

PLANNING COMMISSION AGENDA
COEUR D'ALENE PUBLIC LIBRARY
LOWER LEVEL, COMMUNITY ROOM
702 E. FRONT AVENUE

September 12, 2017

THE PLANNING COMMISSION'S VISION OF ITS ROLE IN THE COMMUNITY

The Planning Commission sees its role as the preparation and implementation of the Comprehensive Plan through which the Commission seeks to promote orderly growth, preserve the quality of Coeur d'Alene, protect the environment, promote economic prosperity and foster the safety of its residents.

5:30 P.M. CALL TO ORDER:

ROLL CALL: Messina, Fleming, Ingalls, Luttropp, Mandel, Rumpier, Ward

PUBLIC COMMENTS:

STAFF COMMENTS:

ADMINISTRATIVE ITEM:

1. A request for a deviation from the requirements of Chapters 16.15 (Design Standards) and 16.40 (Improvement Standards) in the ACI (Area of City Impact) - Chris Bosley, City Engineer


PUBLIC HEARINGS:

1. Applicant: City of Coeur d'Alene
Request: A modification to the Wireless Communications Ordinance
LEGISLATIVE, (O-5-17)

ADJOURNMENT/CONTINUATION:

Motion by _____, seconded by _____,
to continue meeting to _____, __, at __ p.m.; motion carried unanimously.
Motion by _____, seconded by _____, to adjourn meeting; motion carried unanimously.

****The City of Coeur d'Alene will make reasonable accommodations for anyone attending this meeting who requires special assistance for hearing, physical or other impairments. Please contact Shana Stuhlmiller at (208)769-2240 at least 24 hours in advance of the meeting date and time.***



ADMINISTRATIVE

PLANNING COMMISSION STAFF REPORT

FROM: CHRIS BOSLEY, CITY ENGINEER
DATE: SEPTEMBER 12, 2017
SUBJECT: REQUEST FOR A DEVIATION FOR THE HATROCK LIVING TRUST MINOR SUBDIVISION IN KOOTENAI COUNTY WITHIN THE CITY OF COEUR D'ALENE'S AREA OF CITY IMPACT
LOCATION: 6160 E. LONG SHADOWY DRIVE – APPROXIMATELY 12.88 ACRES

DECISION POINT:

The owner of 6160 E. Long Shadowy Drive wishes to subdivide the subject property into four lots and is requesting that the City Planning Commission grant a deviation to the requirement that properties subdivided outside of the city limits but with the City's Area of City Impact (ACI) must improve their frontage roads to City standards.

DISCUSSION:

The subject property has over 1500 feet of road frontage and is located approximately 670 feet from the nearest paved road, Mullan Trail Road, which does not meet City standards. In that direction, East Long Shadowy Road traverses through property owned by East Side Highway District (ESHD). There is no reported plan to improve that section of road by ESHD. The subject property is located approximately 4,500 feet from the City limits at its nearest point, measured in a straight line.

Legal has reviewed the request and has determined that the City Planning Commission may grant a deviation on this requirement. This request, if granted, would allow the property owner to subdivide the property without the requirement to improve E. Long Shadowy Drive to City standards. The Planning Commission's decision will be forwarded to Kootenai County.





PUBLIC HEARINGS

**CITY COUNCIL
STAFF REPORT**

DATE: September, 12, 2017
FROM: Hilary Anderson, Community Planning Director
Sean E. Holm, Planner
SUBJECT: Wireless Telecommunications Ordinance

DECISION POINT

Staff is requesting approval of the proposed revisions to the wireless telecommunications ordinance.

HISTORY

As cell phones became more affordable in the 1990's, and people demanded wider coverage over time, the push for providers to build towers to serve an influx of customers was vast. Cities nationwide struggled with how to incorporate the infrastructure needed into the fabric of communities. Most city codes at that time did not address cell phone tower construction. Coeur d'Alene was no exception.

This is what led to the passing of Ord. # 2819, in May of 1997. An emergency ordinance was adopted, placing a moratorium on future construction of towers, until an ordinance could be put into place to regulate wireless facilities. The moratorium was set to expire on August 30, 1997.

Ord. # 2831 was passed on August 21, 1997, which extended the moratorium until September 17, 1997. This provided staff and City Council an extension needed for crafting and approving the ordinance.

The passing of Ord. # 2833, on September 16, 1997, put into effect the Wireless Communication Facilities Regulations which govern the placement and construction of cell phone towers by establishing definitions, standards, and procedures. These regulations have not been changed for nearly 20 years though Federal law has dramatically done so.

BACKGROUND

Staff recently conducted a complete review of the existing Wireless Communication Facilities Regulations with the assistance of an industry expert and the city's consultant; Bob Duchon, Vice President of River Oaks Communications Corporation. As part of that review process, Mr. Duchon worked with staff and wireless providers to identify current industry standards, as well as upcoming technology and trends, best practices and to propose new municipal standards and regulations for the construction and placement of wireless infrastructure.

Since the city's passage of the Wireless Communication Facilities Regulations, technology has changed. The biggest of those changes involve the necessity for providers to ramp up the capacity needed to meet the demand of customers. Cell phone calls, which used to be the primary function of the infrastructure network, have since shifted. Now, social media, video streaming, and apps that perform services for end users, are placing an enormous data strain on existing infrastructure. Providers must balance their network deployment to continue coverage for older technology (i.e. 3G), as well as, adding functionality and data speeds (i.e. 5G) to meet demand.

PURPOSE

The provisions of this article shall be known as the Wireless Communication Facilities Regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless

communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- a) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;
- b) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Coeur d'Alene community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and federal law;
- c) To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;
- d) To preserve the opportunity for continued and growing service from the wireless industry;
- e) To accommodate the growing need and demand for wireless communication services;
- f) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- g) To ensure City zoning regulations are applied consistently with federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

The following is a summary of significant changes (Complete ordinance proposed is attached):

Definitions:

This section was updated to more completely define the elements found in the proposed ordinance, and to define new technologies and comport with FCC rules and regulations since the passage of the existing ordinance in 1997.

Applicability:

Sets the stage for what proposals require review, provides assurance that existing towers can operate per existing approvals, and specifies what facilities are exempt.

Distributed Antenna Systems and Small Cells:

Provides for administrative review and location approval for this technology given that it is less intrusive than cell towers.

General Requirements:

Sets forth the rules governing what information must be provided to the city for an application (Building and/or Special Use Permit) to be complete. Categories include:

Inventory of existing sites, color, lighting, meeting State and Federal Requirements, site development permit, construction drawings showing the proposed method of installation, manufacturer's recommended installations, site plan, compliance with building code safety standards, noticing requirements, signage, visual impacts, use of stealth design/technology, requirements for building-mounted WCFs, location and installation of antenna arrays, standards for WCFs in the public rights-of-way, accessory uses and accessory equipment standards, site design flexibility to provide the best concealment, construction provisions including screening of

equipment shelters/cabinets, new pole requirements, and allowing for the request by the City of other materials as needed and provided for in published requirements.

Factors Considered in Granting Special Use Permits for Towers:

Height, proximity of the tower to residential structures/district boundaries, nature of uses on adjacent/nearby properties, surrounding topography, tree coverage/foliage, design of the tower, and proposed ingress/egress.

To build a new tower the applicant must show that no existing structures are located within the geographic area which meet applicant's engineering requirements, or that existing towers or structures do not have sufficient structural strength to support applicant's proposed antennas and related equipment, show that an antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna, that the fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable, and finally, that the applicant can demonstrate that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.

Setbacks (+ Breakpoint technology):

Table 1 New Tower Criteria				
Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	Stealth Design	Setback from Property Lines (does not apply within ROW)
Residential R-1 through R-34 (incl. infill) MH-8 NC & CC	Yes or No	75' [1]	Required	20'
Commercial C-17 & C-17L DC	Yes or No	76' - 90'[2]	Optional[2][3] Required	20'
Manufacturing M & LM	Yes or No	91' - 120'[3]	Optional[4]	20'

[1] If an applicant wants to construct a tower in a residential zone or within 200' of a residential zone, then stealth design is required.

[2] An additional 20 feet in height is allowed if applicant uses stealth design.

[3] DC zone requires stealth design. Preferred location on top of existing structure.

[4] An additional 30 feet in height is allowed if applicant uses stealth design.

NOTE: Towers in preferred locations are subject to administrative review as long as the other requirements of this Article are met.

Preferred Tower Locations:

Lists the types of areas/zoning the city prefers from most to least.

Gap in Coverage or Capacity:

The applicant must show a gap in service, that the gap can only be filled by exception, and that the new facility meets the standards to the greatest extent possible.

Exceptions to Standards:

Provides the means for an applicant to seek relief from a hardship by proving their case. Does not allow an applicant to forego stealth design.

Removal of Abandoned Antennas and Towers:

Defines triggers for removal of towers/equipment.

Independent RF Technical Review:

The City may retain the services of an independent RF expert of its choice to provide technical evaluation of permit applications for WCFs, when they are subject to special use permits, conditional use or administrative review. The applicant shall pay the cost for any independent consultant fees through a deposit. Review shall consist of (but not be limited to):

1. The accuracy and completeness of the items submitted with the application;
2. The applicability of analysis and techniques and methodologies proposed by the applicant;
3. The validity of conclusions reached by the applicant; and
4. Whether the proposed WCF complies with the applicable approval criteria set forth in this Article.

Final Inspection:

Review of site/ tower for substantial compliance with the approved plans and photo simulations. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation.

Compliance:

Defines requirements an applicant/owner must meet while the equipment is operational. Includes: FCC, State, or other Federal regulations, fencing/landscaping/site maintenance, graffiti removal, notice to city required if communication services license is revoked.

