

Sec. 16A-3-250. - Wireless Communications Facilities.

(a) Purpose

The purpose of this Section is to establish policies and procedures for the placement of Wireless Communication Facilities (WCFs), as they are defined by this Section, the federal Telecommunications Act of 1996, the Federal Communications Commission (FCC) Declaratory Ruling and Third Report and Order, known as the FCC Small Cell Order (the FCC Order), and House Bill 17-1193, the State of Colorado, Small Cell Facilities Permitting and Installation Act, within the Town Limits of the Town of Snowmass Village, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the Town and its public rights-of-way.

This Section establishes standards for the siting and design of Wireless Communication Facilities. As such, the provisions of this Section are intended to regulate and guide the installation of Wireless Communication Facilities infrastructure and to regulate and guide the installation of new wireless communication facilities, when needed. It is the desire of the Town to encourage the development of an aesthetically pleasing local environment. It is also the intent of the Town to encourage the expansion of wireless technology, as it provides a valuable service to Town residents and businesses. It is the Town's goal to encourage wireless providers to construct new facilities disguised through techniques of camouflage, concealment, and stealth design, as defined in this Section.

The Town recognizes its responsibilities under the federal Telecommunications Act of 1996, the FCC Order, and House Bill 17-1193, and believes that it is acting consistent with the federal Telecommunications Act, the FCC Order, and House Bill 17-1193, in ensuring that development activity does not endanger public health, safety, or welfare. The Town intends this Section to ensure that the installation, augmentation and relocation of Wireless Communication Facilities installations in the Town, including its public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the federal Telecommunications Act, the FCC Order, and House Bill 17-1193, with the rights, safety, privacy, property, and security of residents of the Town.

This Section is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or state law; or (6) otherwise authorize the Town to preempt any applicable federal or state law.

This Section supersedes all Sections, parts of Sections or rules adopted prior hereto that are in conflict herewith, to the extent of such conflict.

In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, the Town finds that these regulations are necessary to:

- (1) Provide for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the Town with the goal of having the fewest number of wireless communication facilities ("WCF") required 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 WCFs;
- (2) Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to camouflage design techniques and undergrounding of WCFs and the equipment associated therewith;
- (3) Develop smaller, less intrusive WCFs to supplement existing larger WCFs;
- (4) Utilize wall-mounted panel antennas;

- (5) Construct roof-mounted antennas only when wall-mounted antennas will not provide adequate service or are not otherwise feasible;
 - (6) Locate alternative tower structures in a manner that minimizes the total number of towers needed throughout the community;
 - (7) Promote the colocation of WCFs on new and existing sites, when visual impacts are minimized;
 - (8) Locate antennas and towers, to the extent possible, in areas where the adverse impact on the community is minimized;
 - (9) Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, and efficiently;
 - (10) Effectively manage WCFs in the right-of-way; and
 - (11) Manage amateur radio facilities and over-the-air receiving devices in the Town.
- (b) Definitions.

All words used in this Section, except where specifically defined herein, shall carry their customary meanings when not inconsistent with the context. Definitions contained elsewhere in this Code shall apply to this Section unless modified herein.

AASHTO means the American Association of State Highway and Transportation Officials, which is a standards setting body that publishes specifications, test protocols, and guidelines that are used in highway design and construction throughout the United States. The association represents not only highways but air, rail, water, and public transportation as well.

Accessory Wireless Equipment means any equipment serving or being used in conjunction with a Wireless Communications Facility (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.

Administrative Review means ministerial review of an Application by the Town relating to the review and issuance of a Permit, including review by the designated staff to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Section and all Town Codes.

Alternative Tower Structure means man-made trees, clock towers, bell steeples, light poles, 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 Section. This term also includes any antenna or antenna array attached to an Alternative Tower Structure and 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 Section.

Antenna means 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.

Antenna, dish means dish (parabolic or cylindrical) antennas used for microwave and satellite transmission and reception for commercial purposes. This definition shall not apply to wireless cable satellite dish antennas or dish antennas less than one (1) meter measured diagonally.

