

TOWN OF SILVERTHORNE, COLORADO

ORDINANCE NO. 2021 - 13

AN ORDINANCE OF THE TOWN OF SILVERTHORNE, COLORADO, ADOPTING A NEW CHAPTER 4, ARTICLE XIII OF THE SILVERTHORNE MUNICIPAL CODE TO PROVIDE FOR THE REGULATION AND EFFICIENT DEPLOYMENT OF WIRELESS COMMUNICATIONS FACILITIES.

WHEREAS, the Town of Silverthorne ("Silverthorne" or the "Town") is a home-rule municipality organized under Article XX of the Colorado Constitution and with the authority of the Silverthorne Home Rule Charter; and

WHEREAS, pursuant to state law, and the Silverthorne Home Rule Charter, the Town has the authority to regulate land uses and the use of the public right-of-way; and

WHEREAS, state and federal law has mandated the efficient deployment of certain wireless communications facilities on private and public property by circumscribing certain local governmental powers; and

WHEREAS, the Town Council finds and declares that amendments to the Community Development Code set forth herein are proper and necessary to advance the public health, safety and welfare of the Town's residents.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF SILVERTHORNE, COLORADO, ORDAINS:

Section 1. The foregoing recitals are incorporated herein as if set forth in full.

Section 2. A new Article XIII of the Silverthorne Municipal Code is hereby adopted as set forth in **Exhibit A**.

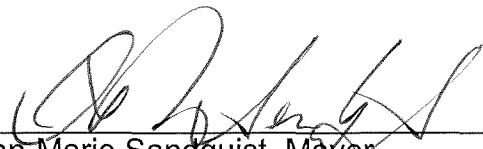
Section 3. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

Section 4. This ordinance shall be effective upon adoption at second reading, pursuant to Sections 4.5 and 4.7 of the Silverthorne Home Rule Charter.

READ AND PASSED ON FIRST READING THIS 14TH DAY OF JULY 2021.

ADOPTED ON SECOND AND FINAL READING THIS 28TH DAY OF JULY 2021.

TOWN OF SILVERTHORNE, COLORADO


Ann-Marie Sandquist, Mayor

ATTEST:


Michele Miller, Town Clerk

Approved on the first reading: 7/14, 2021

Published by title only: 7/23, 2021

Approved on the second reading: 7/28, 2021

Published by title only: 8/6, 2021 (with amendments, if amended
on second reading): _____, 2021

Article XIII - Wireless Communication Facilities.

Sec. 4-13-1. *Purpose and Intent.*

The purpose of this Article is to regulate the placement, construction, and modification of towers and wireless communications facilities (WCFs) to protect the health, safety and welfare of the public, provide for managed development, installation, maintenance, modification, and removal of wireless communications infrastructure that is consistent with Silverthorne's character, while at the same time not unreasonably interfering with the development of a competitive wireless communications marketplace in the town.

Sec. 4-13-2. *Applicability.*

- (a) All applications for the installation or development of WCFs and/or equipment must receive land use approval, building permits, and/or right-of-way permits, as applicable, prior to installation. Concurrent with the issuance of appropriate building and right-of-way permits, WCFs and/or equipment shall be reviewed for approval by the Community Development Director (and when applicable, the Town Engineer) in conformance with the provisions and criteria of this Article. WCFs and equipment subject to the provisions and criteria of this Article include without limitation, WCFs within the Public Rights-of-Way, cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. These provisions and criteria do not apply to noncommercial satellite dish antennae, radio and television transmitters and antennae incidental to residential use. All references made throughout this Article, to any of the devices to which this Article is applicable, shall be construed to include all other devices to which this Article is applicable.
- (b) *Exemptions.* The requirements set forth in this Article shall not apply to:
 - (1) *Amateur Radio Antennas.* Amateur radio antennas, over-the-air receiving device (OTARD) that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas, provided that the height be no more than the distance from the base of the antenna to the property line is met and meets the appropriate zoning district height. The maximum height shall be 35 feet.
 - (2) *Pre-Existing WCFs.* Any WCF for which a permit has been properly issued prior to the effective date of these wireless regulations, shall not be required to meet the requirements of this Subsection, other than the operational standards set forth in this Subsection. Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable operational standards set forth in this Subsection.
 - (3) *Miscellaneous Antennas.* Antennas used for reception of television, multi-channel video programming and radio such as over the air reception devices ("OTARD") antennas, television broadcast band antennas, and broadcast radio antennas, provided that any requirements related to special uses of this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the Director's reasonable discretion, modifications are necessary to comply with federal law.

