A BILL FOR AN ORDINANCE

ORDINANCE NO: 9 **SERIES OF 2017**

INTRODUCED BY: COUNCILMEMBER BISHOP

AN ORDINANCE AMENDING CHAPTER 16 OF THE GREENWOOD VILLAGE MUNICIPAL CODE CONCERNING TELECOMMUNICATIONS FACILITIES

WHEREAS, City Council wishes to accommodate the communication needs of its residents and businesses and comply with state and federal telecommunications laws and regulations while protecting the public health, safety and general welfare of the community; and

WHEREAS, City Council wishes to provide for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the city with the fewest number of wireless communications facilities to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services including all of those who install, maintain, operate and remove wireless facilities; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREENWOOD VILLAGE, COLORADO:

Section 1. Section 16-1-100 of the Greenwood Village Municipal Code is hereby amended to add and amend the following definitions:

16-1-100 Definitions.

Public utility means structures and operations associated with the provision of heat, power or light systems; ~~communication systems;~~ water, sewer or storm drainage transmission lines; or any other energy-producing source within the city serving or supplying the public.

Small cell facility **means either of the following:**

(a) Micro wireless facilities that are no larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that have an exterior antenna, if any, of no more than eleven inches in length; or

(b) A wireless service facility where each antenna is located inside an enclosure of no more than three cubic feet or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of no more than three cubic feet and where primary equipment enclosures are no larger than seventeen cubic feet in volume.

Small cell network **means a collection of interrelated small cell facilities designed to deliver wireless service.**

Telecommunications service means the providing or offering for rent, sale or lease or in exchange for other value received, or for the provision of any emergency telecommunications purposes, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium**, and includes broadband service as set forth in 7 U.S.C. sec. 950bb(b)(1), as amended.**

Telecommunications ~~*T*~~*tower* means a freestanding structure designed and constructed primarily for the purpose of supporting one (1) or more antennae for a telecommunications facility, including self-supporting lattice towers, guy towers and monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and other similar structures. ~~The term also includes antennae attached to the tower structure.~~

Section 2. Section 16-2-10(b) of the Greenwood Village Municipal Code is hereby amended to read as follows:

Sec. 16-2-10. - Intent and applicability.

(b) Applicability. This Division shall apply to applications for annexation, Comprehensive Plan amendments, rezoning, MDP, SDP, PUD, SUP, PSP, landscaping plan amendments, ~~telecommunications facilities~~, variances, appeals, major subdivisions, minor subdivisions, preliminary plats, final plats, vacations of public rights-of-way or easements and exceptions to the subdivision regulations.

Section 3. Section 16-2-110 of the Greenwood Village Municipal Code is hereby deleted in its entirety.

Section 4. Section 16-2-210(b) of the Greenwood Village Municipal Code is hereby amended to read as follows:

(b) Applicability. This Division shall apply to an application for a rezoning, MDP, SDP, SUP, PSP, landscaping plan amendment, ~~location of a telecommunications facility~~, variance, appeal, major subdivision, minor subdivision, vacation of public right-of-way or easement and exception to the subdivision regulations.

Section 5. Section 16-3-30 of the Greenwood Village Municipal Code is hereby amended to read as follows:

Sec. 16-3-30. - O-1 special uses.

Special uses in O-1 designated areas are as follows:

~~(1) Telecommunication facilities; and~~

~~(2)~~**(1)** Public buildings, facilities or utilities.

Section 6. Division I, Telecommunications Facilities, of Article 16-23 is hereby repealed and reenacted to read as follows:

Division 1
Telecommunications Facilities

16-23-10. Intent and applicability

(a) The intent of this Division is:

(1) To ensure that telecommunications facilities minimize adverse visual impacts through careful design, appropriate siting, landscape screening and innovative camouflaging techniques;

(2) To encourage the location of telecommunications facilities in nonresidential areas;

(3) To minimize the total number of telecommunications facilities in the community;

(4) To encourage the joint use of new and existing telecommunications facility locations through collocation;

(5) To enhance the ability to provide telecommunications services to the city quickly, effectively and efficiently;

(6) To protect the public health, safety and welfare;

(7) To avoid damage to adjacent properties from tower failure through careful engineering and locating of towers; and

(8) To encourage small cell facilities located in the city's rights-of-way to utilize existing structures before erecting a freestanding facility in accordance with Titles 29 and 38 of the Colorado Revised Statutes.

(b) Applicability. This Division shall apply to all telecommunications facilities except a tower or antenna owned and operated by a federally licensed amateur radio station operator or used exclusively as a receive-only facility.

16-23-20. Type of approval required.

(a) Administrative approval is required prior to the location of any building-mounted, pole-mounted or small cell telecommunications facility in all zone districts.

(b) City Council approval is required prior to the location of any new telecommunications tower, excluding small cell facilities, or alteration of an existing telecommunications tower that does not qualify as an eligible facility request in all zone districts.