Applicable Codes means any Code drafted and adopted by the Town, including Chapter 11 - *Streets, Sidewalks and Public Property*, Chapter 16A - *Land Use and Development Code*, and Chapter 18 - *Building Regulations*, as well as uniform building, fire, safety, electrical, plumbing, Uniform Traffic Control or mechanical codes adopted by a recognized national code organization to the extent such

codes have been adopted by the Town, including any amendments adopted by the Town, or otherwise are applicable in the jurisdiction.

Applicant means the person submitting an application that is proposing an action requiring review and approval by one or more of the sections in Section 16A-3-250 as well as other applicable sections of Town of Snowmass Village Code including Chapter 11 - *Streets, Sidewalks and Public Property*, Chapter 16A - *Land Use and Development Code*, and Chapter 18 - *Building Regulations*. An applicant may subsequently become the developer once approval is granted, and in this case the terms shall be interchangeable.

Attached Wireless Facilities means facilities affixed to a structure except optical fiber, wires, coaxial cable, and the mounting hardware used to attach optical fiber, wires, and coaxial cable. Examples of attached facilities include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on structures located.

Base Cabinet means a cabinet at the base of a SCF that houses the Base Station.

Base station means:

- a. 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 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 Section 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 pursuant to this Section 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.
- b. The definition of "base station" does not include any structure that, at the time the application is filed with the Town under Section 16A-3-250, *Wireless Communication Facilities*, does not support or house equipment described herein in Subparagraphs 1. and 2. of this definition.

Camouflage, concealment, or camouflage design techniques means 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.

CDOT means the Colorado Department of Transportation.

Clear Zone (as defined in AASHTO's Roadside Design Guide) means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area.

Code means the Snowmass Village Town Code.

Collocation means (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, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Development Code means Chapter 16A of the Town Code, as amended.

Director means the Town’s Community Development Director or designee.

Eligible Facilities Request means any request for modification of an Eligible Support Structure that does not Substantially Change the physical dimensions of such Eligible Support Structure involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement and/or addition of Transmission Equipment.

Eligible Support Structure means 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 Section.

Existing Tower or Base Station means a constructed Tower or Base Station is existing for purposes of this Section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Facilities means any and all equipment, structures, materials or tangible components located in the rights-of-way and used to provide a service, including without limitation: all plants, whether inside or outside, fiber strands or optic lines, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, antennas of any type, lines, termination equipment, pipes, poles, ducts, mains, conduits, inner ducts, regenerators, repeaters, underground lines, vaults, manholes, pull boxes, splice closures, wires and cables, and all other like equipment, fixtures and appurtenances used in connection with transmitting, receiving, distributing, offering, and/or providing such service. Facilities shall include, as the context dictates, wireless communications facilities, as defined herein.

FCC means the Federal Communications Commission of the United States.

FCC Small Cell Order or Order means the FCC’s [Declaratory Ruling and Third Report and Order](#), WT Docket No. 17-79, WC Docket No. 17-84, FCC-18-133, released September 27, 2018, which is incorporated herein by this reference.

Height means maximum height of the WCF, including antenna, above established finished grade measured at the base of the structure.

House Bill 17-1193 or Act means Colorado’s [Small Cell Facilities Permitting and Installation Act](#), as amended, which became effective on July 1, 2017 and is incorporated herein by this reference.

Macro Wireless Telecom Facility or Macrocell means a cell in a mobile phone network that provides radio coverage served by a power cellular base station (tower). The antennas for macrocells are mounted on ground-based masts, rooftops, and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. The term macrocell is used to describe the widest range of cell sizes.

Micro Cell Facility means a small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than eleven inches in length.

Monopole means a single, freestanding pole-type structure supporting one or more antennas.

Multi-User Facility means a facility that is designed to accommodate two or more service providers.

Ordinance means Snowmass Village Land Use and Development Code Section 16A-3-250, *Wireless Communications Facilities*, as amended.