Indemnification:

Language provided to hold harmless the City and its officers, agents, employees, volunteers, and contractors for use of City property.

Eligible Facilities Request:

Sets forth the requirements, procedure, and timing for review of a modification to an existing site/tower which does not substantially change the physical dimensions of such existing tower or site.

Collocation Applications:

Sets forth the requirements, procedure, and timing for review of a collocation application which is not an eligible facilities request.

New Site or Tower Applications.

Sets forth the requirements, procedure, and timing for review of a new site/tower application.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VIII - WIRELESS COMMUNICATION FACILITIES REGULATIONS - 17.08.800-17.08.830 OF THE CITY CODE OF THE CITY OF COEUR D'ALENE; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING FOR PERMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII - Wireless Communication Facilities Regulations - 17.08.800-17.08.830 of the City Code currently govern the City's regulation of wireless communication facilities; and

WHEREAS, federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted Section 17.08-800-17.08.830 of the City Code; and

WHEREAS, the City Council of the City of Coeur d'Alene desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the community, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City's unique character in a manner consistent with State and federal laws and regulations; and

WHEREAS, following appropriate procedures and public notice, on September 12, 2017, the Planning Commission conducted a hearing on proposed amendments to Article VIII, Section 17.08.800-17.08.830 and recommended that the City Council approve the proposed amendments; and

WHEREAS, on _____, the City Council conducted a lawfully-noticed public hearing and received the recommendations of the Planning Commission regarding the Article which modifies the code sections relating to wireless communication facilities.

NOW, THEREFORE, BE IT ORDAINED BY the City Council of the City of Coeur d'Alene, Idaho:

Section 1: Repealer and Amendments. That existing Sections 17.08.800-17.08.830 of the City Code are hereby repealed and new Sections 17.08.800-17.08.____ are inserted in their place.

Section 2: Purpose.

The provisions of this article shall be known as the Wireless Communication Facilities Regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- (a) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;
- (b) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Coeur d'Alene community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and federal law;
- (c) To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;
- (d) To preserve the opportunity for continued and growing service from the wireless industry;

- (e) To accommodate the growing need and demand for wireless communication services;
- (f) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- (g) To ensure City zoning regulations are applied consistently with federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- (h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Section 3: Definitions. As used in this article, the following terms shall have the meanings set forth below:

- (a) "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.
- (b) "Antenna array" means a single or group of antenna elements, not including small cell antennas, and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.
- (c) "Applicant" means any person engaged in the business of providing wireless communication services or the wireless communications infrastructure required for wireless communications services and who submits an application.
- (d) "Backhaul network" means the lines that connect a provider's towers or cell sites to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.
- (e) "Base station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this Article or any equipment associated with a tower.
 - (1) The term includes, but is not limited to, 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.
 - (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).
 - (3) The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

- (4) The term does not include any structure that, at the time the relevant application is filed with the State or the City under this section, does not support or house equipment described in this section.
- (f) "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (g) "Distributed Antenna System" or "DAS" means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.
- (h) "Eligible Facilities Request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
- (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment; or
 - (3) Replacement of transmission equipment.
- (i) "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 City under this Section.
- (j) "Existing" means a tower or base station that 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.
- (k) "FAA" means the Federal Aviation Administration.
- (l) "FCC" means the Federal Communications Commission.
- (m) "Macrocell" means an antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.
- (n) "Site" means, in relation to a tower that is not in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. In relation to support structures other than towers, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (o) "Small cells" mean compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells.
- (p) "Stealth design" means technology that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas.
- (q) "Substantial change" means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
- (1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 U.S.C. Section 1455 (a));

- (2) For towers other than towers in the public rights-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 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other 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 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 cabinets; or, for towers in the public rights-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 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - (4) It entails any excavation or deployment outside the current site;
 - (5) It would defeat the concealment elements of the eligible support structure; or
 - (6) 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, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (1) through (4).
- (r) "Tower" means any structure built for the sole or primary purpose of supporting any 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.
- (s) "Tower height" means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten feet (10') in height, shall not be included within tower height.
- (t) "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.
- (u) "Utility support structure" means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; or pedestrian light standards.
- (v) "Wireless Communication Facilities" or "WCF" means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

Section 4: Applicability.

- (a) New Towers, Antennas, DAS and Small Cells. All new towers, antennas, DAS and small cells in the City shall be subject to these regulations, except as otherwise provided herein.
 - (1) New towers and buildings in zones other than Manufacturing and Light Manufacturing require a Special Use Permit.
 - (2) New antenna arrays meeting the requirements of Subsection (6)(l) are permitted with a Building Permit.
 - (3) DAS and small cells are permitted pursuant to Section 5.
- (b) Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this Article, except as otherwise provided herein.
- (c) Exempt Facilities. The following are exempt from this Section:
 - (1) FCC licensed amateur (ham) radio facilities;
 - (2) Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
 - (3) A government-owned WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and State requirements. The WCF shall be exempt from the provisions of this Article for up to one month after the duration of the state of emergency; and
 - (4) A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this Article for up to one week before and after the duration of the special event.
 - (5) Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements.

Section 5. Distributed Antenna Systems and Small Cells.

- (a) Distributed Antenna Systems and small cells are allowed in all zones, regardless of the siting preferences listed in Section 9 herein, provided the applicant complies with all federal laws (such as the Americans with Disabilities Act) and State laws and requirements.
- (b) Distributed Antenna Systems and small cells in all zones are subject to approval via right-of-way encroachment permits and/or building permits and administrative review unless their installation requires the construction of a new tower or building. A Special Use Permit shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, is no more than the greater of:
 - (1) Fifteen feet (15') taller than the existing utility support structure; or
 - (2) The minimum height necessary to provide the required safety clearances from transmission or distribution lines.

- (c) A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

Section 6. General Requirements.

- (a) Inventory of Existing Sites. Each applicant for a tower shall provide to the Community Planning Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The Community Planning Director may share such information with other applicants applying for administrative approvals or special use permits under this Article or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however that the Community Planning Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (b) Color. The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
- (c) Lighting. For support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is also permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.
- (d) State or Federal Requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- (e) Site Development Permit. All wireless communication facilities shall be required to obtain a site development permit or building permit and shall be subject to the site development standards prescribed herein. A site development permit shall contain the following information:
 - (1) Construction drawings showing the proposed method of installation;
 - (2) The manufacturer's recommended installations, if any; and
 - (3) A diagram to scale showing the location of the wireless communication facility, property and setback lines, easements, power lines, all structures, and the required landscaping.
- (f) Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. Compliance with this Article is subject to the City's Code enforcement procedures pursuant to Chapter 17.09-IX, and other applicable provisions of the City's Code. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the

owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower at the owner's expense.

- (g) Notice. For purposes of this Article, any special use permit or appeal of a special use shall require notice as required by Section 17.09.215 and other applicable provisions of this Code to all abutting property owners, in addition to any other notice otherwise required by the City Code.
- (h) Signs. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.
- (i) Visual Impact. All WCFs in residential uses and zones and within two hundred feet (200') of residential zones shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.
- (j) Use of Stealth Design/Technology. The applicant shall provide justification why it is not employing stealth technology. Stealth design is required for macrocell facilities in residential zones, and to the extent shown in Table 1 and elsewhere as provided in this Chapter. Stealth and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communication facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the State.
- (k) Building-mounted WCFs.
 - (1) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.
 - (2) All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.
 - (3) Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.
- (l) Antenna Arrays. Wireless communication antenna arrays are permitted in any zone as long as they are located upon an existing structure (except on single family houses, duplexes, signage or a building less than sixty feet [60'] in height), that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet (15') above the structure. Installation on city property requires the execution of necessary agreements. However, if any support tower is needed to achieve the needed elevation, then a Special Use Permit is required. If a new equipment cabinet is to be installed, it must be screened if it is higher than the existing screened facility.

(m) WCFs in the Public Rights-of-Way.

- (1) Utility support structure - mounted equipment. All pole-mounted transmission equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible.
- (2) License or agreement. For all WCFs to be located within the right-of-way, prior to submitting for a permit, the applicant must have a valid municipal agreement, license, franchise agreement, Right-of-Way agreement, encroachment permit or exemption otherwise granted by applicable law. If the applicant is willing to install its ancillary facilities underground, that determination by the City shall be subject to administrative review.

(n) Accessory Uses.

- (1) Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.
- (2) All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to applicable permits.
- (3) No equipment shall be stored or parked on the site of the tower, unless used in direct support of the antennas or the tower or antennas that are being repaired.

(o) Accessory Equipment. In residential zones, all accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

(p) Site Design Flexibility. Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval by the City.

(q) General Standards and Construction Provisions.

- (1) All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand the minimum wind speed as required by the City's currently adopted International Building Code, as amended.
- (2) Structures shall be permitted and constructed to meet current, adopted City Building Code requirements.
- (3) All structures shall conform to FCC and FAA regulations, if applicable.
- (4) If any setback or bufferyard as prescribed within this Code requires a greater distance than required of this Article, the greater distance shall apply.

