan on balance and would not create any inconsistencies with this Development Code.

Evidence: The proposed amendments preserve the community's aesthetic character per the General Plan Goal LU-3 and investment in roadway infrastructure by promoting coordinated upgrades and repair work per Action LU-6.3C of the General Plan.

- b. Finding #2: The proposed amendment will not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the City.

Evidence: The proposed amendments promote coordination among the entities that occupy the City's right-of-way to minimize excavation's number and scale by encouraging joint trench practice, also known as dig once.

- c. Finding #3: The proposed amendment complies with the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

Evidence: The proposed amendments are not subject to review under the California Environmental Quality Act (CEQA) pursuant CEQA Guidelines sections 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment) and 15303(e) (similar Project fall under "small facilities").

- d. Finding #4 (Development Code Amendments) The proposed

amendment would be internally consistent with other applicable provisions of this Development Code.

Evidence: Proposed amendment is to maintain the aesthetic character of the community, protect the residents' safety and welfare, and preserve the investment in roadway infrastructure and provide for compliance with Federal and State Law and adherence to adopted General Plan. The proposed application process for review and approval of encroachment permit is consistent with the requirements and process in Public Improvements, Chapter 16.72 of the Stockton Municipal Code.

SECTION II. AMENDMENT OF CODE

Title 16, Chapter 16.44 of the Stockton Municipal Code is amended as follows:

Chapter 16.44 WIRELESS COMMUNICATIONS FACILITIES

16.44.010 Title.

This Chapter shall be titled the "Wireless Communications Facilities for the City of Stockton."

16.44.020 Purpose and Intent.

This Chapter is intended to establish reasonable and uniform standards and procedures for the location and installation of wireless communications facilities consistent with State and Federal law.

The standards and procedures contained in this Chapter are intended to, and should be applied, consistent with and to the extent permitted by law to protect and promote public health, safety, and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, including but not limited to the aesthetic character of the City, its neighborhoods, and community.

This Chapter is also intended to reflect and promote the community interest by:

- A. Ensuring balance between public and private interest.
- B. Protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure.
- C. Protecting and preserving the City's environmental resources.
- D. Promoting access to high-quality advanced wireless services for the City's residents, businesses, and visitors.

16.44.030 Definitions.

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

A. “**Antenna**” as used in this section means any apparatus designed for the purpose of the transmission and/or reception of radio frequency (“RF”) radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.

B. “**Applicant**” means any person that submits an application to the City to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the City’s right-of-way.

C. “**Base Station**” means the same as defined by 47 C.F.R. §1.6100(b)(1), as may be amended from time to time.

D. “**Collocation**” as used in this section means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that for the purpose of Eligible Facilities Requests, “collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

E. “**Design Standards**” means those standards established for the design, construction, and installation of wireless communications facilities in the right-of-way.

F. “**Director**” means the Director of Community Development with concurrence of the Public Works Director responsible for assets in City rights-of-way unless otherwise stated.

G. “Eligible Facilities Request” means the same as defined by the FCC in 47 C.F.R. §1.6100(b)(4), as may be amended or superseded.

H. “**Existing**” means a constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, as defined in 47 C.F.R. §1.6100(b)(5), as may be amended from time to time.

I. “**FCC**” means the Federal Communications Commission or its duly appointed successor agency.

J. “**Major Facility**” as used in this section means a communication facility that: (1) is a freestanding, ground-mounted macro facility; (2) is a structure- or roof-

mounted and exceeds 10 feet in height above the roof ridge line; or (3) does not qualify as a “Minor Facility,” below.

K. “**Master License Agreement**” means a mutual contract between the City and a communications service carrier, licensed by the California Public Utilities Commission to provide communication services, that allows for placement, operation and maintenance of Wireless Communication Facilities in the City’s public right-of-way on City-owned structures.

