

ORDINANCE NO. 2019-002

1
2 AN ORDINANCE OF THE CITY OF CULVER CITY,
3 CALIFORNIA, AMENDING CHAPTER 11.20,
4 TELECOMMUNICATIONS REGULATORY
5 REQUIREMENTS, OF THE CULVER CITY
6 MUNICIPAL CODE TO ADD A NEW SECTION
7 11.20.065 ENTITLED "WIRELESS FACILITIES IN
8 THE PUBLIC RIGHTS-OF-WAY," ESTABLISHING A
9 PROCESS FOR MANAGING, AND UNIFORM
10 STANDARDS FOR ACTING UPON, REQUESTS
11 FOR PLACEMENT OF WIRELESS FACILITIES
12 WITHIN THE PUBLIC RIGHTS-OF-WAY.

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14 **WHEREAS**, pursuant to the laws of the State of California, the City of Culver City
15 has the authority to adopt such ordinances as it deems necessary and appropriate to assure
16 good government in the City, to protect and preserve the City's rights, property and privileges,
17 and to preserve peace, safety and good order; and;

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

23 **NOW, THEREFORE**, the City Council of the City of Culver City, California, DOES
24 HEREBY ORDAIN as follows:

25 **SECTION 1.** The foregoing Recitals are adopted as findings of the City Council as
26 though fully set forth within the body of this Ordinance.
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1 **SECTION 2.** Chapter 11.20, Telecommunications Regulatory Requirements, of
2 the Culver City Municipal Code is hereby amended to add a new Section 11.20.065, entitled
3 “Wireless Facilities in Public Rights-of-Way” as follows:

4 **§11.20.065 WIRELESS FACILITIES IN PUBLIC RIGHT-OF-WAY.**

5 **A. Purpose.**

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7 1. The purpose of this Section is to establish a process for
8 managing, and uniform standards for acting upon, requests for the placement of
9 wireless facilities within the public rights-of-way of the City consistent with the
10 City’s obligation to promote the public health, safety, and welfare, to manage the
11 public rights-of-way, and to ensure that the public’s use of the public rights-of-
12 way is not incommoded by the placement of wireless facilities. The City
13 recognizes the importance of wireless facilities to provide high-quality
14 communications service to the residents and businesses within the City, and the
15 City also recognizes its obligation to comply with applicable Federal and State
16 law regarding the placement of personal wireless services facilities in its public
17 rights-of-way. This ordinance shall be interpreted consistent with those
18 provisions.

19 **B. Definitions.** The terms used in this Section shall have the
20 following meanings:

21 **Applicant:** A person filing an application for placement or
22 modification of a wireless facility in the rights-of-way.

23 **Application:** A formal request that includes all required and
24 requested documentation and information, submitted by an applicant to the City
25 for a wireless encroachment permit.

26 **Base Station:** shall have the meaning as set forth in 47 C.F.R.
27 Section 1.40001(b)(1), or any successor provision.

28 **Eligible Facilities Request:** shall have the meaning as set forth in
47 C.F.R. Section 1.40001(b)(3), or any successor provision.

FCC: The Federal Communications Commission or its lawful
successor.

Municipal Infrastructure: City-owned or controlled property
structures, objects, and equipment in the public rights-of-way, including, but not
limited to, street lights, traffic control structures, banners, street furniture, bus

1 stops, or other poles, lighting fixtures, or electroliers located within the public
rights-of-way.

2 **Permittee:** any person or entity granted a wireless encroachment
3 permit pursuant to this Section.

4 **Personal Wireless Services:** shall have the same meaning as set
5 forth in 47 U.S.C. Section 332(c)(7)(C)(i) (as may be amended), which currently
6 provides: commercial mobile services, unlicensed wireless services, and
common carrier wireless exchange access services.

7 **Personal Wireless Services Facility:** means a wireless facility
8 used for the provision of personal wireless services.

9 **Small Cell Facility:** shall have the same meaning as “small wireless
10 facility” in 47 C.F.R. 1.6002(l) (or any successor provision), which is a personal
11 wireless services facility that meets the following conditions that, solely for
convenience, have been set forth below:

12 1. The facility—

- 13 a. is mounted on a structure 50 feet or less in height,
including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
- 14 b. are mounted on structures no more than 10 percent taller
than other adjacent structures, or
- 15 c. do not extend existing structures on which they are located
16 to a height of more than 50 feet or by more than 10 percent, whichever is
greater;

17 2. Each antenna associated with the deployment, excluding
18 associated antenna equipment (as defined in the definition of antenna in 47
C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

19 3. All other wireless equipment associated with the structure,
20 including the wireless equipment associated with the antenna and any pre-
21 existing associated equipment on the structure, is no more than 28 cubic feet in
volume;

22 4. The facility does not require antenna structure registration under
23 47 C.F.R. Part 17;

24 5. The facility is not located on Tribal lands, as defined under 36
25 C.F.R. Section 800.16(x); and

26 6. The facility does not result in human exposure to radiofrequency
27 radiation in excess of the applicable safety standards specified in 47 C.F.R.
28 Section 1.1307(b).