- (5) Landscaping, Screening and Fencing. In all zoning districts, the following additional landscaping shall be required beyond that which is required for the zone in which it is located:
- (i) Equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with buffer yard and street tree landscaping as required for the zone in which located or with another design acceptable to the Planning Director. Artwork may also be used to screen ground equipment. At the City's discretion, as an alternative to general landscaping and screening requirements, the applicant, at its expense, shall do an artistic wrap designed by a local artist around the equipment cabinets. Alternatively, where technically feasible, the applicant shall incorporate the cabinet and other equipment into the base of a new pole (for example, for a small cell) provided there is adequate space in the right-of-way and that ADA sidewalk accessibility requirements can be met. All provisions of the ADA (including, but not limited to, clear space requirements) shall be met by the applicant.
 - (ii) In particular, the ground level view of towers shall be mitigated by additional landscaping provisions as established through the special use permit process. The use of large trees from the approved urban forestry list of recommended species or native conifers is required at the spacing specified for the specific trees chosen. Alternatively, a landscaping plan may be submitted with the special use permit and, if approved, shall take precedence over the foregoing requirement.
 - (iii) Except for locations in the right-of-way, a site-obscuring fence (for example, wrought iron as opposed to barbed wire) no less than six feet (6') in height from the finished grade shall be constructed around each tower and around related support or guy anchors. Access shall only be through a locked gate. Any fence shall comply with the other design guidelines of the Code.
- (6) New Poles. To the extent technically feasible, new poles must be designed to match the existing street furniture, light fixtures and other poles, and they shall serve a dual purpose (for example, a new light fixture, flag pole or banner clips).
- (7) Other Published Materials. All other information or materials that the City may reasonably require, from time to time, make publicly available and designate as part of the application requirements.

Section 7. Sharing Of Support Towers and Collocation of Facilities.

- (a) It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.
- (b) No new tower may be constructed within one mile of an existing tower, unless it can be demonstrated that the existing tower is not available or feasible for collocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant. Factors to be considered in determining whether applicant has made this demonstration include those listed below in Subsection (c).
- (c) Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to the City Code, the Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Commission concludes that the goals of this Article are better served thereby.

- (1) Height of the proposed tower. Towers exceeding a height of 75 feet shall be able to accommodate collocation of one additional provider. Additional height to accommodate additional collocation may be approved if the applicant submits information certifying the tower has capacity for at least two additional providers. The applicant shall provide a letter indicating their good faith intent to encourage collocation on the tower.
 - (2) Proximity of the tower to residential structures and residential district boundaries.
 - (3) Nature of uses on adjacent and nearby properties.
 - (4) Surrounding topography.
 - (5) Surrounding tree coverage and foliage.
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (7) Proposed ingress and egress.
 - (8) No existing structures are located within the geographic area which meet applicant's engineering requirements.
 - (9) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (10) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (11) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (12) The applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
- (d) Placement Provisions - Towers. Towers shall be located only in those areas described in Table 1, provided that towers that are proposed to be located in a residential zone or within 200 feet of a residential zone shall be subject to the siting priorities set forth for preferred tower locations in Section 9.

Table 1 New Tower Criteria				
Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	Stealth Design	Setback from Property Lines (does not apply within ROW)
Residential R-1 through R-34 (incl. infill) MH-8 NC & CC	Yes or No	75' [1]	Required	20'
Commercial C-17 & C-17L DC	Yes or No	76' - 90'[2]	Optional[2] Required[3]	20'
Manufacturing M & LM	Yes or No	91' - 120'[4]	Optional	20'

[1] If an applicant wants to construct a tower in a residential zone or within 200' of a residential zone, then stealth design is required.

[2] An additional 20 feet in height is allowed if applicant uses stealth design.

[3] DC zone requires stealth design. Preferred location on top of existing structure.

[4] An additional 30 feet in height is allowed if applicant uses stealth design.

Towers in industrial zones (M & LM) are subject to administrative review as long as the other requirements of this Article are met.

Section 8. Setback Requirements.

- (a) Notwithstanding the setbacks provided for in Table 1, when a residence is located on an adjacent property, the support tower structures shall be set back from property lines as required by that zone or a minimum of one foot (1') for every foot of tower height, whichever produces the greater setback, unless:
- (1) the setback is waived by the owner of the residence; or
 - (2) the tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a 100-foot tall monopole with a breakpoint at eighty feet (80'), the minimum setback distance would be twenty-two feet (22') (110% of 20 feet, the distance from the top of the monopole to the breakpoint) or the minimum side yard setback requirements for that zone, whichever is greater. Provided, that if an applicant proposes to use breakpoint design technology to reduce the required setback from a residence, the issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer.
- (b) All equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located.

Section 9. Preferred Tower Locations.

All new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (7):

- (1) City-owned or operated property and facilities not in the downtown, infill or residential zones and not including right-of-way;
- (2) industrial zones (M and LM);
- (3) commercial zones (C-17 and C-17L);
- (4) other non-residential zones (NC and CC);
- (5) City rights-of-way in residential zones;
- (6) parcels of land in residential zones;
- (7) designated historic structures, Downtown Core (DC) zoning district and overlay zoning districts, including neighborhoods with additional protections.

The applicant for a tower located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, shall address these preferences in an alternative sites analysis prepared pursuant to Section 10 below.

Section 10. Submittal Requirements.

(a) Alternative Sites Analysis.

- (1) For towers in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.
- (2) A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.
- (3) For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives the applicant will provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and (c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

(b) Collocation Consent. A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

(c) Documentation. Applications submitted under this Section for towers shall include the following materials:

- (1) Requirement for FCC Documentation. The applicant shall provide a copy of the applicant's FCC license or registration.
- (2) Visual Analysis. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view, including all equipment and ground wires.
- (3) Design Justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this Section to the maximum extent feasible. A complete design justification must identify all applicable design standards under this Section and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
- (4) Noise Study. A noise study, if requested by the City and the proposal is in or within two hundred feet (200') of residentially zoned property, in the downtown core or in infill zoning districts, for the proposed WCF and all associated equipment.
- (5) Additional Information Required. Applicants for a Special Use Permit for a tower shall also submit the following information:
 - (i) A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities or the County), separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, parking, utility runs and other information deemed by the Community Planning Director to be necessary to assess compliance with this Article.
 - (ii) Legal description of the parent tract and leased parcel (if applicable).
 - (iii) The setback distance between the proposed tower and the nearest residential unit and the nearest residentially zoned property.
 - (iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to this Article shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - (v) A landscape plan showing specific landscape materials.
 - (vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - (vii) A description of compliance with all applicable federal, state and local laws.
 - (viii) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - (ix) A description of the suitability of the use of existing towers or other structures to provide the services to be provided through the use of the proposed new tower.
 - (x) A clear and complete written statement of purpose which shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited

by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by an Idaho-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

- (d) Radio Frequency (RF) Emissions Compliance Report. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. The qualified employee of the applicant shall submit his or her qualifications with the application.

Section 11. Exceptions to Standards.

- (a) Applicability. Except as otherwise provided in this Article (under Site Design Flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this Section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this Code; provided this Section does not provide an exception from this Article's visual impact and stealth design.
- (b) Procedure Type. A WCF's exception is subject to approval by the Planning Commission.
- (c) Submittal Requirements. An application for a wireless communication facility exception shall include:
- (1) A written statement demonstrating how the exception would meet the criteria.
 - (2) A site plan that includes:
 - (i) Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
 - (ii) Elevations showing all components of the wireless communication facility, as it would appear with and without the exception.
 - (iii) Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
- (d) Criteria. An application for a wireless communication facility exception shall be granted if the following criteria are met:
- (1) The exception is consistent with the purpose of the development standard for which the exception is sought.
 - (2) Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
 - (3) The applicant demonstrates the following:

- (i) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
 - (ii) The gap can only be filled through an exception to one or more of the standards in this Article; and
 - (iii) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this Article's standards to the greatest extent possible.
- (4) Exceptions in Residential Zones. For a new tower proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this Article seeks to protect.

Section 12. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between them to the contrary, the owner of such unused facility and the owner of a building or land upon which the WCF is located, shall be jointly and severally responsible for the removal of abandoned WCFs and the WCFs' foundation, if any. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Section 13. Independent RF Technical Review. Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of an independent RF expert of its choice to provide technical evaluation of permit applications for WCFs, when they are subject to special use permits, conditional use or administrative review. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering. The RF expert's review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this Article. The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

Section 14. Final Inspection.

- (a) A certificate of completion will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations.
- (b) If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation.

Section 15. Compliance.

- (a) All wireless communication facilities must comply with all standards and regulations of the FCC and any State or other federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on wireless communication facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the WCF.
- (d) If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

Section 16. Indemnification. Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

Section 17. Eligible Facilities Request.

- (a) Purpose. This Section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as interpreted by the FCC in its Report and Order No. 14-153 and regulated by 47 C.F.R. § 1.40001, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this Section and Federal law.
- (b) Application Review.
 - (1) Application. The City shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The City may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.
 - (2) Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval of an Eligible Facilities Request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
 - (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 between the City and the

applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

- (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will have 10 days to notify the applicant 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired.

Section 18. Collocation Applications.

- (a) Purpose. This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter timeframe is otherwise required under this Article, the following timeframes apply to collocation.
- (b) Application Review.
- (1) Application. The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a collocation request.
 - (2) Review. Upon receipt of an application for a collocation request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 90 days of the date on which an applicant submits an application seeking approval of a collocation request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
 - (4) Tolling of the Timeframe for Review. The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

- (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 19. New Site or Tower Applications.

- (a) Purpose. This Section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.
- (b) Application Review.
 - (1) Application. The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request for a new site or tower.
 - (2) Review. Upon receipt of an application for a request for a new site or tower pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 150 days of the date on which an applicant submits an application seeking approval of a request for a new site or tower under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
 - (4) Tolling of the Timeframe for Review. The 150-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- (5) **Failure to Act.** In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 20. Application Fees. In connection with the filing of an application, the applicant shall pay all applicable application fees, according to the currently adopted fee schedule.

Section 21. Laws, Rules and Regulations. This Article shall be subject to all applicable laws, rules and regulations.

Section 22. Severability. The various parts, sentences, paragraphs, sections and clauses of this Article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Article shall not be affected thereby.

Section 23. Conflicts. These Wireless Communication Facilities regulations are in addition to other regulations in the zoning code. In case of a conflict between regulations, the most restrictive shall apply except as otherwise indicated.