L. “**Minor Facility**” as used in this section means a communication facility that is: (1) within the public right-of-way that is stealthed or otherwise designed to match the underlying structure, or is structurally integrated into or on top of a light standard, utility pole, or a metal or precast concrete monopole that is similar in design to a street light pole, or similar structure; (2) structure- or roof-mounted not exceeding 10 feet in height above the roof ridge line unless designed as a stealth facility; or (3) a collocation at a height below the existing structure height, structurally integrated, or otherwise designed to blend with the underlying structure, or freestanding stealth facility; or (4) all small wireless facilities as defined herein.

M. “**Person**” means without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

N. “**Planning Commission**” means the City of Stockton Planning Commission.

O. “**Private Property**” means land owned by an individual, entity, or group over which the owners have exclusive use and legal rights.

P. “**Public Right-of-Way**” means City owned real property or exclusive easement for the purpose of public streets, curb and gutter, sidewalks street lights, storm, sewer and water utilities, public gas, electric and communication utilities, over which the City is the exclusive reviewing and permitting authority for allowing construction and maintenance activities to occur, or devoted to the City (1) Public Transportation; or (2) the placement of the City’s municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. This definition also includes public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the City.

Q. “**Review Authority**” means the Director of Community Development with concurrence of the Public Works Director or the Planning Commission when referred by the Director.

R. **“Revocable Permit”** means the same as defined under Section 16.240.020 of the Development Code.

S. **“RF”** means the same as **“Radio Frequency Radiation”** defined under Section 16.240.020 of the Development Code.

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

U. **“Stealth Facility”** as used in this section means any wireless communications facility which is designed to substantially blend into the surrounding environment by, among other things, architecturally integrating into a structure or otherwise using design elements to conceal or otherwise camouflage antennas, antenna supports, poles, equipment, cabinets, equipment housing and enclosure; and related above-ground accessory equipment.

V. **“Small Wireless Facility”** means the same as defined by the FCC in 47 C.F.R. §1.6002(l).

W. **“Substantial change”** means the same as defined under 47 U.S.C. 1.6100(b)(7), as such law may be amended from time to time.

X. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. section 1.6100(b)(8), as may be amended from time to time.

Y. **“Wireless Communication Facility/Facilities”** as used in this section means any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower or base station, transmission equipment, equipment cabinets, and all materials or techniques used to conceal the installation.

16.44.040 Review and Approval Process

A. Review Authority.

1. Private Property

a. **Minor Facilities:** The Director is the Review Authority for this facility type pursuant to Table 2-2 and Chapter 16.152.

b. **Major Facilities:** The Director is the Review Authority for this facility type pursuant to Table 2-2 and Chapter 16.168.

2. Public Right-of-Way

a. **Encroachment Permit:** The Director is the Review Authority for this facility type pursuant to Chapter 16.72.125

b. **Master License Agreement:** The City Manager is the Review Authority for all Master License Agreements for facilities on City-owned structures.

B. Application filing, processing, and decision.

1. **Filing.**

a. Private Property

i. **Minor Facilities:** These facilities require Site Plan Review under Chapter 16.152. These facilities shall be allowed if they comply with all applicable standards under the Development Code.

ii. **Major Facilities:** These facilities require an Administrative Use Permit under Chapter 16.168.

b. Public Right-of-Way

i. **Encroachment Permit:** All facilities located in a public right-of-way, are required to obtain an encroachment permit.

ii. **Master License Agreement:** All facilities located in a public right-of-way are required to enter into a Master License Agreement with the City.

2. **Fees.** The Applicant shall pay all applicable fees required by the Council's fee resolution.