Sec. 4-13-3. *Operational Standards.*

- (a) *Federal Requirements.* All WCFs shall meet the current standards and regulations of the Federal Aviation Authority ("FAA"), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are

amended, then the owners of the WCF governed by this Subsection shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the owner's expense.

- (b) *Radio Frequency Standards.* All WCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for a WCF have been made to the Town, the Town may request that the owner or operator of the WCF provide information demonstrating compliance. If such information suggests, in the reasonable discretion of the Town, that the WCF may not be in compliance, the Town may request and the owner or operator of the WCF shall then submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, the Town finds that the facility does not meet federal standards, the Town may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF pursuant to this Section. Any reasonable costs incurred by the Town, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner or operator.
- (c) *Signal Interference.* All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. The applicant shall provide a written statement from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems and shall allow the Town to monitor interference levels with public safety communications during this process. Additionally, the owner or operator shall notify the Town at least ten (10) calendar days prior to the introduction of new service or changes in existing service and shall allow the Town to monitor interference levels with public safety communications during the testing process.
- (d) *Legal Access.* In all applications for WCFs an applicant must warrant and represent that it has the written agreement of the owner of the property which is the subject of the application for legal access to and from the WCF and the applicant must also warrant and represent that it will have legal access to the utilities to operate and maintain the WCF.
 - (i) *Permission to Use Right-of-Way.* For WCFs in the right-of-way, the applicant shall execute a master license agreement with the Town. In this, the Town is able to grant a non-exclusive license to the applicant to use the right-of-way. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.
- (e) *Operation and Maintenance.* To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes. If upon inspection, the Town concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have thirty (30) days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town's building official may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the Town may remove such WCF at the owner's expense.
- (f) *Abandonment and Removal.* If a WCF has not been in use for a period of three (3) months, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing three (3) months. Any WCF that is not operated for a continuous period of six (6) months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within thirty (30) days of receipt of written notice from the Town. If the

WCF is not removed within said thirty (30) days, the Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

- (g) *Collocation.* No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.
- (h) *Hazardous Materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

Sec. 4-13-4. *Design Standards for all WCFs.*

The requirements set forth in this Subsection shall apply to the location and design of all WCFs governed by this Section as specified below; provided, however, that the Town may waive these requirements if it determines that the goals of this Section are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding area and to maintain the character and appearance of the Town, consistent with other provisions of the Code.

- (a) *Camouflage/Concealment.* All WCFs and any transmission equipment shall, to the extent possible, use camouflage design techniques and not be readily apparent. Techniques may include, but are not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and/or built environment. Design, materials, and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on sites located in the right-of-way, in the same parcel, and on adjacent parcels.
 - (1) Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). Should the director determine that WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., camouflaged, placed underground, depressed, or located behind earth berms) to minimize their profile at the request of the director.
 - (2) The camouflage design may include the use of alternative tower structures should the Director determine that such design meets the intent of the Code and the community is better served thereby.
 - (3) All WCFs shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only).
 - (4) Maximum height for WCFs shall be based on height limits set forth in zoning standards with the maximum height of 35 feet., except if they are structures, they shall comply with building height limits.
- (b) *Siting.*
 - (1) No portion of any WCF may extend beyond the property line of the lot upon which it is located.
 - (2) Collocation. WCFs may be required to be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF unless the Town approves an alternative design. No WCF owner or operator shall unreasonably exclude a competitor from using the same facility or location.
 - (3) WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Code standards.
- (c) *Lighting.* WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar

structure primarily used for lighting purposes. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

(d) *Landscaping and Fencing.*

- (1) WCFs shall be sited in a manner that does not reduce landscaping required by the Code for the principal uses on the parcel.
- (2) WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
- (3) In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by the director.
- (4) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the site perimeter may be a sufficient buffer.
- (5) No trees larger than four (4) inches in diameter measured at four and one-half (4½) feet high on the tree may be removed, unless authorized by the director. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1.
- (6) Landscaping for concealed towers shall be compatible with the type of camouflage or concealment technique.
- (7) Additional landscaping required by the Town shall be maintained at the expense of the owner of the WCF.