WHEREUPON, a motion was passed and the Ordinance declared adopted this ____ day of _____, 2017.

CITY OF COEUR D'ALENE

Mayor

ATTEST:

City Clerk

FIRST READING:

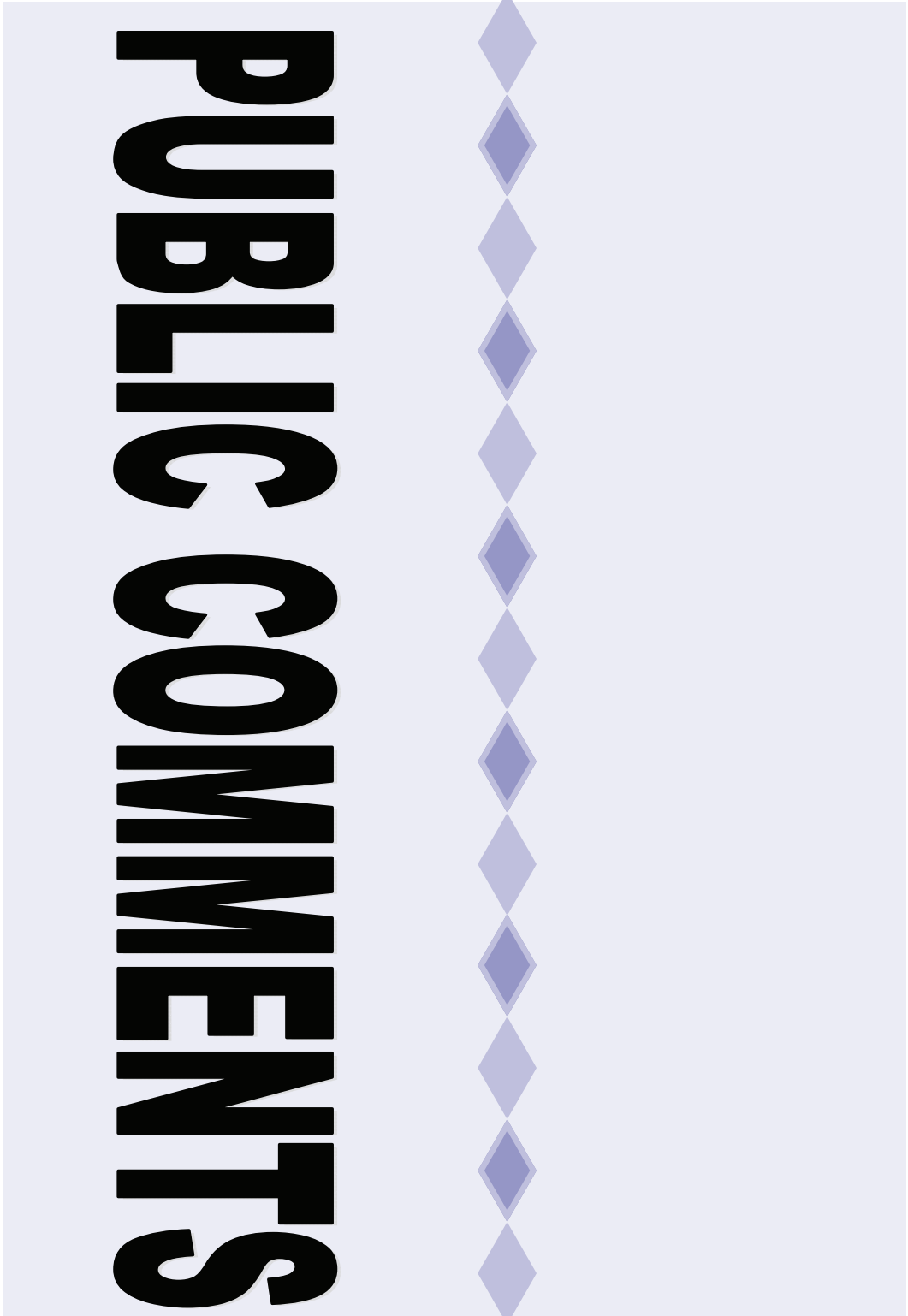
SECOND READING:

PUBLISHED:

EFFECTIVE THE ____ DAY OF _____, 2017.



PUBLIC COMMENTS





August 30, 2017

*Via Email c/o Hilary Anderson, Planning Director
HANDERSON@cdaid.org*

Coeur D'Alene Planning Commission
Chair Messina
Vice-Chair Ingalls
Commissioner Mandel
Commissioner Fleming
Commissioner Luttrupp
Commissioner Rumpler
Commissioner Ward

Re: Wireless Code Update

Dear Commissioners,

Thank you for the opportunity to provide early feedback on the draft wireless code update. Verizon has been communicating with staff to provide information about the enormous increase in consumer demand for data capacity and cell service, as well as input on the technical requirements for the new small cell technology. Verizon supports the general direction and language of the draft code and is appreciative of the effort by staff to address the needs of the wireless industry. Lelah Vaga from Verizon Wireless will be at your September 12th meeting to answer questions and provide information, as needed.

This new technology is vital to address the coverage and capacity needs of Verizon's customers. More people are using more wireless devices to do more things than ever before, like streaming video and uploading images. In fact, wireless data usage tripled from 2013 to 2015 and is forecast to multiply seven-fold from 2015 to 2019.

Verizon is working to stay ahead of the demand by adding fiber optic capacity and small cells to connect people where they need it most. Small cell antennas are usually mounted on existing utility and street light poles. The low visual profile of small cells makes them an excellent solution for delivering capacity and coverage to residential

neighborhoods. Small cells will also deliver connections for “smart communities” services to boost the flow and safety of vehicle traffic, manage resources like light, power and water and improve the quality of life of Verizon’s customers. Moreover, this technology is key to preparing Verizon’s network infrastructure so that it is capable of offering 5G wireless connections at speeds up to 100 times faster than today’s wired broadband services.

In reviewing the latest draft, there are just a couple of provisions where Verizon suggests the addition of language for clarification, also outlined in the attached redline for your convenience:

- Section 3, p.2---Clarify in the definition of “Antenna Array” that small cell antennas are not included. Verizon requests this clarification because small cells are addressed and defined separately in the code. Small Cell antennas are much smaller and much lower powered than macro antennas, and are typically placed at much lower heights. The 60 foot height minimum for antenna arrays in Section 6(l), p. 7, would be too high for small cells to provide the additional capacity and coverage that they are designed to supply.
- Section 9(b) and (c), p.7---A stricter standard of review is created here for new towers proposed to be located in a residential zone or within two hundred feet (200’) of a residential zone, or in the downtown core or infill zoning districts. Verizon requests that language specifying these applicable zones be added to Subsections (b) and (c) to mirror the language in Subsection (a), to clarify that this stricter review applies only to new towers in these zones, and not citywide.

Thank you for the opportunity to comment and we look forward to continuing to work with the city to develop a code that preserves the look and feel of your community, while providing an efficient and workable process to deliver the service your residents, visitors and businesses have come to expect.

Sincerely,



Kim Allen
Wireless Policy Group, LLC on behalf of Verizon Wireless

Draft 7-24-17
ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VIII - WIRELESS COMMUNICATION FACILITIES REGULATIONS - 17.08.800-17.08.830 OF THE CITY CODE OF THE CITY OF COEUR D'ALENE; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING FOR PERMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII - Wireless Communication Facilities Regulations - 17.08.800-17.08.830 of the City Code currently govern the City's regulation of wireless communication facilities; and

WHEREAS, federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted Section 17.08-800-17.08.830 of the City Code; and

WHEREAS, the City Council of the City of Coeur d'Alene desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the community, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City's unique character in a manner consistent with State and federal laws and regulations; and

WHEREAS, following appropriate procedures and public notice, on September 12, 2017, the Planning Commission conducted a hearing on proposed amendments to Article VIII, Section 17.08.800-17.08.830 and recommended that the City Council approve the proposed amendments; and

WHEREAS, on _____, the City Council conducted a lawfully-noticed public hearing and received the recommendations of the Planning Commission regarding the Article which modifies the code sections relating to wireless communication facilities.

NOW, THEREFORE, BE IT ORDAINED BY the City Council of the City of Coeur d'Alene, Idaho:

Section 1: Repealer and Amendments. That existing Sections 17.08.800-17.08.830 of the City Code are hereby repealed and new Sections 17.08.800-17.08.____ are inserted in their place.

Section 2: Purpose.

The provisions of this article shall be known as the Wireless Communication Facilities Regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- (a) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;
- (b) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Coeur d'Alene community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and federal law;
- (c) To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;

Comment [MP1]: WCF definitions in Section 17.02.130 will also need to be repealed.

Comment [MP2]: Suggest updating permitted uses in all zoning districts in Chapter 17.05. At this time, the identification of WCF uses is not consistently made throughout Chapter 17.05.

- (d) To preserve the opportunity for continued and growing service from the wireless industry;
- (e) To accommodate the growing need and demand for wireless communication services;
- (f) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- (g) To ensure City zoning regulations are applied consistently with federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- (h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Section 3: Definitions. As used in this article, the following terms shall have the meanings set forth below:

- (a) "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.
- (b) "Antenna array" means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.
- (c) "Applicant" means any person engaged in the business of providing wireless communication services or the wireless communications infrastructure required for wireless communications services and who submits an application.
- (d) "Backhaul network" means the lines that connect a provider's towers or cell sites to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.
- (e) "Base station" means a structure or equipment at a fixed location that enables ~~Commission~~FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this Article or any equipment associated with a tower.
 - (1) The term includes, but is not limited to, 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.
 - (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).
 - (3) The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable

zoning or siting process, or under State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

- (4) The term does not include any structure that, at the time the relevant application is filed with the State or the City under this section, does not support or house equipment described in this section.
- (f) "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (g) "Distributed Antenna System" or "DAS" means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.
- (h) "Eligible Facilities Request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment; or
 - (3) Replacement of transmission equipment.
- (i) "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 City under this Section.
- (j) "Existing" means a tower or base station that 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.
- (k) "FAA" means the Federal Aviation Administration.
- (l) "FCC" means the Federal Communications Commission.
- (m) "Macrocell" means an antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.
- (n) "Site" means, in relation to a tower that is not in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. In relation to support structures other than towers, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (o) "Small cells" mean compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells and meet both of the following qualifications:
 - (i) each antenna could fit within an enclosure of no more than six cubic feet in volume;
 - and
 - (ii) all other wireless equipment associated with the wireless communication facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- (p) "Stealth design" means technology that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines),

Comment [MP3]: Suggest adopting size qualifications for small cells in order to guide the categorization of small cell proposals vs. macrocells.