3. **Location.**

a. **Private Property** – Order of Site Preference.

i. **Minor Facilities:**

1. Existing structures that allow a façade-mounted antenna.

2. New or existing structures integrating a stealth design.

3. Existing structures that allow roof-mounted antennas.

4. Collocation on existing structures at a height at or below the existing structure height.

5. New freestanding stealth facility (whether co-location or single carrier).

ii. **Major Facilities:**

1. Co-location on existing wireless communication facilities above the height of the existing structure.

2. New freestanding facility designed with space for future co-location.

3. New freestanding facility for single carrier.

4. Major facilities are strongly encouraged to locate as follows:

a. Separate from residential areas to the greatest extent feasible but in no case shall they locate in or within 500 feet of a residential zoning district.

b. On parcels within the IG (industrial general) zoning district. Major facilities locating within an IG zone shall be allowed by right with no height limitation or screening requirement.

5. Major facilities shall not be located within 1,000 feet of an existing Major Facility except when collocated on the same structure *unless* the applicant can justify to the satisfaction of the Director, or his/her designee, that it is infeasible to locate on an existing major facility.

6. For the purposes of this section, distances shall be measured in a straight line without regard to intervening structures, from the nearest point of the proposed facility to the nearest applicable boundary line of a residential zone described, or to the nearest point of another major facility.

4. Grounds for Denial.

- a. The application is not authorized to conduct business in the State of California.
- b. The applicant is not in full compliance with the requirements of this Chapter.
- c. The applicant has not paid the City fees imposed by this Chapter for the application.
- d. The application, design, or location does not comply with the relevant standards under this Chapter or any other applicable standard under the Stockton Municipal Code.

5. **Decision.**

- a. **Private Property.** Wireless communication facilities located on private property, the following standards shall apply:

- i. *Good Faith Effort.* Applicants for minor and major facilities shall provide written documentation demonstrating a good faith effort to locate facilities in compliance with Sections (3)(a)(i) and (3)(a)(ii) of this section.
- ii. *Height Criteria.* Structure- or roof-mounted minor facilities that do not incorporate a stealth design shall not exceed 10 feet in height above the roof ridge line regardless of the overall structure/structure height.

- a) **Minor Facilities.** Minor facilities that are stealth designed (freestanding or roof-mounted) shall not exceed 75 feet in overall height from finished grade.

- b) **Major Facilities.** Major facilities shall not exceed 75 feet in overall height from finished grade, unless the applicant can justify to the satisfaction of the Director that the proposed height necessary to achieve the required technical service objective.

- iii. *Stealth.* All wireless facilities must to the maximum extent feasible use design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- iv. *Setbacks.* Wireless facilities on private property must be compliant with all setback requirements under

Chapter 16.36. Where a freestanding major or minor communication facility abuts a residential use in a nonresidential zone, the setback shall be equal to the height of the proposed facility plus 25 feet, or the highest engineered break point, whichever is lower.

- v. *Noise.* Wireless facilities and all transmission equipment must comply with all noise regulations under Chapter 16.60. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/ or strategies to avoid any ambient noise from equipment that exceeds the applicable noise regulations.
- vi. *Landscaping.* All wireless facilities must include landscape features and a landscape maintenance plan when proposed to be placed in a landscaped area. Additional landscape features may be required to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or resistant to drought.
- vii. *Site Security Measures.* Wireless facilities, where appropriate, may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. All wireless facilities components shall be constructed from graffiti-resistant materials. Additional concealment elements may be required to blend the security measures and other improvements into the natural and/ or built environment.
- viii. *Backup Power Sources.* No backup power sources that emit noise above the level allowed under Chapter 16.60 or exhaust fumes shall be allowed within the public rights-of-way.
- ix. *Lights.* Wireless facilities may not include exterior lights other than as may be required under FAA, FCC, other applicable governmental regulations or applicable pole owner policies related to public or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with

the electronic equipment shall be appropriately shielded from public view. The provisions in this subsection shall not be interpreted to prohibit installations on street light poles or the installation of luminaires on new poles when required by the City.