(e) *Noise.* Noise generated on the site shall not exceed the noise/nuisance standards permitted in the Code, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the Town.

(f) *Fire protection.* WCFs shall be sited and built to address Fire Code standards for fire-detection and extinguishing systems, and if in a wildfire hazard area provide defensible space and adequate vehicle access for emergency equipment and possibly an approved water supply.

(g) *Adjacent to Residential Uses.* WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on the corner formed by two intersecting streets. If these requirements are not reasonably feasible from a construction, engineering or design perspective, the applicant may submit a written statement to the director requesting the WCF be exempt from these requirements.

Sec. 4-13-5. *Design Standards Specific to WCF Types.* Additional design requirements shall be applicable to the various types of WCFs as specified below:

(a) *Design Standards for Facilities Attached to Base Stations.*

- (1) Roof mounted WCFs, including the antenna, support structures and screening, shall not project more than ten (10) feet above the roof line of a building and shall not exceed the height limits in the zoning district standards.

- (2) WCFs shall be painted to match the building and shall be architecturally integrated with the building materials.
 - (3) If placed on a structure or building which is non-conforming due to setbacks or height, the addition of antennas or equipment must not increase the nonconformity.
 - (4) Façade mounted WCFs, including the antenna, support structures and screening, shall not extend above the top of the structure or the parapet wall, or, in the case of a pitched roof, above the fascia.
 - (5) WCFs attached to base stations shall utilize camouflage design techniques. If an antenna is installed on a structure other than a tower or alternative tower structure, such as a base station (including, but not limited to the antennas and accessory equipment) it 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 technically feasible. Additionally, any ground-mounted equipment shall be located in a flush-to-grade underground equipment vault, unless otherwise authorized by the director.
- (b) *Design Standards for Alternative Tower Structures Not in the Right-of-Way.*
- (1) Alternative tower structures not in the right-of-way shall
 - i. Be designed and constructed to look like a building, facility, or structure typically found in the area;
 - ii. Be minimized in height and size as much as possible and shall be subject to the maximum height restrictions of the zoning district in which it is located, subject to a maximum height limit of thirty-five (35) feet. ;
 - iii. Be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
 - iv. Shall take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
 - v. Shall be compatible with the surrounding topography, tree coverage, and foliage;
 - vi. Shall be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - vii. Visual impacts of the proposed ingress and egress shall be minimized.
- (c) *Towers.*
- (1) Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the Town;
 - (2) Tower structures should use existing landforms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment;
 - (3) Monopole support structures shall taper from the base to the tip;
 - (4) All towers, excluding towers in right-of-way, shall be enclosed by security fencing or wall at least six (6) feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material;
 - (5) Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of thirty-five (35) feet..

Towers in rights-of-way shall not exceed twenty-five (25) feet in height and shall meet all of the design requirements of alternative tower structures in the right-of-way;

- (6) Towers should be sited in a manner that that is least obtrusive to residential structures and residential district boundaries where feasible;
- (7) Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the tower to these uses;
- (8) Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- (9) Visual impacts of the proposed ingress and egress shall be minimized.
- (10) No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town that no existing WCFs can accommodate the needs that the applicant proposes to address with its tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:
 - (i) No existing WCFs are of sufficient height and are located within the geographic area required to meet the applicant's engineering requirements;
 - (ii) Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF and cannot be reasonably modified to support the applicant's proposed WCF;
 - (iii) The applicant's proposed WCFs would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCF would cause interference with the applicant's proposed WCF; and
 - (iv) The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for colocation.
- (11) A tower, located outside of the right-of-way, shall meet the greater of the following minimum setbacks from all property lines:
 - (i) The setback for a principal building within the applicable zoning;
 - (ii) Twenty-five (25) percent of the facility height, including WCFs and transmission equipment; or
 - (iii) The tower height, including antennas, if the tower is in or adjacent to a residential district or residential zoned property.
 - (iv) Towers over thirty-five (35) feet in height shall not be located within one-quarter ($\frac{1}{4}$) mile from any existing tower that is over thirty-five (35) feet in height, unless the applicant has shown to the satisfaction of the Town that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.
- (d) *Related Accessory Equipment.* Accessory equipment for all WCFs shall meet the following requirements:
 - (a) All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
 - (b) The total footprint coverage area of the WCF's accessory equipment shall not exceed three hundred fifty (350) square feet;
 - (c) No related accessory equipment or accessory structure shall exceed twelve (12) feet in height; and

- (d) Accessory equipment, including but not limited too remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

Sec. 4-13-6. Supplemental Standards for Small Cell Facilities Located in the Right-of-Way.