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flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas.

- (q) “Substantial change” means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
- (1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 U.S.C. Section 1455 (a));
 - (2) For towers other than towers in the public rights-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 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other 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 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 cabinets; or, for towers in the public rights-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 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - (4) It entails any excavation or deployment outside the current site;
 - (5) It would defeat the concealment elements of the eligible support structure; or
 - (6) 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, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (1) through (4).
- (r) “Tower” means any structure built for the sole or primary purpose of supporting any 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.
- (s) “Tower height” means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten feet (10’) in height, shall not be included within tower height.
- (t) “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.

- (u) "Utility support structure" means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; traffic signals; or pedestrian light standards.
- (v) "Wireless Communication Facilities" or "WCF" means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

Section 4: Applicability.

(a) New Towers, Antennas, DAS and Small Cells. All new towers, antennas, DAS and small cells in the City shall be subject to these regulations, except as otherwise provided herein.

- (1) New towers ~~and buildings~~ in zones other than Manufacturing and Light Manufacturing require a Special Use Permit.
- (2) New antenna arrays meeting the requirements of Subsection (6)(l) are permitted with a Building Permit.

(3) DAS and small cells are permitted pursuant to Subsection (5).

Comment [MP4]: For clarity.

(b) Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this Article, except as otherwise provided herein.

(c) Exempt Facilities. The following are exempt from this Section:

- (1) FCC licensed amateur (ham) radio facilities;
- (2) Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
- (3) A government-owned WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and State requirements. The WCF shall be exempt from the provisions of this Article for up to one month after the duration of the state of emergency; and
- (4) A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this Article for up to one week before and after the duration of the special event.
- (5) Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements.

(6) Routine maintenance, repair, and replacement of antennas and WCFs, so long as the overall height of the WCF is not increased.

Section 5. Distributed Antenna Systems and Small Cells.

- (a) Distributed Antenna Systems and small cells are allowed in all zones, regardless of the siting preferences listed in Section 9 herein, provided the applicant complies with all federal laws (such as the Americans with Disabilities Act) and State laws and requirements.
- (b) Distributed Antenna Systems and small cells in all zones are subject to approval via ~~administrative review, right-of-way encroachment permit or building permit~~ unless their installation requires the construction of a new tower or building. A Special Use Permit shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, is no more than the greater of:
 - (1) Fifteen feet (15') taller than the existing utility support structure; or
 - (2) The minimum height necessary to provide the required safety clearances from transmission or distribution lines.
- (c) A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells ~~spaced to provide wireless coverage in a defined geographic area~~. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

Comment [MP5]: Suggest clarifying the applicable permit process.

Section 6. General Requirements.

- (a) ~~Inventory of Existing Sites. Each applicant for a tower shall provide to the Community Planning Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The Community Planning Director may share such information with other applicants applying for administrative approvals or special use permits under this Article or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however that the Community Planning Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.~~
- (b) Color. The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
- (c) Lighting. For support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. ~~Where possible, waivers to FAA coloring and lighting requirements should be sought.~~ White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is also permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.
- (d) State or Federal Requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

Comment [MP6]: This is unnecessarily burdensome. When a new tower is proposed, the applicant need only analyze those collocation opportunities within a certain radius. AT&T suggests a half-mile radius. See below.

- (e) Site Development Permit. All wireless communication facilities shall be required to obtain a site development permit or building permit and shall be subject to the site development standards prescribed herein. A site development permit shall contain the following information:
- (1) Construction drawings showing the proposed method of installation;
 - (2) The manufacturer's recommended installations, if any; and
 - (3) A diagram to scale showing the location of the wireless communication facility, property and setback lines, easements, power lines, all structures, and the required landscaping.
- (f) Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. Compliance with this Article is subject to the City's Code enforcement procedures pursuant to Chapter 17.09-IX, and other applicable provisions of the City's Code. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower at the owner's expense.
- (g) Notice. For purposes of this Article, any special use permit or appeal of a special use shall require notice as required by Section 17.09.215 and other applicable provisions of this Code to all abutting property owners, in addition to any other notice otherwise required by the City Code.
- (h) Signs. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.
- (i) Visual Impact. ~~Except for small cells, a~~All WCFs in residential uses and zones and within two hundred feet (200') of residential zones shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.
- (j) Use of Stealth Design/Technology. ~~Except when installing small cells, t~~The applicant shall provide justification why it is not employing stealth technology. ~~Stealth design is required for macrocell facilities in residential zones and to the extent shown Table 1. Stealth and in all zones (for example, in residential zones and downtown, but excluding industrial zones), and~~ concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communication facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the State.
- (k) Building-mounted WCFs.
- (1) ~~In residential zones, a~~All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform

Comment [MP7]: Small cells minimize visual impacts through their small size and reliance on existing infrastructure.

Comment [MP8]: As noted above, by virtue of their small size and reliance on existing structures, small cells minimize visual impacts by design.

Comment [MP9]: This change is needed for consistency with Table 1, where stealth is described as optional or required, depending on the zone.

Comment [MP10]: Suggested changes to (k) for the balance struck in Spokane

to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

(2) In residential zones, aAll roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.

(3) In all other zones, aAntenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.

(l) Antenna Arrays. Wireless communication antenna arrays are permitted in any zone as long as they are located upon an existing structure (except on single family houses, ~~signage or a building less than sixty feet [60'] in height or duplexes~~), that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet (15') above the structure. Installation on city property requires the execution of necessary agreements. However, if any support tower is needed to achieve the needed elevation, then a Special Use Permit is required. If a new equipment cabinet is to be installed, it must be screened if it is higher than the existing screened facility.

(m) WCFs in the Public Rights-of-Way.

(1) Utility support structure - mounted equipment. All pole-mounted transmission equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible.

(2) License or agreement. For all WCFs to be located within the right-of-way, prior to submitting for a permit, the applicant must have a valid municipal agreement, license, franchise agreement, Right-of-Way agreement, encroachment permit or exemption otherwise granted by applicable law. ~~If the applicant is willing to install its ancillary facilities underground, that determination by the City shall be subject to administrative review.~~

(n) Accessory Uses.

(1) Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.

(2) In residential zones, aAll accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to site development permit plan approval. ~~Where there is no primary use other than the tower, the building materials for the accessory building shall be subject to the review and approval of the Planning Commission.~~

(3) No equipment shall be stored or parked on the site of the tower, unless used in direct support of the antennas or the tower or antennas that are being repaired.

(o) Accessory Equipment. In residential zones, all accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

Comment [MP11]: This appears to be an incentive to install equipment underground, but it is not clear what "that determination" is. This provision is not consistent with rest of the code, which allows utility pole replacements, etc., with administrative review, and already regulates equipment in detail elsewhere.

Comment [MP12]: Deleted because this application will not necessarily be before the Planning Commission.

(p) Site Design Flexibility. Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval by the City.

(q) General Standards and Construction Provisions.

- (1) All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand ~~a minimum 100 mile per hour (mph) wind, or~~ the minimum wind speed as required by the City's currently adopted ~~Uniform-International Building Code, as amended,~~ and required setback provisions as prescribed for the zoning districts.
- (2) Structures shall be permitted and constructed to meet current, adopted City Building Code requirements.
- (3) All structures shall conform to FCC and FAA regulations, if applicable.
- (4) If any setback or bufferyard as prescribed within this Code requires a greater distance than required of this Article, the greater distance shall apply.
- (5) Landscaping, Screening and Fencing. In all zoning districts, the following additional landscaping shall be required beyond that which is required for the zone in which it is located:
 - (i) ~~To the extent feasible, e~~equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with buffer yard and street tree landscaping as required for the zone in which located or with another design acceptable to the Planning Director. Artwork may also be used to screen ground equipment. At the City's discretion, as an alternative to general landscaping and screening requirements, the applicant, at its expense, ~~shall may~~ do an artistic wrap designed by a local artist around the equipment cabinets. Alternatively, where technically feasible, the applicant ~~shall may~~ incorporate the cabinet and other equipment into the base of a new pole (for example, for a small cell) provided there is adequate space in the right-of-way and that ADA sidewalk accessibility requirements can be met. All provisions of the ADA (including, but not limited to, clear space requirements) shall be met by the applicant.
 - (ii) In particular, the ground level view of towers shall be mitigated by additional landscaping provisions as established through the special use permit process. The use of large trees from the approved urban forestry list of recommended species or native conifers is required at the spacing specified for the specific trees chosen. Alternatively, a landscaping plan may be submitted with the special use permit and, if approved, shall take precedence over the foregoing requirement.
 - (iii) ~~Except for locations in the right-of-way, a~~A site-obscuring fence (for example, wrought iron as opposed to barbed wire) no less than six feet (6') in height from the finished grade shall be constructed around each tower and around related support or guy anchors. Access shall only be through a locked gate. Any fence shall comply with the other design guidelines of the Code.
- (6) New Poles. To the extent technically feasible, new poles must be designed to match the existing street furniture, light fixtures and other poles, and they shall serve a dual purpose (for example, a new light fixture, flag pole or banner clips).