- x. *Signage; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City or as required under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- xi. *Future Collocations and Expansions.* To the extent feasible and aesthetically desirable, all new wireless communication facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The requirements in this section may be waived if the Director determines future collocations at a proposed wireless facility would be aesthetically undesirable.
- xii. *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits in areas of the city where undergrounding utilities is required. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.

- xiii. *Compliance with Laws.* Wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, General Plan and any applicable specific plan, the Stockton Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
 - xiv. *Public Safety.* Wireless communication facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility. No person shall install, use or maintain any facilities, which in whole or in part rest upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near the location where the wireless facilities are located.
- b. **Public Right-of-Way.** Wireless communication facilities located in the public right-of-way shall conform to the Small Cell Design & Deployment Standards or as otherwise stipulated by the Director.

6. Appeal- Private Property

- a. **Minor Facilities:** These facilities are subject to site plan review, which upon issuance, are not subject to appeal pursuant to Section 16.84.020.
- b. **Major Facilities:** These facilities are subject to the Administrative Use Permit process under Chapter 16.168. Final decisions may be appealed to the Planning Commission and Council in accordance with Section 16.84.020, utilizing the procedure under Section 16.100.

C. Exemptions.

The following non-commercial, receive-only antennas for the sole use of a resident occupying a residential structure shall not be regulated by this section:

1. A ground or structure-mounted, radio or satellite dish antenna which does not project above the roof ridge line and does not have a diameter greater than one (1) meter (39 inches); and
2. Roof-mounted radio or television aerials not exceeding 75 feet in overall height.

16.44.050 Abandonment/Removal.

A. The operator of a communications facility shall be required to remove all unused or abandoned equipment, antennas, poles, and/or towers if the facility has not been operational for a consecutive six (6) month period or a total of 12 months over a consecutive 30-month period. A facility is considered abandoned if it no longer provides communication services. The removal shall comply with proper health and safety requirements and occur no later than 90 days following the end of the applicable cessation period.

B. A written notice of the determination of abandonment shall be sent or delivered to the operator of the facility by the Department. The operator shall have 30 days to remove the facility or provide the Department with evidence that the use has not been discontinued. The Planning Commission shall review evidence and shall determine whether the facility is abandoned. Facilities not removed within the required 90-day period shall be in violation of this section and operators of the facility and the owners of the property shall be subject to penalties for violations under the enforcement and penalty provisions of the Municipal Code.

C. In the event that a communication facility is not removed within 90 days after the applicable cessation period ends, as described in subsection A of this section (Abandonment /Removal), the facility may be removed by the City and the costs of removal charged to Licensee.

16.44.060 Safety Requirements.

A. **Prevention of failures and accidents.** Any person who owns a Wireless Communications Facility sited in the public right-of-way shall at all times employ ordinary and reasonable care to prevent failures and accidents that may cause damage, injury, or nuisance to the public.

B. Compliance with fire safety and FCC regulations. Wireless communications facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, State, and local regulations, and in such manner that will not interfere with the use of other property.

16.44.070 Satellite antennas, amateur radio communication facilities, and citizen band (CB) radio antennas.

This section provides standards for the location and installation of satellite antennas, amateur (noncommercial) radio communication facilities, and citizen band radio antennas, which shall be located, constructed, installed, and maintained in the following manner:

A. Exempt. The following noncommercial, receive-only antennas for the sole use of a resident occupying a residential structure shall not be regulated by this section:

1. A ground or structure-mounted, radio or satellite dish antenna which does not project above the roof ridge line and does not have a diameter greater than one (1) meter (39 inches); and
2. Roof-mounted radio or television aerials not exceeding 75 feet in overall height.