- (a) *Siting and Location.* The Town reserves the right to approve all proposed pole locations and to modify those locations as necessary for future Town needs, functional and/or aesthetic reasons. The Town will work with the applicant to find a suitable location for both the Town and the applicant.
 - (1) SCFs in the right-of-way shall be located in the following order of preference:
 - (i) New SCF established on the site and in replacement of an existing Town of Silverthorne streetlight and including an attached luminaire or contained within the structure of existing or redesigned traffic signals, with cooperation of CDOT.
 - (ii) Co-located on an already established or future small cell facility in the right of way.
 - (iii) New stand-alone facility in a new location – this may or may not include a luminaire.
 - (iv) Alley locations may be considered on a case-by-case basis.
 - (2) No SCFs are permitted in the right-of-way in the following locations.
 - (i) Within roadway medians.
 - (ii) Within a sight triangle for vehicles at intersections. For small cells, replacing traffic signals or streetlights refer to Town of Silverthorne Engineering Standards and AASHTO.
 - (iii) In any manner which would obstruct a public sidewalk or roadway including reducing vertical or horizontal clearances required by the Town and shall not result in a change in the slope of any sidewalk adjacent to the SCF, or impact the ability to remove snow or maintain walkways or roadways.
 - (iv) When located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the SCF such that it does not negatively impact the business. SCFs shall not be located in-front of store front windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building. SCFs should be located between properties as much as possible.
 - (v) SCFs shall not impede existing and future facilities, including sidewalks, stormwater infrastructure, water infrastructure, fiber optic infrastructure, and electric infrastructure, and other infrastructure included in adopted Town plans.
- (b) *Design Standards for Small Cell Facilities Located in the Right-of-Way.* Every small cell facility (SCF) in the public right-of-way shall comply with the following standards:
 - (1) Shall be no higher than twenty-five (25) feet;
 - (2) Shall be no higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within five hundred (500) feet of the pole or structure;

- (3) Any new pole for SCF shall be separated from any other existing WCF facility by a distance of at least six hundred (600) feet, unless the new pole replaces an existing traffic signal, streetlight pole, or similar structure determined by the Director;
- (4) Pole-mounted components shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives;
- (5) Shall be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the SCF will be located;
- (6) Shall, to the extent feasible, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the SCF;
- (7) Shall, when located near a residential property, be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two (2) intersecting streets;
- (8) Shall be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered;
- (9) Facility antennas, mast arms, equipment, and other facilities shall be sized to minimize visual clutter;
- (10) Any ground mounted equipment shall be installed in an underground or partially underground equipment vault (projecting not more than thirty-six (36) inches above grade), or co-located within a traffic cabinet of a design approved by the Director; and
- (11) Shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. Must comply with the federal Americans with Disabilities Act and all applicable local, state, and federal law and regulations. No alternative tower structure nor small cell facility may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with this use by the Town, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way 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.
- (12) New poles shall match the design, type, and material of existing utility poles, including streetlight poles, within the immediate area, except as otherwise approved by the Town.

Sec. 4-13-7 *Review Procedures and Requirements.* No new WCF shall be constructed and no colocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the Director in accordance with this Section. All WCFs shall be reviewed pursuant to the procedures set forth in this Section:

- (a) *Submittal Requirements.* In addition to an application form, signal interference letter, and payment of all application and review fees, as established by resolution of Town Council, each applicant shall submit a scaled site plan, photo simulation, scaled elevation view and

other supporting drawings, calculations, landowner permissions, and other documentation, signed and sealed by appropriate qualified professionals, showing the location and dimension of all improvements, including information concerning topography, radio frequency coverage, tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed by the director to be necessary to assess compliance with this Section.