Ordinary Maintenance and Repair means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW.

Public right-of way means any public way or public thoroughfare dedicated or devoted to public use, including street, highway, road, alley, lane, court, boulevard, sidewalk, public square, mall or like designation.

Replacement Pole means an Alternative Tower structure that is a newly constructed and permitted streetlight, flagpole, or other similar structure of proportions and of equal height to a pre-existing pole or structure in order to support a WCF or Small Wireless Facility or to accommodate collocation and remove the pre-existing pole or structure.

Roof-mounted wireless facility means a wireless facility that is mounted on the roof or any rooftop appurtenance of a legally existing building or structure.

Screening means reducing the visibility of all wireless facilities equipment, including accessory equipment, from adjacent and nearby public rights-of-way and public or private properties by the use of fencing, landscaping, and/or berming, or in the case of wall-mounted or roof-mounted wireless facilities, the use of paint color selection, parapet walls, screen walls, and/or placing equipment in the structure.

Site (for towers other than towers in the right-of-way and eligible support structures) means the current boundaries of the leased or owned property surrounding the tower or eligible support structure and any access or utility easements currently related to the site. A site, for other towers in the right-of-way, is further restricted to that area comprising the base of the structure and to other related accessory equipment already deployed on the ground.

Small cell facility or small wireless facility or SCF (as defined in the FCC Order and the Act) means 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.

Structure means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, service cabinets, junction boxes, foundations, fences, retaining walls, awnings, balconies, and canopies.

Substantial change means a modification that substantially changes the physical dimensions of an eligible support structure, which meets any of the following criteria:

- a. 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;
- b. 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 ten (10) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater for eligible support structures, if it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than five (5) feet;
- c. For any eligible support structure, if 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;

- d. For any eligible support structure, it entails any excavation or deployment outside the current site; or would impair the concealment elements of the eligible support structure; or
- e. 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 that would not exceed the thresholds identified in Paragraphs a., b., and c. of this definition; and
- f. 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.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunication service(s) means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunication service provider or telecommunications applicant means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. Section 226).

Telecommunication system means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. A system that provides both cable and telecommunications or information services may be considered both as a cable system and a telecommunications system pursuant to this Code.

Toll means a pause in the progression of the shot clock due to an incomplete application.

TOSV means the Town of Snowmass Village.

Tower means 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.

Town means the Town of Snowmass Village, its citizens, representatives, and employees.

Town Council means the Snowmass Village Town Council.

Town Manager means the Snowmass Village Town Manager or designee.

Transmission equipment means 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.

Unreasonable Interference means any use of the Right-of-Way that disrupts or interferes with its 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, bike, or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare. This shall also apply to any violation of the Americans with Disabilities Act.

Wall-mounted wireless facility means a WCF that is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features such as parapets, but does not include mechanical screens, chimneys and similar appurtenances.

Wireless communications facility, or WCF means 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 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, directional, 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 Section 16A-3-250, *Wireless Communication Facilities*.

(c) Applicability

- (1) All applications for the installation or development of WCFs and/or equipment must receive land use and development 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 Section. WCFs and equipment subject to the provisions and criteria of this Section 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. All references made throughout this Section, to any of the devices to which this Section is applicable, shall be construed to include all other devices to which this Section is applicable.
- (2) Exemptions. The requirements set forth in this Section shall not apply to:
 - a. Amateur radio antennas. Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas; however, amateur radio antennas shall be subject to the other applicable requirements of Sections of Town Code.
 - b. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of this Section, shall not be required to meet the requirements of this Section, other than the operational standards set forth in this Section. 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 Section.
 - c. Miscellaneous antennas. Antennas used for reception of television, multi-channel video programming and radio such as over the air reception devices ("OTARD") antennas, noncommercial satellite dish antennae, radio and television transmitters and antennae

incidental to residential use; however, such antennas shall be subject to the other applicable requirements of Sections of Town Code.