B. Satellite Antennas. Satellite antennas, including portable units and dish antennas, shall be designed, installed and maintained in compliance with the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC) as follows, when these provisions are not in conflict with applicable State and Federal regulations:

1. Antennas shall not be located within required front or side yard setback areas. In addition, no portion of an antenna shall extend beyond the property lines.
2. The antennas and supporting structure shall be painted a single, neutral, nonglossy color (e.g., earth-tones, gray, black, etc.) and, to the extent possible, compatible with the appearance and character of the surrounding neighborhood.
3. Electrical and antenna wiring shall be placed underground whenever possible.
4. In residential zoning districts, antennas shall be subject to the following standards:

- a. Antennas shall be located only within the rear yard of the site, at least five (5) feet from the rear lot line and at least 15 feet from any street side property line;
- b. The diameter of the ground-mounted antenna (dish) shall not exceed 10 feet;
- c. The height of the antennas shall not exceed 20 feet at the highest point of the antenna;
- d. Antennas shall not project or overhang into areas in which antennas are not allowed to locate;
- e. Only one (1) antenna with a diameter greater than one (1) meter (39 inches) may be allowed on a site; and
- f. The antennas shall be used for private, noncommercial, purposes only.

5. In nonresidential zoning districts, antennas may be roof- or ground-mounted which do not exceed 14 feet in diameter.

C. Single Pole/Tower Amateur Radio Communication Facilities. Single pole/tower amateur radio communication facilities shall be designed, constructed, installed, and maintained in the following manner:

- 1. The maximum overall height (including antennas) shall not exceed 75 feet, measured from finished grade;
- 2. Where a parcel has one (1) pole/tower structure greater than 40 feet in overall height (including antennas), a second pole/tower structure shall be allowed with an overall height not to exceed 40 feet (including antennas);
- 3. A boom or other active element/accessory shall not exceed 35 feet in length (wire type antennas, no larger than 10 gauge in size, with two (2) or less elements and no boom are exempt from this limitation);
- 4. The pole/tower and/or antennas may be roof- or ground-mounted;
- 5. The pole/tower and/or antennas may not be located in any required front or side yard setback areas;
- 6. The pole/tower and/or antennas shall be located at least five (5) feet from the rear lot line and at least 15 feet from any street side property line;
- 7. The pole/tower and/or antennas shall not project or overhang into areas in which they are not allowed to locate;

8. The pole/tower and/or antennas shall be a natural metal finish or painted a single, neutral, nonglossy color (e.g., earth-tones, gray, black, etc.) and, to the extent possible, compatible with the appearance and character of the surrounding neighborhood;

9. The pole/tower and/or antennas shall be used for private, noncommercial, purposes only; and

10. Operators shall be responsible to operate in compliance with all applicable regulations, specifically those regulations related to radio interference with electronic devices as set forth by the Federal Communications Commission (FCC).

D. **Citizen Band (CB) Radio.** Citizen band radio antennas shall be designed, constructed, installed and maintained in the following manner except for antennas mounted on vehicles or to handheld units:

1. **Standards.**

a. Citizen band radio antennas shall not exceed 20 feet above the highest point of a structure, or structure on which it is mounted, and in no case shall it exceed 60 feet in overall height; and

b. Citizen band radio antennas shall comply with requirements provided in subsections (C)(4) through (10) of this section (Single pole/tower amateur radio communication facilities).

2. **Prohibition of Certain Citizen Band Radios.** It shall be a violation of this Development Code to use citizen band radio equipment not authorized by the Federal Communications Commission or the unauthorized operation of citizen band radio equipment on a frequency between 24 MHz and 35 MHz and subject to a penalty in compliance with Division 16.224 (Enforcement).

3. **Exempt Stations.** A station that is licensed by the Federal Communications Commission pursuant to Section 301 of the Communications Act of 1934 in any radio service for the operation at issue shall not be subject to this chapter. A citizens band radio equipment on board a "commercial motor vehicle," as defined in Section 31101 of Title 49, United States Code, shall require probable cause to find that the commercial motor vehicle or the individual operating the vehicle is in violation of Federal Communications Commission citizens band radio regulations.