- (b) *Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Public Rights-of-Way, but excepting Eligible Facilities Requests, and Small Cell Facilities in the Right-of-Way.* In all zone districts, applications for these WCF facilities shall be reviewed by the Community Development Department for conformance to this Article. For WCFs in the Rights-of-Way, except for Small Cell Facilities in the Right-of-Way, that are found to have a significant visual impact (e.g., proximity to historical sites, obstructing views), be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Community Development Department may refer the application to Planning Commission as applicable, for a Special Review determination.
- (c) *Review Procedures for Towers.* In all zone districts, Towers, other than those defined or excepted in (A) above, must apply for Conditional Use approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 4-4-19. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the Town.
- (d) *Review Procedures for Eligible Facilities Requests.*
 - (1) In all zone districts, Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The Town shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the Town to consider whether an application is an Eligible Facilities Request. Such required information may include, without limitation, whether the project:
 - (i) Constitutes a Substantial Change; or
 - (ii) Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.The application shall not require the applicant to demonstrate a need or business case for the proposed modification or Collocation.
 - (2) Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Community Development Department shall review such application to determine whether the application so qualifies.
 - (3) *Timeframe for Review.* Subject to the tolling provisions of subparagraph (4) below, within sixty (60) calendar days of the date on which an applicant submits a complete application seeking approval under this Section, the Town shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.
 - (4) *Tolling of the Timeframe for Review.* The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the Town and the applicant, or in cases where the Community Development Department determines that the application is incomplete:
 - (i) To toll the timeframe for incompleteness, the Town 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;

- (ii) The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
 - (iii) Following a supplemental submission, the Town will notify the applicant within ten (10) days that if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- (5) *Failure to Act.* In the event the Town fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the Town in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- (6) *Interaction with Telecommunications Act Section 332(c)(7).* If the Town determines that the applicant's request is not an Eligible Facilities Request as delineated in this Article, the presumptively reasonable timeframe under Section 332(c)(7) of the Telecommunication Act, as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the Town's decision that the application is not a covered request. To the extent such information is necessary, the Town may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.
- (e) *Review Procedures for Small Cell Facilities in the Public Right-of-Way.*
 - (1) Small Cell Facilities in the Public Right-of-Way may be approved pursuant to a Master License Agreement or similar form of authorization or individually in accordance with the provisions of this subsection.
 - (2) Within ten (10) days of receipt of the application, the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Article.
 - (3) The Director shall review the completed application for conformance with the provisions in this Article and may approve or deny an application within ninety (90) days of the date the application is submitted for new stand-alone facilities or sixty (60) days for facilities collocated on town infrastructure.
 - (i) To toll the timeframe for incompleteness, the Town must provide written notice to the Applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - (ii) The timeframe for review resets to zero (0) when the Applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
 - (iii) Following a supplemental submission, the Town 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 timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town

may not specify missing information or documents that were not delineated in the original notice of incompleteness.

- (4) *Consolidated applications.* The Town shall allow a wireless provider to file a consolidated application for up to six (6) small cell facilities and receive a single approval for the consolidated application. The Town's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.
- (e) *General.* Except for applications under subsections (d) and (e) above, the applicant shall conduct a pre-application conference with staff of the Community Development Department. The planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is recommended, for Eligible Facility Requests or SCFs in the Right-of-Way.
- (f) *Administrative review.* Except for applications under subsections (c) and (d) above, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by staff and the Community Development Director, respectively. In order to proceed with additional land use reviews or obtain a development authorization, the Community Development Director shall find the submitted development application consistent with the provisions, requirements and standards of this Article.
- (g) *Decision.* Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.
- (h) *Appeal of Director's determination.* The Community Development Director may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria in this Article. If the Community Development Director determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Community Development Director, the applicant may appeal in accordance with Sec. 4-1-44 of this Code.
- (j) *Building Permit.* A Building Permit shall be submitted concurrently with the Land Use Application. Depending on the nature of project, a full Building Permit may be necessary, or, as would be the case for most Eligible Facilities Requests, an Electrical Permit. A contractor for the proposed work must be identified with the submitted application. A Building or Electrical Permit without an identified contractor will be deemed incomplete and the application will be tolled until the contractor is identified.
- (k) *Right-of-Way Permit.* For all facilities located in the public Right-of-Way, a Right-of-Way Permit shall be submitted concurrently with the Land Use Application. For WCFs in the Right-of-Way, Applicants should review the checklist included in the Appendix of the Design Guidelines - that describes in detail the submittal requirements. A contractor for the proposed work must be identified with the submitted application. A Right-of-Way permit without an identified contractor will be deemed incomplete - and the application will be tolled until the contractor is identified. Additionally, an Electrical Permit shall be required for any installation that involves line voltage.