- d. A temporary wireless facility serving the general health, safety and welfare of the residents of the Town installed upon the declaration of a state of emergency by the federal, state, or local government or other written determination of need by the federal, state or local government.
- e. A temporary wireless facility installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the Town.

(d) Wireless Communications Facilities Design Guidelines

The Town Council adopts design guidelines, hereinafter referred to as the *Wireless Communications Facilities Design Guidelines* ("Design Guidelines"), which are incorporated into the Town of Snowmass Village Land Use and Development Code. The Design Guidelines set forth the design parameters to ensure safe and secure installation and minimize negative aesthetic impacts of wireless communications facilities installed on private property or in the public right-of-way. The Town may administratively revise, develop new, update, or amend the Design Guidelines as necessary to meet the goals of the Town.

(e) Operational Standards

- (1) Federal Requirements. All WCFs shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate WCFs, including, without limitation, the requirement that WCFs shall not present a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations. If such standards and regulations are changed, then the owners of the WCF 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 WCF owner's expense.
- (2) 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 Applicant shall notify the Town at least ten 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.
- (3) Radio Frequency Standards. All WCFs shall comply with federal standards for radio frequency emissions. The wireless provider shall certify that the WCF is in compliance with applicable FCC Maximum Permissible Exposure (MPE) regulations, by submitting a site-specific non-ionizing electromagnetic radiation (NIER) or electromagnetic energy (EME) report for the WCF equipment type and model being installed at the site that is endorsed by a radiofrequency engineer licensed in the State of Colorado, including a certification that the WCF complies with all radiation and electromagnetic standards. The report shall specify approach distances to the general public and occupational workers at the ground and antenna centerline levels. The report shall include instructions regarding powering off the equipment or contact information for a person who can power off the equipment. No significant changes to the power, location, RF emission patterns and/or emitting frequencies may be made without prior notification and approval. However, non-substantive changes, for example, in-kind replacements of transmitters of the same frequency, radiation patterns and power are permitted. The Town retains the right to independently verify the RF patterns as installed.

- (4) **Public Safety.** The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety. Wireless Communication Facilities must not result in human exposure to radio frequency radiation in excess of applicable safety standards specified in [47 CFR Rule 1.1307\(b\)](#). After transmitter and antenna system optimization, but prior to unattended operations of the facility, the wireless provider or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the [FCC OET Bulletin 65](#) RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. The wireless provider shall submit documentation of this testing to the Town within ninety (90) days after installation of the facility. RF emissions testing shall be conducted annually, and the wireless provider shall submit documentation of this testing to the Town within ninety (90) days after the testing is completed.
- (5) **License to Use.** The Applicant may execute a license agreement (a.k.a. Master License Agreement) with the Town, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing streetlight pole or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.
- (6) **Operation and Maintenance.** To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building, safety, and engineering 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 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town may extend such compliance period not to exceed 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.
- (7) **Abandonment and Removal.** If a WCF has not been in use for a period of three 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 months. Any WCF that is not operated for a continuous period of six 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 commence removal of the same within 30 days of receipt of written notice from the Town. If such WCF is not removed within said 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.

Additionally, the Town, in its sole discretion, shall not approve any new WCF application until the Applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the Town.

- (8) **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.
- (9) **Collocation.** No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Town, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.
- (10) **Compliance with Applicable Law.**

Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, engineering, electrical, and safety requirements as set forth in the Town's Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

- a. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
- b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
- c. Be maintained in good working condition and to the standards established at the time of application approval; and
- d. 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 calendar days from the time of notification by the Town or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the Town at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the Town.

(f) Review Procedures

No new wireless facility shall be constructed, and no collocation or modification to any existing wireless facility may occur except after submittal of an application and approval by the Town to ensure compliance with the applicable provisions of the Town's Land Use and Development Code and Municipal Code. All work done pursuant to wireless facility applications must be completed in accordance with all applicable building and safety requirements and any other applicable regulations. The review process varies according to the type and location of the proposed facility. The review process is intended to ensure that the facility will be designed and sited in a manner that complies with the provisions on this Section and uses the *Wireless Communications Facilities Design Guidelines* in such a way to minimize negative impacts on surrounding property.