4. **Appeal.** Any person subject to this chapter may submit to the Federal Communications Commission an appeal of the decision on the grounds that the City enacted the ordinance codified in this chapter outside the auto route provided by Section 302 of the Communications Act of 1934. A person shall submit his/her appeal on a City decision to the Federal Communications Commission, if at all, not later than 30 days after the date on which the City's decision becomes final, but prior to seeking judicial review of the decision.

16.44.080 Modifications.

A. **General.** Modifications to all approved wireless facilities not regulated by Section 6409(a) shall comply with Chapter 16.104 (Changes to an Approved Project).

B. **6409(a) Modifications.** Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station.

1. **Applicability.** This Section applies to all Eligible Facilities Requests to modify or collocate on an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).
2. **Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station shall be subject to the Director's approval and shall be approved upon Director's determination that the Eligible Facilities Request application qualifies as an eligible facilities request.
3. **Other Regulatory Approvals.** No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any section 6409(a) approval granted under this Section shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.
4. **Application.** Applicants for Eligible Facilities Requests shall require Site Plan Review under Chapter 16.152. The Director shall prepare and make publicly available an application form that shall be limited to the information necessary for the city to consider whether an application is an eligible facility request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.
5. **Process.** All applications for 6409(a) modifications are subject to the review process under 47 C.F.R. §1.6100(c).

- a. **Timeframe for Review.** The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or where the City determines that the application is incomplete. The timeframe for review of an eligible facilities request is not tolled by a moratorium on the review application.
- b. **Tolling.** To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of 47 C.F.R. 1.6100(c).
 - i. The timeframe for review begins running again when the applicant makes a supplemental submission in response to a notice of incompleteness.
 - ii. Following a supplemental submission, the City has 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- c. **Notice of Decision.** The Director shall notify the applicant in writing, prior to expiration of the FCC timeframe for review, when the Director determines that the application does not qualify for approval. Failure to act on an application within 60 days shall result in a deemed approval.
 - i. **Criteria for denial.** Notwithstanding any other provisions in this Section, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice an application submitted for approval pursuant to

Section 6409(a) when it finds that the proposed project:

- A. Does not satisfy the criteria for an eligible facilities;
- B. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
- C. Involves the replacement of the entire support structure.

- d. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. As used in this subsection, a "substantive response" must include the materials identified as incomplete in the approval authority's notice. The Director may, in his or her discretion, grant a written extension when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- e. **Failure to Act.** In the event the City fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant shall become effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- f. **Remedies.** These facilities are subject to site plan review, which upon issuance, are not subject to appeal pursuant to Section 16.84.020. Applicants or City may bring claims related to Section 6409(a) to any court of competent jurisdiction.

16.44.090 Violations and Penalties.

A. Violation of any of the provisions of this Chapter shall be deemed to be an infraction.

B. Any person convicted of an infraction, shall be punishable by a fine only as follows: Upon a first conviction, by a fine not exceeding \$100.00, by a fine not exceeding \$250.00 for a second violation of the same ordinance within one year, and for a third conviction or subsequent conviction within a period of one year, by a fine not exceeding \$500.00.

SECTION III. AMENDMENT OF CODE

Title 16, Chapter 16.72, Section 16.72.125 of the Stockton Municipal Code is amended to read as follows:

16.72.125. Encroachment permit.

A. Permit. All excavations, construction, maintenance, and/or repairs in a public street, alley, or other public place in the City shall require an encroachment permit from the Director. Everyone, including any Department of the City or other governmental agency or authority, is required to obtain an encroachment permit to excavate/perform work in the public streets, alleys, or other public place in the City.

B. Definitions.

1. **“Conduit”** shall mean a pipe or tube through which water, wastewater or gas is conveyed, or which is used to protect electrical or communications cables.

2. **“Department”** shall mean Community Development Department unless otherwise indicated.

3. **“Director”** shall mean Community Development Department Director, unless otherwise indicated.