Comment [MP13]: Designs for wind speeds will be controlled by the applicable version of the IBC and depend on topography. The IBC should simply be incorporated by reference. Setbacks are addressed elsewhere. This setback clause conflicts with Table 1.

- (7) Other Published Materials. All other information or materials that the City may reasonably require, from time to time, make publicly available and designate as part of the application requirements.

Section 7. Sharing Of Support Towers and Collocation of Facilities.

(a) It is the policy of the City to minimize the number of ~~wireless communication support~~ towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single ~~support~~ tower.

(b) No new ~~wireless communication support~~ tower may be constructed within one-half mile of an existing ~~support~~ tower, unless it can be demonstrated ~~to the satisfaction of the Planning Commission~~ that the existing ~~support~~ tower is not available or feasible for collocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant. Factors to be considered ~~by the Planning Commission~~ in determining whether applicant has made this demonstration include those listed below in Subsection (c). This separation requirement does not apply to new towers constructed to support small cells.

Comment [MP14]: This is the balance struck in Spokane.

Comment [MP15]: Towers in industrial zones will not go to the Planning Commission.

(c) Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to the City Code, the Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Commission concludes that the goals of this Article are better served thereby.

- (1) Height of the proposed tower. Towers exceeding a height of 75 feet shall be able to accommodate collocation of one additional provider. Additional height to accommodate additional collocation may be approved if the applicant submits information certifying the tower has capacity for at least two additional providers. The applicant shall provide a letter indicating their good faith intent to encourage collocation on the tower.
- (2) Proximity of the tower to residential structures and residential district boundaries.
- (3) Nature of uses on adjacent and nearby properties.
- (4) Surrounding topography.
- (5) Surrounding tree coverage and foliage.
- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Proposed ingress and egress.
- (8) No existing structures are located within the geographic area which meet applicant's engineering requirements.
- (9) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (10) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

- (11) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (12) The applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
- (d) Placement Provisions - Towers. Towers shall be located only in those areas described in Table 1, provided that towers that are proposed to be located in a residential zone or within 200 feet of a residential zone shall be subject to the siting priorities set forth for preferred tower locations in Section 9.

Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	Stealth Design	Setback from Property Lines (does not apply within ROW)
Residential R-1 through R-34 (incl. infill) MH-8 NC & CC	Yes or No	75' (1)	Required	20'
Commercial C-17 & C-17L DC	Yes or No	76' - 90'[2]	Optional[2][3] Required	20'
Manufacturing M & LM	Yes or No	91' - 120'[43]	Optional[4]	20'

Comment [MP16]: These footnote references appear to be in error.

[1] If an applicant wants to construct a tower in a residential zone or within 200' of a residential zone, then stealth design is required.

[2] An additional 20 feet in height is allowed if applicant uses stealth design.

[3] DC zone requires stealth design. Preferred location on top of existing structure.

[4] An additional 30 feet in height is allowed if applicant uses stealth design.

Towers in preferred locations industrial zones (M & LM) are subject to administrative review as long as the other requirements of this Article are met.

Section 8. Setback Requirements.

(a) Notwithstanding the setbacks provided for in Table 1, when a residence is located on an adjacent property, the support tower structures shall be set back from property lines as required by that zone or a minimum of one foot (1') for every foot of tower height, whichever produces the greater setback, unless:

- (1) the setback is waived by the owner of the residence; ✘
- (2) the tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a 100-foot tall monopole with a breakpoint at eighty feet (80'), the minimum setback distance would be twenty-two feet (22') (110% of 20 feet, the distance from the top of the monopole to the breakpoint) or the

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minimum side yard setback requirements for that zone, whichever is greater. Provided, that if an applicant proposes to use breakpoint design technology to reduce the required setback from a residence, the issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer; or

~~(3) the tower is located in a right-of-way.~~

Comment [MP17]: For consistency with Table 1, above.

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- (b) All equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located, unless the equipment is located in the right-of-way.

Comment [MP18]: Suggested for clarification.

Section 9. Preferred Tower Locations.

~~(a) Preferred Tower Locations.~~ All new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (7);

- (1) City-owned or operated property and facilities not in the downtown, infill or residential zones and not including right-of-way;
- (2) industrial zones (M and LM);
- (3) commercial zones (C-17 and C-17L);
- (4) other non-residential zones (NC and CC);
- (5) City rights-of-way in residential zones;
- (6) parcels of land in residential zones;
- (7) designated historic structures, Downtown Core (DC) zoning district and overlay zoning districts, including neighborhoods with additional protections.

The applicant for a tower located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, shall address these preferences in an alternative sites analysis prepared pursuant to Section 10 below.

~~(b) Gap in Coverage or Capacity. The applicant shall demonstrate the following with a tower application:~~

Comment [MP19]: The significant gap test in this subsection is written as an exception to standards, but it appears with the locational preferences for all new towers. This draft now incorporates the significant gap test into an exceptions section, see below, and these subsections 9(b) and (c) should be deleted for consistency.

~~(1) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;~~

~~(2) The gap can only be filled through an exception to one or more of the standards herein; and~~

~~(3) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible.~~

~~(c) Least Intrusive Means. For a new tower, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.~~

Section 10. Submittal Requirements.

(a) Alternative Sites Analysis.

- (1) For towers in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.
- (2) A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.
- (3) For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives the applicant will provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and (c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

(b) Collocation Consent. A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

(c) Documentation. Applications submitted under this Section for towers shall include the following materials:

- (1) Requirement for FCC Documentation. The applicant shall provide a copy of the applicant's FCC license or registration.
- (2) Visual Analysis. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view, including all equipment and ground wires.
- (3) Design Justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this Section to the maximum extent feasible. A complete design justification must identify all applicable design standards under this Section and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
- (4) Noise Study. A noise study, if requested by the City and the proposal is in or within two hundred feet (200') of residentially zoned property, in the downtown core or in infill zoning districts, for the proposed WCF and all associated equipment.
- (5) Additional Information Required. Applicants for a Special Use Permit for a tower shall also submit the following information:

- (i) A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities or the County), separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, parking, utility runs and other information deemed by the Community Planning Director to be necessary to assess compliance with this Article.
- (ii) Legal description of the parent tract and leased parcel (if applicable).
- (iii) The setback distance between the proposed tower and the nearest residential unit and the nearest residentially zoned property.
- (iv) The separation distance from other towers ~~described in the inventory of existing sites submitted pursuant to this Article within one-half mile~~ shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
- (v) A landscape plan showing specific landscape materials.
- (vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- (vii) A description of compliance with all applicable federal, state and local laws.
- (viii) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
- (ix) A description of the suitability of the use of existing towers ~~or other structures or alternative technology not requiring the use of towers or structures~~ to provide the services to be provided through the use of the proposed new tower.
- (x) A clear and complete written statement of purpose which shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by an Idaho-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

Comment [MP20]: Preempted by federal law. *New York SMSA Limited Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-07 (2nd Cir. 2010).

- (d) Radio Frequency (RF) Emissions Compliance Report. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. The qualified employee of the applicant shall submit his or her qualifications with the application.

Section 11. Exceptions to Standards.

- (a) Applicability. Except as otherwise provided in this Article (under Site Design Flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this Section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this Code; provided this Section does not provide an exception from this Article's visual impact and stealth design.
- (b) Procedure Type. A WCF's exception is subject to approval by the Planning Commission.
- (c) Submittal Requirements. An application for a wireless communication facility exception shall include:
 - (1) A written statement demonstrating how the exception would meet the criteria.
 - (2) A site plan that includes:
 - (i) Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
 - (ii) Elevations showing all components of the wireless communication facility, as it would appear with and without the exception.
 - (iii) Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
- (d) Criteria. An application for a wireless communication facility exception shall be granted if the following criteria are met:
 - (1) The exception is consistent with the purpose of the development standard for which the exception is sought.
 - (2) Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
 - (3) The applicant demonstrates the following:
 - (i) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
 - (ii) The gap can only be filled through an exception to one or more of the standards in this Article; and
 - (iii) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this Article's standards to the greatest extent possible.
 - (4) Exceptions in Residential Zones. For a new tower proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this Article seeks to protect.

Section 12. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall so notify the City in writing and remove the same within ninety (90) days of

giving notice to the City of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between them to the contrary, the owner of such unused facility and the owner of a building or land upon which the WCF is located, shall be jointly and severally responsible for the removal of abandoned WCFs and the WCFs' foundation, if any. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Section 13. Independent RF Technical Review. Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of an independent RF expert of its choice to provide technical evaluation of permit applications for WCFs, when they are subject to ~~special use permits, conditional use or administrative review~~. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering. The RF expert's review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this Article. The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

Comment [MP21]: Suggest that third-party RF review only be required for facilities for which a detailed alternatives analysis is required. Other WCFs are preferred, and as preferred alternatives, should be encouraged with a more simple review process.

Section 14. Final Inspection.

- (a) A certificate of completion will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations.
- (b) If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation.

Section 15. Compliance.

- (a) All wireless communication facilities must comply with all standards and regulations of the FCC and any State or other federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on wireless communication facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the WCF.
- (d) If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

Section 16. Indemnification. Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability,

damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

Section 17. Eligible Facilities Request.

- (a) Purpose. This Section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as interpreted by the FCC in its Report and Order No. 14-153 and regulated by 47 C.F.R. § 1.40001, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this Section and Federal law.
- (b) Application Review.
- (1) Application. The City shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The City may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.
 - (2) Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval of an Eligible Facilities Request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
 - (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 between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will have 10 days to notify the applicant 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired.