- (1) 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 Town for conformance to this Section and using the *Wireless Communications Facilities Design Guidelines*. 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., obstructing views), be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Town may refer the application to the Planning Commission, as applicable, for a Special Review determination.

- (2) Review Procedures for Towers.

In all zone districts, Towers, other than those defined or excepted in paragraph 16A-3-250(f)(1) above, must apply for Special Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in paragraph 16A-3-250(f)(11). 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.

- (3) Review Procedures for Eligible Facilities Requests.

- a. 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:
 1. Constitutes a Substantial Change; or
 2. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

- b. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Town shall review such application to determine whether the application so qualifies.
 - c. Timeframe for Review. Subject to the tolling provisions of subparagraph (d) below, within 60 calendar days of the date on which an applicant submits a complete application seeking approval under this subsection, 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.
 - d. 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 Town determines that the application is incomplete:
 - 1. 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;
 - 2. 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
 - 3. 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 (1) 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.
 - e. 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.
 - f. 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 Section, 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.
- (4) Review Procedures for Small Cell Facilities in the Public Right-of-Way.
- a. 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 a Small Cell Facility in the public right-of-way request.
 - b. 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.
 - c. Within ten (10) days of receipt of the application, the Town 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 Section.
 - d. The Town shall review the completed application for conformance with the provisions in this Section and may approve or deny an application administratively within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on Town infrastructure.

1. 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;
 2. 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
 3. 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 (1) 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.
- e. Consolidated applications. The Town shall allow a wireless provider to file a consolidated application for 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.

(5) General.

Except for applications under subsections (3) and (4) above, pursuant to Section 16A-5-30, the applicant shall conduct a pre-application conference with Town staff. Town staff shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use and development material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is strongly recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

(6) Administrative review.

Except for applications under subsections (3) and (4) above, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by staff. In order to proceed with additional land use and development reviews or obtain a development order, the Town shall find the submitted development application consistent with the provisions, requirements and standards of this Section and the *Wireless Communications Facilities Design Guidelines*.

(7) 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.

(8) Appeal of Decision.

The Community Development Director may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria in the *Wireless Communications Facilities Design Guidelines*. 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 apply for special review (Town Code Section 16A-5-230) by the Planning Commission and such application must be made within fifteen (15) calendar days of the day on which the Community Development Director's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Section 16A-5-60 of this Code.

(9) Building Permit.

A Building Permit application shall be submitted concurrently with the Development 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.

(10) Right of Way Permit.

For all facilities located in the public right-of-way, a Right of Way Permit application shall be submitted concurrently with the Development Application. 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.

(11) Special review.

An application requesting a variance from the review standards as set forth in this Section and the *Wireless Communications Facilities Design Guidelines* (except for Eligible Facilities Requests) or an appeal of a determination made by the Community Development Director, shall be processed as a special review in accordance with the common development review procedures set forth in Town Code Section 16A-5-20, and the Special Review Section 16A-5-230 of Town Code. The special review shall be considered at a public hearing for which notice has been posted and mailed, pursuant to Section 16A-5-60. The review shall be by the Planning Commission.

(g) Application Contents.

An application for approval of new WCFs and modified or additional WCFs, Eligible Facilities Requests, and Small Cell Facilities Requests shall comply with the submittal requirements applicable to all Development Reviews pursuant to Town Code Section 16A-5-20 - *Overview of Common Development Review Procedure*. Additionally, depending on their nature, required Building, Electrical, and/or Right-of-Way permits shall be submitted concurrent to the Development Application. Please note that pursuant to Section 16A-5-30 of the Town's Code, a pre-application conference is not required, but is strongly recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

Pursuant to Town Code *Section 16A-5-40*, a WCF development application for a WCF not located in the public right-of-way may only be submitted to the Planning Department by the owner, or any other person having a recognized interest in the land for which the development is proposed, or their authorized agent. If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application. If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners, or an association representing the owners, consenting to or joining in the development application.