4. **“Facility”** shall mean any tangible asset in public rights-of-way required to provide utility service. Includes any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person that are located or are proposed to be located in public rights-of-way.

5. **“Public Rights-of-Way”** shall mean the areas across, along, beneath, in, on, over (above), under, upon, and within the dedicated public alleys, boulevards, bridges, courts, lanes, roads, sidewalks, spaces, streets, and tunnels.

6. **“Public Works Department”** shall mean the Public Works Department or any successor City agency that is responsible for managing access to and use of public rights-of-way.

7. **“Restoration”** shall mean the process by which public rights-of-way and surrounding areas, including but not limited to pavement and foundations, are returned to the same or better condition than existed before permitted activities.

8. **“Trench”** shall mean a form of excavation to install underground infrastructure or utilities such as fiber optic cables, gas or water mains, or electric lines.

9. **“Utility Service”** shall include those services provided by a public utility as defined under applicable California statutes.

C. Application filing, processing, and decision.

1. **Filing.** An application for an encroachment permit shall be completed and filed with the Department. Applications must include the following information:

- a. Location.
- b. Description of work.
- c. Acknowledgement of the Completion of Work requirement of Stockton Municipal Code section 16.72.125(E).
- d. Compliance with Annual Utility Work Plan filing requirements of Stockton Municipal Code section 16.72.125(F)(2).
- e. Compliance with the Coordination and Scheduling requirements of Stockton Municipal Code section 16.72.125(G).

2. Excavation:

- a. **Backfilling the Excavation.** Following completion of the excavation, the excavation site shall be backfilled with materials and compacted in compliance with the City of Stockton Standard Specifications and Plans.

b. **Barrier.**

- i. From the commencement of the excavation until the excavation has been completed and properly refilled and compacted, a substantial barrier shall be positioned around the excavation site. Lights shall be placed at the beginning and end and along the length of the barrier no more than 50 feet apart; the lights shall be on from sunset to sunrise. The material of the barrier and the lighting shall be approved by the Director of Public Works.
- ii. It is unlawful to interfere with a barrier or to travel on any street paving or repairs protected by a barrier.

3. **Authority.** Each application shall be analyzed by the Director for completeness and a decision rendered.

4. **Denial.** The Director may deny or refuse to issue an Encroachment Permit under the following conditions:

a. When the Director finds that the work specified in the Encroachment Permit will be detrimental to the public health, safety, or welfare; and

b. When the Director finds that the applicant has failed to comply with the requirements of Stockton Municipal Code section 16.72.125(C)(1).

D. **Fees.** The permittee, including any Department of the City, or other governmental agency to the extent permitted by law, shall pay the City an encroachment permit fee and reimburse the City for the costs of permit plan check, issuance, and inspection, as required by the Council's fee resolution.

E. **Completion of Work.**

1. **Time.** Work on the permitted activity shall proceed with due diligence, and limit any obstruction of the street, sidewalk, alley or other public place. If there is a lack of progress or, in the opinion of the Director of Public Works, a failure to comply with the terms of the encroachment permit, the Director of Public Works shall notify the permittee of the requirement to complete the work in a timely manner.

Failure to comply with the notice shall result in the Director of Public Works having the work completed at the expense of the permittee. The notice shall be either personally served or served by leaving it

at the residence or place of business of the permittee, or if the permittee or their address is unknown or the address outside the City, the notice may be served by depositing it in the United States post office, postage prepaid, addressed to the permittee.

2. **Supervision and Inspection.** All permitted activities, including excavations and backfilling of excavations, made or done under this section shall be under the supervision and direction of the Director of Public Works.
3. **Standard Specifications.** All work performed under an approved encroachment permit shall comply with the Section 100 of the City of Stockton's Standard Specifications and Plans.

F. **Utilities.** An applicant for an encroachment permit under this section for the placement of underground conduit in, along, across, or through public rights-of-way shall comply with the requirements of this section.