(c) Micro wireless facilities.

(1) No application is required for installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on provider-owned cables or lines that are strung between existing utility poles in compliance with national safety codes.

(2) A right-of-way permit is required if the installation, placement, operation, maintenance, or replacement of micro wireless facilities:

a. Involves working within a highway travel lane or requires the closure of a highway travel lane;

b. Disturbs the pavement or a shoulder, roadway, or ditch line;

c. Includes placement on limited access rights-of-way; or

d. Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in or will be conducted in a time, place or manner than is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro wireless facility is attached

16-23-30. Administrative approval.

(a) Within ninety (90) days of receipt of an administrative review application for a new location deemed complete by the Director, the Director shall consider whether the proposed application conforms to the design standards set forth in this article. An applicant and the Director may mutually agree than an application may be processed in a longer period.

(b) Expiration. If CONSTRUCTION of the APPROVED facility is not COMPLETED within ONE HUNDRED EIGHTY (180) days of APPROVAL AND ISSUANCE OF A BUILDING PERMIT, the approval shall expire. If there is an appeal, the ONE-HUNDRED-EIGHTY-day period shall not begin until the appeal is finally resolved.

16-23-40. Neighborhood Input Meeting.

(a) Applicability. A NIM is required for any telecommunications facility, excluding small cell facilities, that requires City Council approval.

(b) Exceptions. The Director may waive the requirement for a NIM if not more than one

(1) year has elapsed since the date of a NIM for the same or similar request for which an application was deemed complete by the Director.

(c) Notice. The applicant shall send written notice via first-class United States mail to all property owners within one thousand (1,000) feet of the boundary lines of the property that is the subject of the application, at least fifteen (15) days prior to the date of the NIM. The notice shall be in substantially the form provided in Appendix F to this Chapter. The applicant shall provide an affidavit of notice in substantially the form provided in Appendix B.

(d) Attendance. At least one (1) representative of the applicant and at least one (1) representative of the city shall attend the NIM.

16-23-50. City Council Approval.

(a) The City Council shall base its decision regarding a telecommunication facility on whether the proposed facility meets the applicable requirements of this Article. If approved, the applicant may apply for a building permit.

(b) A decision on an application deemed complete by the Director shall be rendered within one hundred fifty (150) days. An applicant and the Director may mutually agree that an application may be processed in a longer period.

(c) Expiration. If CONSTRUCTION of the APPROVED facility is not COMPLETED within ONE HUNDRED EIGHTY (180) days of APPROVAL AND ISSUANCE OF A BUILDING PERMIT, the approval shall expire. If there is an appeal of the City Council's decision, the ONE-HUNDRED-EIGHTY-day period shall not begin until the appeal is finally resolved.

(d) Modifications. Authority is delegated to the Director to make administrative modifications to a previously approved facility for the sole purpose of correcting an administrative or clerical error, such as correction of inaccurate legal descriptions, inaccurate topographic information and other technical information, or to add or replace approved equipment with current technology that is otherwise in conformance with this Division.

16-23-60. Development Standards

(a) Telecommunications Towers. This section shall apply to telecommunications towers, excluding small cell facilities.

> **(1) Setbacks. A tower located within two hundred fifty (250) feet of any residential dwelling unit shall be separated from each residential dwelling unit by one (1) foot of distance for every one (1) foot of tower height, plus an additional ten (10) feet.**
>
> **(2) Height. A tower shall not exceed the maximum structure height limit in the underlying zone district unless the approval specifically allows a tower to exceed that limit. Under no circumstances shall a tower exceed one hundred (100) feet in height.**

(3) Design standards.

a. The tower shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area, subject to any FAA regulations.

b. The tower shall be finished in a neutral color to reduce visual obtrusiveness, subject to any applicable standards of the FAA.

c. All towers shall accommodate collocation of other telecommunication facilities.

d. Support facilities for towers shall meet the following design standards to minimize impacts on adjacent properties:

(i) The total area of all support facilities shall not exceed four hundred (400) square feet per tower.

(ii) Support facilities shall be grouped as closely together as technically possible.

(iii) No support facility shall exceed fifteen (15) feet in height.

(iv) Any support facility that could be dangerous to persons or wildlife shall be adequately fenced.

e. Signage. Signs shall be limited to those signs required for cautionary or advisory purposes only.

f. Illumination. Towers shall not be artificially illuminated unless required by the FAA or other governmental regulation. Ground level security lighting not more than twenty (20) feet in height may be permitted if it does not project glare onto other properties and is designed to minimize impacts on adjacent properties.

(4) Screening. The area around the tower shall be landscaped with a buffer of plant materials that effectively screens the base of the facility. Support facilities shall be fully screened with a combination of fencing and landscaping that is compatible with materials in the surrounding area.