Also, Pursuant to Town Code *Section 16A-5-40*, the development application shall include the information and materials specified for that particular type of application in the applicable Section of Article V of Chapter 16A of the Town's Code. In addition, all development applications shall, at a minimum, include the following information and materials:

- (1) Name, address, telephone number and power of attorney. The applicant's name, address and telephone number. If the applicant is to be represented by an agent, a letter signed by the applicant granting power of attorney to the agent shall be submitted, authorizing the agent to represent the applicant and stating the representative's name, address and phone number.
- (2) Legal description. The legal description and street address, if such exists, of the parcel on which the WCF development is proposed.
- (3) Disclosure of ownership. If the property is not located in the public right-of-way, a current certificate from a title insurance company or attorney licensed in the State which shall set forth

the names of all owners of property included in the application and shall include a list of all mortgages, judgments, liens, contracts, easements or agreements of record that affect the property. At the Town's option, the holders or owners of such mortgages, judgments, liens, contracts, easements, or agreements of record may be required to consent to the application before it is acted upon by the Town.

- (4) Written description. A written description of the proposal and an explanation, in written, graphic or model form, of how the proposed development complies with the review standards applicable to the application, found in the applicable Section of Article V of Chapter 16A of the Town's Code.
- (5) Vicinity map. An eight and one-half inch by eleven-inch (8½" x 11") vicinity map locating the subject parcel within the Town.
- (6) Other maps. All other maps required for the application shall be prepared at a scale of one-inch equals one hundred feet (1" = 100') or larger, on sheets no larger than thirty inches by forty-two inches (30" x 42"), with an unencumbered margin of one and one-half inches (1.5") on the left hand side of the sheet and one-half inch (0.5") around the other three (3) sides of the sheet. Sheets of twenty-four by thirty-six inches (24" x 36") are preferred. If it is necessary to place information on more than one (1) sheet, an index shall be included on the first sheet. Report-size versions of all maps, reduced to a sheet size of no greater than eleven inches by seventeen inches (11" x 17"), shall also be submitted.
- (7) Base fee. All WCF development applications, except for small wireless facility development applications in the right of way, shall be accompanied by the applicable base fee from the Planning Department's fee schedule. The fee schedule shall be established and may be revised from time-to-time by the Planning Director. The fee schedule shall be available for review in the Planning Department during normal business hours.
 - a. Actual fee. The actual review fee shall be computed by the Planning Director, based upon a staff hourly rate determined by the Planning Director to be an estimate of the fully allocated hourly cost of review of the application by the Town staff, plus the actual costs incurred by the Town in employing consultants, including attorneys and engineers, performing services for the Town directly related to the application.
 - b. Reimbursement due. The applicant shall reimburse the Town for such amounts in excess of the base fee as determined by the Planning Director. The reimbursement to the Town by the applicant shall be due and payable within fifteen (15) days of the date of billing.
 - c. The Town retains the right to require an applicant to pay the fees and costs of any consultant engaged by the Town to assist in the review of plans, applications, reports, inspections, and/or testing.

The applicable fees for small cell facility development applications in the public right-of-way shall be as follows:

- a. The application fee for an application to collocate a small wireless facility that includes the installation of a new pole shall be: (i) not less than \$1,000 one-time fee for each Small Wireless Facility addressed in an application that includes a new pole; or (ii) established by the Town by resolution as a reasonable, non-discriminatory approximation of the Town's costs; or (iii) agreed upon by the Town and a permittee in a Master License Agreement.
- b. The application fee for an application to collocate a small wireless facility on an existing streetlight pole or wireless support structure, or replacement of an existing streetlight pole or wireless support structure shall be (i) not less than \$500 one-time fee for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five; or (ii) established by the Town by resolution as a reasonable, non-discriminatory approximation of the Town's costs; or (iii) agreed upon by the Town and a permittee in a Master License Agreement.
- c. A wireless provider shall pay to the Town an annual recurring license fee: (i) not less than \$270 per small wireless facility on a Town streetlight pole located in a right-of-way; or (ii)

established by the Town by resolution as a reasonable, non-discriminatory approximation of the Town's costs; or (iii) agreed upon by the Town and a permittee in a Master License Agreement.