1 **Support Structure:** Any structure capable of supporting a base
2 station.

3 **Tower:** Any structure built for the sole or primary purpose of
4 supporting any FCC-licensed or authorized antennas and their associated
5 facilities, including structures that are constructed for wireless communications
6 services including, but not limited to, private, broadcast, and public safety
7 services, as well as unlicensed wireless services and fixed wireless services
8 such as microwave backhaul, and the associated site. This definition does not
9 include utility poles.

10 **Underground Areas:** Those areas where there are no electrical
11 facilities or facilities of the incumbent local exchange carrier in the public rights-
12 of-way; or where the wires associated with the same are or are required to be
13 located underground; or where the same are scheduled to be converted from
14 overhead to underground. Electrical facilities are distribution facilities owned by
15 an electric utility and do not include transmission facilities used or intended to be
16 used to transmit electricity at nominal voltages in excess of 35,000 volts.

17 **Utility Pole:** A structure in the public rights-of-way designed to
18 support electric, telephone, cable television and similar utility lines. A tower is
19 not a utility pole.

20 **Wireless Encroachment Permit:** A permit issued pursuant to this
21 Section authorizing the placement or modification of a wireless facility of a
22 design specified in the permit at a particular location within the public rights-of-
23 way; and the modification of any existing support structure to which the wireless
24 facility is proposed to be attached.

25 **Wireless Facility, or Facility:** The radios, transmitters, antenna
26 structures, electric meters, batteries, conduit, fiber optic and coax cables, and
27 other types of installations used for the provision of wireless transmissions at a
28 fixed location, including, without limitation, any associated tower(s), support
structure(s), and base station(s).

Wireless Infrastructure Provider: A person that owns, controls,
operates or manages a wireless facility or portion thereof within the public rights-
of-way.

Wireless Regulations: Those regulations adopted pursuant to
Section 11.20.065 of this Code and implementing the provisions of this Chapter.

Wireless Service Provider: An entity that provides personal
wireless services to end users.

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2 **C. Scope.**

3 **1. In general.** A “wireless encroachment permit” shall be
4 subject to all of the same requirements as an encroachment permit would under
5 Chapter 11.20, in addition to all of the requirements of this Section. Unless
6 exempted, every person who desires to place a wireless facility in the public
7 rights-of-way or modify an existing wireless facility in the public rights-of-way
8 must obtain a wireless encroachment permit authorizing the placement or
9 modification in accordance with this Section. Except for small cell facilities,
10 facilities qualifying as eligible facilities requests, or any other type of facility
11 expressly allowed in the public rights-of-way by state or federal law, no other
12 wireless facilities shall be permitted pursuant to this Section.

13 **2. Exemptions.** This Section does not apply to:

14 a. The placement or modification of facilities by the City or by
15 any other agency of the state solely for public safety purposes.

16 b. Installation of a "cell on wheels," “cell on truck” or a similar
17 structure for a temporary period in connection with an emergency or event, but
18 no longer than required for the emergency or event, provided that installation
19 does not involve excavation, movement, or removal of existing facilities.

20 **3. Other applicable requirements.** In addition to the wireless
21 encroachment permit required herein, the placement of a wireless facility in the
22 public rights-of-way requires the persons who will own or control those facilities
23 to obtain all permits required by applicable law, and to comply with applicable
24 law, including, but not limited, applicable law governing radio frequency (RF)
25 emissions.

26 **4. Pre-existing Facilities in the Public Rights-of-Way.** Any
27 wireless facility already lawfully existing in the public rights-of-way as of the date
28 of this Section’s adoption shall remain, as long as the wireless facility continues
to comply with all conditions and requirements imposed upon its original
permitting. Upon expiration of any permit which pre-exists the adoption of this
Section, any renewal of such facility’s permit shall have to comply with this
Section.

5. Public use. Except as otherwise provided by state law, any
use of the public rights-of-way authorized pursuant to this Section will be
subordinate to the City’s use and use by the public.