(b) Freestanding Small Cell Facilities.

(1) The shared use of an existing freestanding small cell facility is preferred to the construction of a new facility. An application to locate a new freestanding small cell facility shall include evidence that reasonable efforts have been made to collocate with an existing facility within a reasonable distance, regardless of the municipal

boundaries of the site. The telecommunications provider must demonstrate that the proposed facility cannot be accommodated on existing facility due to one or more of the following reasons:

a. Existing facilities are not of sufficient height within the geographic area to meet the applicant's engineering requirements; or

b. Existing facilities do not have sufficient structural strength or space to support applicant's proposed facility; or

c. The planned equipment, if collocated, would cause radio frequency interference with other existing or planned equipment, or exceed radio frequency emission standards that cannot be reasonably prevented; or

d. The applicant demonstrates that there are other limiting factors that render existing facilities unsuitable for collocation.

(2) Height. The facility shall not exceed the height of any nearby existing pole by more than four (4) feet in the vicinity of residential dwelling units, and eight (8) feet in all other areas.

(3) Design standards. A freestanding small cell facility shall meet one of the following design standards to minimize impacts on surrounding properties:

a. The facility shall be designed to resemble other vertical infrastructure along the same streetscape; or

b. The facility shall utilize a stealth design to integrate into existing and planned uses in the surrounding area; or

c. The facility shall be camouflaged/concealed consistent with existing natural or manmade features near the location where it will be located.

(3) Siting. Freestanding small cell facilities may not be located within 600 feet of another freestanding facility. When located along a residential street frontage, the facility must be placed in front of a common lot line between adjoining residential properties, or on the corner formed by two intersecting streets.

(4) Support facilities. Support facilities shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible. Support equipment that may be located outside the primary equipment enclosure and not be included in the total volume calculation includes the electric meter, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

(5) Screening. Support facilities shall be fully screened with a combination of fencing and landscaping that is compatible with materials in the surrounding area. In locations where the visual impact of support facilities would be minimal, the Director may waive the screening requirement. A flush-to-grade underground equipment vault may be required. In locations where the visual impact of the facility would be minimal, the Director may waive the screening requirement.

(c) Pole-mounted facilities.

(1) Telecommunications facilities, including small cell facilities, may be located on a utility or street light pole if there are no reasonable alternatives, and the applicant is authorized to construct the utility pole or street light.

a. Use of streetlights for facilities is encouraged before using traffic signals or erecting a tower or freestanding small cell facility.

b. Use of traffic signals for facilities is allowed provided the traffic signal can adequately support the facilities and they can be placed in such a manner that the size and appearance of the signal will not be considerably altered or the function impaired.

(2) Interference. No telecommunication facility may be located or maintained such that it disrupts or interferes with the use of any rights-of-way by the city, the general public, or other person authorized to use or be present upon the right-of-way. Interference includes any use that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety or welfare.

(3) Design standards. The facility shall be colored to match the pole to which it is attached and shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.

(4) Height. The facility shall not exceed the height of the existing pole by more than four (4) feet in the vicinity of residential dwelling units, and eight (8) feet in all other areas.

(5) Support facilities. Support facilities shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible. Pole-mounted support equipment that may be located outside the primary equipment enclosure and not be included in the total volume calculation includes the electric meter, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

(6) Screening. Support facilities shall be fully screened with a combination of fencing and landscaping that is compatible with materials in the surrounding area. In locations where the visual impact of support facilities would be minimal, the Director may waive the screening requirement. A flush-to-grade underground equipment vault may be required.

(e) Building-mounted facilities.

(1) Height.

(a) Under no circumstance shall a facility located on the roof extend more than seven (7) feet above the roof line of the building, including parapets and already existing equipment on the roof, but not other roof-mounted facilities.

(b) Wall-mounted facilities shall not extend above the roof line of the building if the roof is pitched; or above the height of existing facilities and equipment on the roof if the roof is flat.

(2) Design standards.

(a) Each facility, including support facilities, shall be screened from the view of adjacent properties or passersby, colored to match the building to which it is attached or architecturally integrated with the building to which it is mounted.

(b) Antennae and support facilities shall be mounted as flush as possible to the building, and in no case shall antenna extend more than two (2) feet above the building wall.

(c) Antennae, support structures, screening, and all accessory equipment shall not exceed a total of twenty-five percent (25%) of the total surface area of the roof, per facility.

(3) Support facilities. Support facilities shall be located inside the building if feasible, grouped as closely together as technically possible, and not exceed four hundred (400) square feet of area per building-mounted facility.

16-23-70. Right-of-way use fees.

Fees in the amount as those allowed under 47 U.S.C. Sec. 224, as amended, may be charged for locating telecommunication facilities and small cell facilities on city-owned property within the city's rights-of-way.

16-23-80. Eligible facilities requests.