The annual recurring license fee shall be payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

- d. The Town retains the right to require an applicant to pay the fees and costs of any consultant engaged by the Town to assist in the review of plans, applications, reports, inspections, and/or testing.

(8) Additional Application Requirements and Conditions for Small Cell Facility Development Applications in the Public Right-of-way.

- a. Site specific structural integrity and, for a Municipal streetlight pole, make-ready analysis prepared by a Colorado licensed structural engineer.
- b. The location where each proposed small wireless facility would be installed and photographs of the location and its immediate surroundings depicting the streetlight poles or structures on which each proposed small wireless facility would be mounted or location where wireless support structures would be installed. This should include a depiction of the completed facility.
- c. Specifications and drawings prepared by a Colorado licensed structural engineer for each proposed small wireless facility covered by the application as it is proposed to be installed.
- d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility.
- e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved.
- f. Certification that the collocation complies with the collocation requirements and conditions contained herein, to the best of the applicant's knowledge.
- g. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Town, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.
- h. The first completed application shall have priority over applications received by different applicants for collocation on the same streetlight pole or wireless support structure. For all new pole installations, the Town retains the right to require a second applicant for the same general space to install a new pole capable of collocating both applicants internally in the pole, where technically feasible and financially reasonable. The first applicant is required to allow the subsequent applicant to replace the pole with a multi-cell pole. The original pole shall be made available to the installing applicant to salvage. If not retrieved in 30 days, the pole shall be declared abandoned and disposed.
- i. The Town shall deny an application which does not meet the requirements of this subsection.

If the Town determines that applicable codes, ordinances or regulations that concern public safety, or the collocation requirements and conditions contained herein require that the streetlight pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the streetlight pole or wireless support structure at the cost of the provider.

The Town shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant.

The applicant may cure the deficiencies identified by the Town and resubmit the revised application once within thirty (30) days after notice of denial is sent to the applicant without

paying an additional application fee. The Town shall approve or deny the revised application within thirty (30) days after the applicant resubmits the application. Failure to resubmit the revised application within thirty (30) days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the Town's review period.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- j. Master License Agreement: In addition to providing a permit, to collocate a small wireless facility on a Municipal streetlight pole, the Town, by and through the Town Council, and the applicant may enter into a Master License Agreement, provided by the Town for the initial collocation. A copy of said Agreement is on file in the Town and incorporated herein by reference as exhibit A. For subsequent approved permits to collocate on a small wireless facility on a Municipal streetlight pole, the Town, by and through the Town Manager, or designee, and the applicant may enter into a License Supplement of the Master License Agreement in a form approved by the Town Manager for such purpose.

(h) Conditions and limitations.

The Town shall reserve the right to add, modify or delete conditions after the approval of a request in order to advance a legitimate Town interest related to health, safety or welfare. Prior to exercising this right, the Town shall notify the owner and operator in advance and shall not impose a substantial expense or deprive the affected party of a substantial revenue source in the exercising of such right.

Approval by the Community Development Director for a WCF and/or equipment application shall not be construed to waive any applicable zoning or other regulations; and wherein not otherwise specified, all other requirements of Town Code shall apply, including Chapter 11 - *Streets, Sidewalks and Public Property*, Chapter 16A - *Land Use and Development Code*, and Chapter 18 - *Building Regulations*. All requests for modifications of existing facilities or approvals shall be submitted to the Community Development Director for review under all provisions and requirements of this Section. If other than minor changes are proposed, a new, complete application containing all proposed revisions shall be required.