1 **D. Administration.**

2 **1. Public Works Director/City Engineer.** Except as expressly
3 provided in this Section, the Public Works Director/City Engineer or their
4 designee is responsible for administering this Section. As part of the
administration of this Section, the Public Works Director/City Engineer may:

5 a. Interpret the provisions of this Section;

6 b. Develop and implement standards governing the
7 placement and modification of wireless facilities consistent with the requirements
8 of this Section, including regulations governing collocation and resolution of
conflicting applications for placement of wireless facilities;

9 c. Develop and implement acceptable designs and
10 development standards for wireless facilities in the public rights-of-way, taking
into account the zoning districts bounding the public rights-of-way;

11 d. Develop forms and procedures for submission of
12 applications for placement or modification of wireless facilities, and proposed
changes to any support structure consistent with this Section;

13 e. Collect, as a condition of the completeness of any
14 application, any fee established by this Section or by resolution of the City
15 Council;

16 f. Establish deadlines for submission of information
17 related to an application, and extend or shorten deadlines where appropriate and
consistent with state and federal laws and regulations;

18 g. Issue any notices of incompleteness, requests for
19 information, or conduct or commission such studies as may be required to
20 determine whether a permit should be issued;

21 h. Require, as part of, and as a condition of
22 completeness of any application, notice to members of the public that may be
affected by the placement or modification of the wireless facility and proposed
23 changes to any support structure;

24 i. Determine whether to approve, approve subject to
25 conditions, or deny an application, subject to appeal as provided herein; and

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

1 k. Refer applications proposing the installation of a new
2 pole to the City Council for review and decision, after the application is
determined to be complete by the Public Works Director/City Engineer.

3 **2. City Manager.** The City Manager or his/her designee(s)
4 shall be responsible for negotiating and entering into agreements for the
5 attachment of wireless facilities to municipal infrastructure required by this
Section.

6 **3. Appeals.**

7 a. Any person adversely affected by the decision of the
8 Public Works Director/City Engineer pursuant to this Section may appeal the
9 decision to the City Council, which may decide the issues *de novo*, and whose
10 written decision will be the final decision of the City. Any appeal shall be
conducted so that a timely written decision may be issued in compliance with any
legally-required deadline.

11 b. All appeals must be filed within two business days of
12 the written decision of the Public Works Director/City Engineer, unless the Public
Works Director/City Engineer extends the time therefore. An extension may not
13 be granted where extension would result in approval of the application by
operation of law.

14 c. An appeal by a wireless infrastructure provider must
15 be taken jointly with the wireless service provider that intends to use the personal
wireless services facility.

16 d. If the Public Works Director/City Engineer determines
17 that an application must be approved because a denial would result in a
prohibition or effective prohibition under applicable federal law, the Public Works
18 Director/City Engineer shall not render a decision on the application, but instead
shall refer the application directly to the City Council for review and decision,
19 whose review shall be conducted in accordance with paragraph (a) of this
subsection.

20 **E. General Standards for Wireless Facilities in the Public Rights-**
21 **of-Way.**

22 **1. Generally.** Wireless facilities in the public rights-of-way
23 shall meet the minimum requirements set forth in this ordinance and the wireless
regulations, in addition to the requirements of any other applicable law.

24 **2. Regulations.** The wireless regulations and decisions
25 regarding applications for placement of wireless facilities in the public rights-of-
26 way shall, at a minimum, ensure that the requirements of this Section are
27 satisfied, unless it is determined that applicant has established that denial of an
28 application would, within the meaning of federal law, prohibit or effectively
prohibit the provision of personal wireless services, or otherwise violate

1 applicable laws or regulations. If that determination is made, the requirements of
2 this Section may be waived, but only to the minimum extent required to avoid the
prohibition or violation.

3 **3. Minimum Standards.** Wireless facilities shall be installed
4 and modified in a manner that: minimizes risks to public safety; avoids
5 placement of aboveground facilities in Underground Areas; minimizes installation
6 of new support structures or equipment cabinets in the public rights-of-way;
7 maintains the integrity and character of the neighborhoods and corridors in which
8 the facilities are located; ensures that installations are subject to periodic review
9 to minimize the intrusion on the public rights-of-way; ensures that the City bears
10 no risk or liability as a result of the installations; does not inconvenience the
11 public; does not interfere with the primary uses of the rights-of-way; and, does
12 not hinder the ability of the City or other government agencies to improve,
13 modify, relocate, abandon, or vacate the public rights-of-way or any portion
14 thereof.

15 **4. Additional Standards.** All wireless facilities proposed to be
16 placed in the public rights-of-way shall comply with the design and locational
17 standards established by City Council Resolution.