Section 18. Collocation Applications.

- (a) Purpose. This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter timeframe is otherwise required under this Article, the following timeframes apply to collocation.
- (b) Application Review.
- (1) Application. The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a collocation request.
 - (2) Review. Upon receipt of an application for a collocation request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 90 days of the date on which an applicant submits an application seeking approval of a collocation request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
 - (4) Tolling of the Timeframe for Review. The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 19. New Site or Tower Applications.

- (a) Purpose. This Section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter timeframe is required otherwise under this Code, the following timeframes apply to new sites or towers.

(b) Application Review.

- (1) **Application.** The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request for a new site or tower.
- (2) **Review.** Upon receipt of an application for a request for a new site or tower pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
- (3) **Timeframe for Review.** Within 150 days of the date on which an applicant submits an application seeking approval of a request for a new site or tower under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
- (4) **Tolling of the Timeframe for Review.** The 150-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (5) **Failure to Act.** In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 20. Application Fees. In connection with the filing of an application, the applicant shall pay all applicable application fees, according to the currently adopted fee schedule.

Section 21. Laws, Rules and Regulations. This Article shall be subject to all applicable laws, rules and regulations.

Section 22. Severability. The various parts, sentences, paragraphs, sections and clauses of this Article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Article shall not be affected thereby.

Section 23. Conflicts. These Wireless Communication Facilities regulations are in addition to other regulations in the zoning code. In case of a conflict between regulations, the most restrictive shall apply except as otherwise indicated.

WHEREUPON, a motion was passed and the Ordinance declared adopted this ____ day of _____, 2017.

CITY OF COEUR D'ALENE

Mayor

ATTEST:

City Clerk

FIRST READING:

SECOND READING:

PUBLISHED:

EFFECTIVE THE _____ DAY OF _____, 2017.



September 1, 2017

Mr. Tom Messina, Chair
Coeur d'Alene Planning Commission
710 Mullan Avenue
Coeur d'Alene, ID 83814

SENT VIA EMAIL: planningdiv@cdaid.org

**Re: Wireless Communications Facilities Regulations
Amendments to Sections 17.08.800, *et seq.*
07-24-2017 Draft**

Dear Chair Messina and Commissioners:

Thank you for the opportunity to comment on the City's proposed changes to its Wireless Communications Facilities Regulations, Sections 17.08.800, *et seq.* We submit these comments on behalf of AT&T.

AT&T supports the City's proposal to review small cell utility pole attachments by an administrative process. Small cells have minimal visual impact and usually rely on infrastructure (such as utility and light poles) that is already part of the built environment. Due to these significant benefits, other communities have adopted measures to encourage small cells or exempt them from land use review. Appropriate regulations for the City's rights-of-way can similarly guide the installation of small cell improvements.

AT&T further supports the City's plans to update the code so that it is consistent with federal requirements. While the current draft incorporates several clarifications we had previously suggested, AT&T requests that a further change be made to ensure consistency with federal law, as explained below.

In many respects, the draft ordinance is similar to the wireless ordinance that the City of Spokane adopted in 2015. The City of Spokane ordinance was adopted after extensive discussions among representatives of neighborhood groups, the wireless industry, and

September 1, 2017

Page 2

the city. As a result of this months-long process, the various interested parties supported the final version of the ordinance as a solution that balanced the parties' interests. As explained in more detail below, AT&T has suggested some additions to the Coeur d'Alene's draft ordinance to achieve the balance reached in Spokane. AT&T suggests that the City more completely follow the Spokane example where described in this letter and shown in the enclosed redlined draft.

Skyrocketing Demand for Wireless Service

AT&T and other carriers are responding to a significant increase in demand for wireless services. For example:

- Since 2007, AT&T has seen data usage on its network increase by 250,000 percent.¹
- Over half (50.8%) of American homes no longer use traditional landline telephone service and instead choose to be wireless only.²
- More than two-thirds of American adults aged 25–29 (72.7%) and aged 30-34 (71%) live in households with only wireless telephones.³

Furthermore, mobile communications are a critical tool for first responders in emergency situations. According to the Federal Communications Commission ("FCC"), nearly 70 percent of 911 calls are made from wireless phones and that percentage is expected to continue to grow.⁴

To meet the skyrocketing demand for wireless service in residential areas, better serve businesses, and enhance public safety, carriers need viable options for siting new facilities in a way that will provide meaningful coverage and capacity and high-quality service. Small cells can add much-needed capacity, and in some cases coverage, to targeted areas with minimal impacts to the community.

¹ http://about.att.com/story/att_details_5g_evolution.html

² CDC Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016 (released May 2017).

³ Id.

⁴ FCC 911 Wireless Services Consumer Guide <https://www.fcc.gov/consumers/guides/911-wireless-services>

Small Cells

AT&T suggests an approach that establishes volumetric size parameters for a “small cell” facility and then regulates these facilities in a manner commensurate with their minimal impact. AT&T supports the City’s proposal to allow small cell attachments to utility poles with an administrative review, Subsection (5), and suggests that the definition of “small cells” be revised to establish size parameters to guide the distinction between small cells and macrocell facilities. See Subsection (3)(o) in the enclosed redlined draft.

In addition, for clarity, AT&T suggests that small cells be expressly excepted from the code’s separation standards in Subsection (7)(b).

Significant Gap/Least Intrusive Means

AT&T remains concerned with the location of the significant gap/least intrusive means test in Subsections (9)(b)-(c). While limited by its terms to exceptions to standards (“*The gap can only be filled **through an exception** to one or more of the standards herein*”), the test is placed within generally applicable standards. More consistent with its terminology, the same test also appears in Exceptions to Standards, Section (11). Furthermore, the draft code otherwise has very detailed requirements for an alternatives analysis for new towers, which will be completed consistent with the City’s siting preferences. AT&T suggests that these inconsistencies in the draft be resolved by deleting Subsections (9)(b)-(c).

Balanced Provisions

As noted above, the draft code was clearly modeled after Spokane’s wireless code, but it does not reflect several solutions that were developed through extensive discussions between interested parties. We suggest that the City more fully incorporate Spokane’s provisions, as follows:

- Use of a half-mile radius for the applicant’s demonstration that collocation on other towers is not feasible;
- Limitations of certain strict design criteria to residential zones, where the greatest protection is justified; and
- Limitation of the significant gap/least intrusive means test to the Exceptions section.

Please see the enclosed redlined draft for details.

September 1, 2017
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Alternative Technology – Consistency with Federal Law

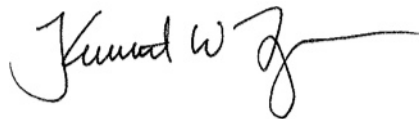
Because requiring consideration of alternative technology is preempted by federal law,⁵ AT&T suggests deleting references to alternative technology in Subsection (10)(c)(5)(ix).

Other Comments

We have provided additional suggested changes in the enclosed redlined draft, with explanatory comments.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Lyons", with a long horizontal flourish extending to the right.

Ken Lyons
206.227.0020
ken.lyons@wirelesspolicy.com

Enclosure

cc: Hilary Anderson, Community Planning Director
Sean Holm, Planner
Bob Duchon, River Oaks

⁵ *New York SMSA Limited Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-07 (2nd Cir. 2010).

Draft 7-24-17
ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VIII - WIRELESS COMMUNICATION FACILITIES REGULATIONS - 17.08.800-17.08.830 OF THE CITY CODE OF THE CITY OF COEUR D'ALENE; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING FOR PERMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII - Wireless Communication Facilities Regulations - 17.08.800-17.08.830 of the City Code currently govern the City's regulation of wireless communication facilities; and

WHEREAS, federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted Section 17.08-800-17.08.830 of the City Code; and

WHEREAS, the City Council of the City of Coeur d'Alene desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the community, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City's unique character in a manner consistent with State and federal laws and regulations; and

WHEREAS, following appropriate procedures and public notice, on September 12, 2017, the Planning Commission conducted a hearing on proposed amendments to Article VIII, Section 17.08.800-17.08.830 and recommended that the City Council approve the proposed amendments; and

WHEREAS, on _____, the City Council conducted a lawfully-noticed public hearing and received the recommendations of the Planning Commission regarding the Article which modifies the code sections relating to wireless communication facilities.

NOW, THEREFORE, BE IT ORDAINED BY the City Council of the City of Coeur d'Alene, Idaho:

Section 1: Repealer and Amendments. That existing Sections 17.08.800-17.08.830 of the City Code are hereby repealed and new Sections 17.08.800-17.08.____ are inserted in their place.

Section 2: Purpose.