Sec. 4-13-8 *Definitions.* For purposes of this Subsection, the following terms shall be defined as follows:

Accessory Equipment. Any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or other structures including fences.

Alternative Tower Structure. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are intended to be compatible with the natural setting and surrounding structures, and camouflage or

concealment design techniques so as to make the presence of antennas or towers compatible with the surrounding area pursuant to this Article. This term also includes any antenna or antenna array attached to an Alternative Tower Structure or a Replacement Pole. A stand-alone Monopole in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Article.

Antenna. Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one (1) or more elements, multiple antenna configurations, or other similar devices and configurations. Exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

Base Station. A structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any accessory equipment associated with a tower. Base station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town pursuant to this Article has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the Town has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of "base station" does not include any structure that, at the time the application is filed with the Town under this Article, does not support or house equipment described herein in Subparagraphs (1) and (2) of this definition.

Camouflage, Concealment, or Camouflage Design Techniques. A WCF which is camouflaged or utilizes camouflage design techniques when any measures are used in the design and siting of WCF's with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes camouflage design techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a flagpole, or (iii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Colocation. (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, "Colocation" 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.

Eligible Facilities Request. Any request for modification of an existing tower or base station that does not Substantially Change the physical dimensions of such Eligible Support

Structure involving: (i) colocation of new transmission equipment, (ii) removal of transmission equipment, or (iii) replacement and/or addition of transmission equipment.

Eligible Support Structure. Any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the Town under this Article.

Existing Tower or Base Station. 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, is existing for purposes of this definition.

Master License Agreement. A legal contract between the Town (the licensor) and a telecommunications provider (the licensee). The licensor grants the licensee the right to nonexclusively use the right-of-way for the purpose of small cell facilities according to the terms of the agreement.

Micro Cell Facility. A small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

Monopole. A single, freestanding pole-type structure supporting one or more Antennas.

OTARD Antenna.

- (1) An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or
- (2) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or (iii)
- (3) An antenna that is designed to receive television broadcast signals.

OTARD Antenna Structure. Any pole, tower, or other structure designed and intended to support an OTARD antenna.

Readily Apparent. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, in the discretion of the director, will be easily recognizable as a WCF to a reasonable person viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole. An Alternative Tower structure that is a newly constructed and permitted traffic signal, utility pole, streetlight, flagpole, electric distribution, or streetlight poles or other similar structure of proportions and of equal height to a pre-existing pole or structure in order to support a WCF or SCF or to accommodate colocation and remove the pre-existing pole or structure.

Small Cell Facility or "SCF". A WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary

enclosure of no more than three (3) cubic feet; and primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternative Tower Structures, Replacement Pole, and Base Stations.

Site. The current boundaries of the leased or owned property surrounding the WCF and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by the Town, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

Substantial Change. A modification that substantially changes the physical dimensions of an eligible support structure, which meets any of the following criteria:

- (1) For towers other than alternative tower structures in the right-of-way, it increases the height of the tower by more than ten (10) percent or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater;
- (2) For towers other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) For any eligible support structure, it entails any excavation or deployment outside the current site; or would defeat the concealment elements of the eligible support structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or
- (5) For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower

or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the adoption of this Article; or

- (6) For any eligible support structure, it 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.

Tower. Any structure that is designed and constructed primarily built for the sole or primary purpose of supporting one (1) or more any Federal Communications Commission ("FCC")-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guy towers or monopole towers. The term also includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and such other similar structures.

Transmission Equipment. Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility, or "WCF". A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or Smart Town, Internet of Things, wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directions, omni-directional and parabolic antennas, base stations, support equipment, alternative tower structures, and towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Article.