(a) Requests for modifications to a previously approved existing telecommunications tower, pole-mounted facility, building-mounted facility, or support facility that does not substantially change the physical dimensions of such facilities involving: (i) collocation of new equipment, (ii) removal of equipment, or (iii) replacement of equipment, shall considered a use by right subject to administrative review.

(b) The following modifications do not qualify as eligible facility requests and require review as for a new application:

(1) For towers in the right-of-way, the modification increases the height by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater. For other facilities, the modification increases the height of the structure by more than 10 percent or more than ten (10) feet, whichever is greater; or

(2) The modification involves adding an appurtenance to the body of a tower that would protrude from the edge by more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater. For other facilities or support facilities, the modification involves adding an appurtenance that would protrude from the edge of the structure by more than six feet; or

(3) The modification for any eligible facility involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or

(4) For freestanding small cell facilities or pole-mounted facilities in the rights-of-way, the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure; or

(5) Involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or

(6) The modification entails any excavation or deployment outside the current site or impairs the concealment elements; or

(7) The modification does not comply with conditions associated with the siting approval of the construction or modification of the structure or support facilities, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (i)through (vi) of this section; or

(8) The modification does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective

standards reasonably related to health and safety, or it does not comply with any relevant Federal requirements.

(c) Review Period. Within sixty (60) days of the date on which an applicant submits an application deemed complete by the Director and qualifying for approval under this section, the Director shall approve the application unless it determines that the application is not covered by this subsection. The sixty-day review period may be suspended only by mutual agreement of the city and the applicant.

(1) To suspend the review period due to incompleteness, the city must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;

(2) The review period begins running again when the applicant makes a supplemental written submission in response to the city's notice of incompleteness; and

(3) Following a supplemental submission, the city will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The review period is suspended in the case of second or subsequent notices pursuant to the procedures identified in paragraph (1). In the case of a second or subsequent notice of incompleteness, the city may not specify missing information or documents that were not delineated in the original notice of incompleteness.

(4) In the event the city fails to act on an eligible facilities request seeking approval within the review period (accounting for any suspension), the request shall be deemed granted. The deemed grant becomes effective when the applicant notifies the city in writing after the review period has expired (accounting for any suspension) that the application has been deemed granted.

(5) If the city determines that the applicant's request is not an eligible facilities request as delineated in this section, the presumptively reasonable timeframe under section 332(c)(7), as prescribed by the FCC's shot clock order, will begin to run from the issuance of the city's decision that the application is not a covered request. To the extent such information is necessary, the city may request additional information from the applicant to evaluate the application under section 332(c)(7) reviews.

16-23-90 - Compliance with applicable law.

(a) Compliance with applicable law. Notwithstanding approval of an application for any telecommunication facility or eligible facility as described herein, all work done pursuant to an approved application must be completed in accordance with all applicable building

and safety requirements as set forth in city code and any other applicable regulations. In addition, all applications shall comply with the following:

(1) Any permit or license issued by a local, state or federal agency with jurisdiction;

(2) Easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;

(3) Be maintained in good working condition and to the standards established at the time of application approval; and

(4) Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten (10) calendar days from the time of notification by the city or after discovery by the owner or operator of the site. Notwithstanding the foregoing, any graffiti on facilities located in the rights-of-way or on other city-owned property may be removed by the city at its discretion, and the owner and/or operator of the facility shall pay all costs of such removal within thirty (30) days after receipt of any invoice from the city.

16-23-100 – Abandonment.

A telecommunications facility that is not operated for a continuous period of one hundred eighty (180) consecutive days shall be considered abandoned and the permit shall expire. The owner of any abandoned telecommunications facility shall remove the same within ninety (90) days of the date of abandonment.

16-23-110 – Appeal.

(1) Any person, partnership, corporation, or other entity deeming itself aggrieved by a decision of the Director under this Division may appeal the decision to the City Council within thirty (30) days after issuance of the written decision.

(2) The City Council shall hear the matter within sixty (60) days and determine whether the Director's decision was supported by the evidence presented to the Director, and then either affirm the decision, reverse the decision or affirm the decision with conditions. The ruling of the City Council shall be final, subject to judicial review.

Section 7. Effective Date. This ordinance shall take effect six days following final publication.

INTRODUCED AND APPROVED ON FIRST READING ON THE 6th DAY OF JUNE, 2017, AND ORDERED PUBLISHED IN THE VILLAGER.

_____
Ronald J. Rakowsky, Mayor

ATTEST:

_____
Susan M. Ortiz, MMC
City Clerk

INTRODUCED AND APPROVED ON SECOND READING ON THE 19th DAY OF JUNE, 2017, AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY.

_____
Ronald J. Rakowsky, Mayor

ATTEST:

_____
Susan M. Ortiz, MMC
City Clerk

EFFECTIVE: June 28, 2017