18 **F. Applications.**

19 **1. Submission.** Unless the wireless regulations provide
20 otherwise, an applicant shall submit an application, amendments, or
21 supplements to an application, or responses to requests for information
22 regarding an application on the forms and in compliance with the standards
23 adopted by the Public Works Director/City Engineer. All applicant submissions
24 shall be made to the Public Works Director/City Engineer, at City Hall, 9770
25 Culver Boulevard, Culver City, California 90232.

26 **2. Pre-application meeting.** Prior to filing an application for a
27 wireless encroachment permit, an applicant is encouraged to schedule a pre-
28 application meeting with the Public Works Director/City Engineer to discuss the
proposed facility, the requirements of this Section, and any potential impacts of
the proposed facility.

29 **3. Content.**

30 a. An applicant shall submit an application on the form
31 approved by the Public Works Director/City Engineer, which may be updated
32 from time-to-time, but in any event shall require the submission of all required
33 fee(s), documents, information, and any other materials necessary to allow the
34 Public Works Director/City Engineer to make required findings and ensure that
35 the proposed facility will comply with applicable federal and state law, this Code,
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1 and will not endanger the public health, safety, or welfare. If no form has been
2 approved, applications must contain all information necessary to show that the
3 applicant is entitled to the wireless encroachment permit requested, and must
specify whether the applicant believes state or federal law requires action on the
application within a specified time period.

4 b. An applicant shall provide written notice of its
5 application to all residents and businesses within 500 feet of any proposed
6 facility. The applicant shall provide a list of those residents and businesses so
7 notified in its application and attest that the notice required by this subsection
has been provided.

8 **4. Fees.** Application fee(s) shall be required to be submitted
9 with any application for a wireless encroachment permit. The City Council is
10 hereby authorized to determine, or cause to be determined, the amount, type,
11 and other terms of such fee(s) from time to time by means of resolution.
Notwithstanding the foregoing, no application fee shall be refundable, in whole or
in part, to an applicant for a wireless encroachment permit.

12 **5. Waivers.** Requests for waivers from any requirement of this
13 Section shall be made in writing to the Public Works Director/City Engineer or his
14 or her designee. The Public Works Director/City Engineer may grant or deny a
15 request for a waiver pursuant to this subsection. The Public Works Director/City
16 Engineer may grant a request for waiver if it is demonstrated that,
17 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. All waivers approved pursuant to this
subsection shall be (i) granted only on a case-by-case basis, and (ii) narrowly-
tailored to minimize deviation from the requirements of this Code.

18 **6. Application Incompleteness.** For personal wireless
19 facilities and eligible facilities requests, applications will be processed, and
20 notices of incompleteness provided, in conformity with state, local, and federal
21 law. If such an application is incomplete, the Public Works Director/City Engineer
may notify the applicant and specify the material omitted from the application.

22 **7. Applications Denied Without Prejudice.** To promote
23 efficient review and timely decisions, the City may deny an application without
24 prejudice when the applicant fails to tender a substantive response to the City
25 within one hundred and eighty (180) calendar days after the City deems the
26 application incomplete in a written notice to the applicant. In the event the
27 application is denied without prejudice as provided herein and the applicant
28 seeks to pursue an application at the same location, the applicant shall be
required to submit a new application and applicable fee.

1 **G. Findings; Decisions; Consultants.**

2 **1. Findings Required for Approval.**

3 a. Except for eligible facilities requests, the Public
4 Works Director/City Engineer or City Council, as the case may be, shall approve
5 an application if, on the basis of the application and other materials or evidence
6 provided in review thereof, it finds the following:

7 i. The facility is not detrimental to the public health,
8 safety, and welfare;

9 ii. The facility complies with this Section and all
10 applicable design and development standards; and

11 iii. The facility meets applicable requirements and
12 standards of state and federal law.

13 b. For eligible facilities requests, the Public Works
14 Director/City Engineer or City Council, as the case may be, shall approve an
15 application if, on the basis of the application and other materials or evidence
16 provided in review thereof, it finds the following:

17 i. That the application qualifies as an eligible facilities
18 request; and

19 ii. That the proposed facility will comply with all
20 generally-applicable laws.

21 **2. Decisions.** Decisions on an application by the Public Works
22 Director/City Engineer or City Council shall be in writing and include the reasons
23 for the decision. Decisions shall be sent by overnight mail, electronic mail or
24 other means to the applicant, appellant (if applicable) and to any person who
25 submitted written comments on the application.