1. **Pipes and Mains.** It is unlawful and a misdemeanor for any person, firm, or corporation to lay any gas or water surface pipe or main pipe, or sewer, or any drain or other conduit in any street or other public place which is less than three (3) feet below the established grade of the gutter of the street or alley, or less than three (3) feet below the surface of any other public place in the City, as approved by the Public Works Department.
2. **Annual Utility Work Plan.** Any utility owning, operating or installing in public rights-of-way facilities providing water, sewer, gas, electric, communication, video or other utility services, shall prepare and submit to the Director of Public Works an annual utility work plan, in a format specified by the Director of Public Works, that shows the location of the utility's existing facilities in public rights-of-way, and shows all of the utility's planned utility work in public rights-of-way for the next year to the extent known. Utilities shall submit an initial annual utility work plan no later than 180 days after the effective date of the ordinance adopting this section. Thereafter, each utility shall submit annually, on the first regular business day of August, a revised and updated annual utility work plan. A utility may extend its deadline to submit its annual utility work plan by submitting written notice to the Director of Public Works of the reason of the delay within 30 days from the original deadline.
3. **Roadway Maintenance.** Each year, the Director of Public Works shall notify the utilities of the roads and streets selected for resurfacing and other capital projects that the City is performing in public rights-of-way or any other large-scale maintenance activities performed by the City.

Any utility or public agency may mail written notice to the Director of Public Works of their intention to excavate in public rights-of-way that have been identified in the annual pavement maintenance list by identifying the location and dimensions of the planned excavation and the estimated commencement and completion dates of the work.

The Public Works Department and utility service providers shall coordinate to the extent possible. Utility service providers are directed to Section 100 of the City of Stockton's Standard Specifications and Plans, for street opening and pavement restoration.

G. Coordination and Scheduling.

1. **Meet and Confer.** Prior to applying for an encroachment permit, any person planning to excavate in the public right-of-way in excess of 300 lineal feet, shall review the annual utility work plans and the City's roadway maintenance list on file with the Director of Public Works and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with, the use of public rights-of-way.

Such coordination shall include the provision that whenever two or more parties (e.g., the City or any applicant) have proposed a excavation in the same block, they shall meet and confer with the Public Works Department regarding whether it is feasible to conduct a joint operation excavation.

2. **Anticipated Project Plan.** In order to encourage coordination of excavation and pavement scheduling and planning between the City and excavators, the City shall update at least annually its anticipated project plans. The anticipated project plans shall also identify the public rights-of-way which are subject to moratorium provisions, and the moratorium expiration date for each such rights-of-way. A copy of the anticipated public rights-of-way which are then subject to the moratorium provisions of project plans shall be available for review at the Department of Public Works by any interested person. All currently observed moratoriums will be applicable to wireless communication providers, only when such moratoriums do not unreasonably or indefinitely delay deployment and are competitively neutral. However, all street restoration shall conform to Section 100 of the City of Stockton's Standard Specifications and Plans.

3. **Utility Coordination Group.** The Director of Public Works shall conduct a utility coordination group meeting at least once each year at which time utilities and public agencies and other interested parties may meet to coordinate excavation and project schedules. The Director of Public Works shall maintain a list of those requesting notice of the working group meeting, and, at least 30 days prior to the meeting date, shall mail notice of the time and location of the meeting to each person who has requested notice. If the initial group meeting is not completed on the designated meeting date, the meeting may continue on a subsequent date as the Director of Public Works announces at the end of the first meeting.
4. **Spare Conduits.** To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to allow installation of spare conduits by other entities.

SECTION IV. SEVERABILITY

If any of this ordinance or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION V. EFFECTIVE DATE

This Ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: _____

EFFECTIVE: _____

KEVIN J. LINCOLN II
Mayor of the City of Stockton

ATTEST:

ELIZA R. GARZA, CMC
City Clerk of the City of Stockton