26 **3. Independent Consultants.** The Public Works Director/City
27 Engineer or City Council, as the case may be, is authorized, in its discretion, to
28 select and retain independent consultant(s) with expertise in telecommunications
in connection with the review of any application under this Section. Such
independent consultant review may be retained on any issue that involves
specialized or expert knowledge in connection with an application, including, but
not limited to, application completeness or accuracy, structural engineering
analysis, or compliance with FCC radio frequency emissions standards.

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2 **H. Conditions of Approval.**

3 **1. Adoption by Resolution.** The City Council shall adopt by
4 resolution standard conditions that shall apply to all wireless encroachment
5 permits approved under this Section. Such standard conditions shall also apply
6 to any wireless facility granted or approved by operation of law. The standard
7 conditions shall address, without limitation, the following: compliance with this
8 Code and applicable law; duration, renewal, and termination of wireless
9 encroachment permits; installation of facilities; commencement of operations; as-
10 built drawings; inspections; emergency procedures; maintaining updated contact
11 information of relevant persons; insurance, indemnification, and bond
12 requirements; minimizing impacts on adjacent properties; noninterference with
13 and relocation to accommodate other improvements or uses of the public rights-
14 of-way; no right, title, or interest (including possessory interest) created by a
15 permit; maintenance requirements; ongoing compliance with FCC radio
16 frequency emissions standards; facility access and testing; modifications to the
17 facility; requiring an agreement with the City for use of Municipal Infrastructure;
18 abandonment of facilities; records retention; attorney's fees; and any additional
19 conditions for eligible facility requests and small cell facilities.

20 **2. Modification.** The approving authority (Public Works
21 Director/City Engineer or City Council, as the case may be) may impose
22 additional conditions, remove conditions, or otherwise modify the standard
23 conditions applicable to a wireless encroachment permit in its sole discretion on
24 a case-by-case basis.

25 **I. Breach; Termination of Permit.**

26 **1. For breach.** A wireless encroachment permit may be
27 revoked for failure to comply with the conditions of the permit or applicable law.
28 Upon revocation, the wireless facility must be removed; provided that removal of
a support structure owned by City, a utility, or another entity authorized to
maintain a support structure in the public rights-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 facility.

2. For installation without a permit. Any wireless facility
installed without a wireless encroachment permit (except for those exempted by
this Section) 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 public rights-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

1 City in connection with the revocation and removal shall be paid by entities who
2 own or control any part of the wireless facility.

3 **3. Municipal Infraction.** Any violation of this Section shall
4 constitute an infraction and shall be subject to the penalties and fines set forth in
5 Chapters 1.01 and 1.02 of this Code.

6 **J. Infrastructure Controlled By City.** The City, as a matter of
7 policy, will negotiate agreements for use of Municipal Infrastructure. The
8 placement of wireless facilities on those structures shall be subject to the
9 agreement. The agreement shall specify the compensation to the City for use of
10 the structures. The person seeking the agreement shall additionally reimburse
11 the City for all costs the City incurs in connection with its review of, and action
12 upon the person's request for, an agreement.

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

19 **SECTION 3: CEQA.** This Ordinance is not a project within the meaning of
20 Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines,
21 because it would not have the potential for resulting in physical change in the environment,
22 directly or indirectly. The Ordinance does not authorize any specific development or installation
23 on any specific piece of property within the City's boundaries. Moreover, when and if an
24 application for installation is submitted, the City will at that time conduct preliminary review of the
25 application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within
26 the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on
27 multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's
28 adoption of the Ordinance is covered by the general rule that CEQA applies only to projects
which have the potential for causing a significant effect on the environment. (State CEQA
Guidelines, § 15061(b)(3)). Since approval of the Ordinance will not result in the actual
installation of any facilities in the City, its approval would not have the potential to result in a
significant effect on the environment. In order to install a facility in accordance with this

1 Ordinance, the wireless provider would have to submit an application for installation of the
2 wireless facility. At that time, the City will have specific and definite information regarding the
3 facility and the City will then conduct a preliminary CEQA review. Moreover, in the event that
4 the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site,
5 the installation would be exempt from CEQA review in accordance with either State CEQA
6 Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section
7 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines
8 section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of
9 Exemption be filed with the County Clerk of the County of Los Angeles within five working days
10 of the passage and adoption of the Ordinance.

11 **SECTION 4:** The City Council hereby declares that, if any provision, section,
12 subsection, paragraph, sentence, phrase or word of this Ordinance is rendered or declared
13 invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason or
14 any preemptive legislation, then the City Council would have independently adopted the
15 remaining provisions, sections, subsections, paragraphs, sentences, phrases, or words of this
16 Ordinance, and as such they shall remain in full force and effect.

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