The provisions of this article shall be known as the Wireless Communication Facilities Regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- (a) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;
- (b) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Coeur d'Alene community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and federal law;
- (c) To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;

- (d) To preserve the opportunity for continued and growing service from the wireless industry;
- (e) To accommodate the growing need and demand for wireless communication services;
- (f) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- (g) To ensure City zoning regulations are applied consistently with federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- (h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Section 3: Definitions. As used in this article, the following terms shall have the meanings set forth below:

- (a) "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.
- (b) "Antenna array" means a single or group of antenna elements, not including small cell antennas, and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.
- (c) "Applicant" means any person engaged in the business of providing wireless communication services or the wireless communications infrastructure required for wireless communications services and who submits an application.
- (d) "Backhaul network" means the lines that connect a provider's towers or cell sites to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.
- (e) "Base station" means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this Article or any equipment associated with a tower.
 - (1) The term includes, but is not limited to, 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.
 - (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).
 - (3) The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable

zoning or siting process, or under State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

- (4) The term does not include any structure that, at the time the relevant application is filed with the State or the City under this section, does not support or house equipment described in this section.
- (f) "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (g) "Distributed Antenna System" or "DAS" means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.
- (h) "Eligible Facilities Request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment; or
 - (3) Replacement of transmission equipment.
- (i) "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 City under this Section.
- (j) "Existing" means a tower or base station that 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.
- (k) "FAA" means the Federal Aviation Administration.
- (l) "FCC" means the Federal Communications Commission.
- (m) "Macrocell" means an antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.
- (n) "Site" means, in relation to a tower that is not in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. In relation to support structures other than towers, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (o) "Small cells" mean compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells.
- (p) "Stealth design" means technology that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas.
- (q) "Substantial change" means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - (1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10%

or more than ten feet, whichever is greater. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 U.S.C. Section 1455 (a));

- (2) For towers other than towers in the public rights-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 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other 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 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 cabinets; or, for towers in the public rights-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 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - (4) It entails any excavation or deployment outside the current site;
 - (5) It would defeat the concealment elements of the eligible support structure; or
 - (6) 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, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (1) through (4).
- (r) "Tower" means any structure built for the sole or primary purpose of supporting any 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.
- (s) "Tower height" means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten feet (10') in height, shall not be included within tower height.
- (t) "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.
- (u) "Utility support structure" means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; or pedestrian light standards.
- (v) "Wireless Communication Facilities" or "WCF" means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure,

transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

Section 4: Applicability.

- (a) New Towers, Antennas, DAS and Small Cells. All new towers, antennas, DAS and small cells in the City shall be subject to these regulations, except as otherwise provided herein.
 - (1) New towers and buildings in zones other than Manufacturing and Light Manufacturing require a Special Use Permit.
 - (2) New antenna arrays meeting the requirements of Subsection (6)(l) are permitted with a Building Permit.
- (b) Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this Article, except as otherwise provided herein.
- (c) Exempt Facilities. The following are exempt from this Section:
 - (1) FCC licensed amateur (ham) radio facilities;
 - (2) Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
 - (3) A government-owned WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and State requirements. The WCF shall be exempt from the provisions of this Article for up to one month after the duration of the state of emergency; and
 - (4) A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this Article for up to one week before and after the duration of the special event.
 - (5) Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements.

Section 5. Distributed Antenna Systems and Small Cells.

- (a) Distributed Antenna Systems and small cells are allowed in all zones, regardless of the siting preferences listed in Section 9 herein, provided the applicant complies with all federal laws (such as the Americans with Disabilities Act) and State laws and requirements.
- (b) Distributed Antenna Systems and small cells in all zones are subject to approval via administrative review unless their installation requires the construction of a new tower or building. A Special Use Permit shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, is no more than the greater of:
 - (1) Fifteen feet (15') taller than the existing utility support structure; or
 - (2) The minimum height necessary to provide the required safety clearances from transmission or distribution lines.

- (c) A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells spaced to provide wireless coverage in a defined geographic area. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

Section 6. General Requirements.

- (a) Inventory of Existing Sites. Each applicant for a tower shall provide to the Community Planning Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The Community Planning Director may share such information with other applicants applying for administrative approvals or special use permits under this Article or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however that the Community Planning Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (b) Color. The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
- (c) Lighting. For support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. Where possible, waivers to FAA coloring and lighting requirements should be sought. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is also permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.
- (d) State or Federal Requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- (e) Site Development Permit. All wireless communication facilities shall be required to obtain a site development permit or building permit and shall be subject to the site development standards prescribed herein. A site development permit shall contain the following information:
 - (1) Construction drawings showing the proposed method of installation;
 - (2) The manufacturer's recommended installations, if any; and
 - (3) A diagram to scale showing the location of the wireless communication facility, property and setback lines, easements, power lines, all structures, and the required landscaping.
- (f) Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. Compliance with this Article is subject to the City's Code enforcement procedures pursuant to Chapter 17.09-IX, and other applicable provisions of the City's Code. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a

danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower at the owner's expense.

- (g) Notice. For purposes of this Article, any special use permit or appeal of a special use shall require notice as required by Section 17.09.215 and other applicable provisions of this Code to all abutting property owners, in addition to any other notice otherwise required by the City Code.
- (h) Signs. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.
- (i) Visual Impact. All WCFs in residential uses and zones and within two hundred feet (200') of residential zones shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.
- (j) Use of Stealth Design/Technology. The applicant shall provide justification why it is not employing stealth technology. Stealth design is required in all zones (for example, in residential zones and downtown, but excluding industrial zones), and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communication facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the State.
- (k) Building-mounted WCFs.
 - (1) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.
 - (2) All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.
 - (3) Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.
- (l) Antenna Arrays. Wireless communication antenna arrays are permitted in any zone as long as they are located upon an existing structure (except on single family houses, signage or a building less than sixty feet [60'] in height), that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet (15') above the structure. Installation on city property requires the execution of necessary agreements. However, if any support tower is needed to achieve the needed elevation, then a Special Use Permit is required. If a new equipment cabinet is to be installed, it must be screened if it is higher than the existing screened facility.

(m) WCFs in the Public Rights-of-Way.

- (1) Utility support structure - mounted equipment. All pole-mounted transmission equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible.
- (2) License or agreement. For all WCFs to be located within the right-of-way, prior to submitting for a permit, the applicant must have a valid municipal agreement, license, franchise agreement, Right-of-Way agreement, encroachment permit or exemption otherwise granted by applicable law. If the applicant is willing to install its ancillary facilities underground, that determination by the City shall be subject to administrative review.

(n) Accessory Uses.

- (1) Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.
- (2) All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to site plan approval. Where there is no primary use other than the tower, the building materials for the accessory building shall be subject to the review and approval of the Planning Commission.
- (3) No equipment shall be stored or parked on the site of the tower, unless used in direct support of the antennas or the tower or antennas that are being repaired.

(o) Accessory Equipment. In residential zones, all accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

(p) Site Design Flexibility. Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval by the City.

(q) General Standards and Construction Provisions.

- (1) All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand a minimum 100 mile per hour (mph) wind, or the minimum wind speed as required by the City's currently adopted Uniform Building Code, as amended, and required setback provisions as prescribed for the zoning districts.
- (2) Structures shall be permitted and constructed to meet current, adopted City Building Code requirements.
- (3) All structures shall conform to FCC and FAA regulations, if applicable.

- (4) If any setback or bufferyard as prescribed within this Code requires a greater distance than required of this Article, the greater distance shall apply.
- (5) Landscaping, Screening and Fencing. In all zoning districts, the following additional landscaping shall be required beyond that which is required for the zone in which it is located:
 - (i) Equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with buffer yard and street tree landscaping as required for the zone in which located or with another design acceptable to the Planning Director. Artwork may also be used to screen ground equipment. At the City's discretion, as an alternative to general landscaping and screening requirements, the applicant, at its expense, shall do an artistic wrap designed by a local artist around the equipment cabinets. Alternatively, where technically feasible, the applicant shall incorporate the cabinet and other equipment into the base of a new pole (for example, for a small cell) provided there is adequate space in the right-of-way and that ADA sidewalk accessibility requirements can be met. All provisions of the ADA (including, but not limited to, clear space requirements) shall be met by the applicant.
 - (ii) In particular, the ground level view of towers shall be mitigated by additional landscaping provisions as established through the special use permit process. The use of large trees from the approved urban forestry list of recommended species or native conifers is required at the spacing specified for the specific trees chosen. Alternatively, a landscaping plan may be submitted with the special use permit and, if approved, shall take precedence over the foregoing requirement.
 - (iii) A site-obscuring fence (for example, wrought iron as opposed to barbed wire) no less than six feet (6') in height from the finished grade shall be constructed around each tower and around related support or guy anchors. Access shall only be through a locked gate. Any fence shall comply with the other design guidelines of the Code.
- (6) New Poles. To the extent technically feasible, new poles must be designed to match the existing street furniture, light fixtures and other poles, and they shall serve a dual purpose (for example, a new light fixture, flag pole or banner clips).
- (7) Other Published Materials. All other information or materials that the City may reasonably require, from time to time, make publicly available and designate as part of the application requirements.

Section 7. Sharing Of Support Towers and Collocation of Facilities.

- (a) It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.
- (b) No new wireless communication support tower may be constructed within one mile of an existing support tower, unless it can be demonstrated to the satisfaction of the Planning Commission that the existing support tower is not available or feasible for collocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant. Factors to be considered by the Planning Commission in determining whether applicant has made this demonstration include those listed below in Subsection (c).
- (c) Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to the City Code, the Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Commission may waive or reduce the burden on the applicant of one or

more of these criteria if the Commission concludes that the goals of this Article are better served thereby.

- (1) Height of the proposed tower. Towers exceeding a height of 75 feet shall be able to accommodate collocation of one additional provider. Additional height to accommodate additional collocation may be approved if the applicant submits information certifying the tower has capacity for at least two additional providers. The applicant shall provide a letter indicating their good faith intent to encourage collocation on the tower.
 - (2) Proximity of the tower to residential structures and residential district boundaries.
 - (3) Nature of uses on adjacent and nearby properties.
 - (4) Surrounding topography.
 - (5) Surrounding tree coverage and foliage.
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (7) Proposed ingress and egress.
 - (8) No existing structures are located within the geographic area which meet applicant's engineering requirements.
 - (9) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (10) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (11) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (12) The applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
- (d) Placement Provisions - Towers. Towers shall be located only in those areas described in Table 1, provided that towers that are proposed to be located in a residential zone or within 200 feet of a residential zone shall be subject to the siting priorities set forth for preferred tower locations in Section 9.

Table 1 New Tower Criteria				
Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	Stealth Design	Setback from Property Lines (does not apply within ROW)
Residential R-1 through R-34 (incl. infill) MH-8 NC & CC	Yes or No	75' (1)	Required	20'
Commercial C-17 & C-17L DC	Yes or No	76' - 90'[2]	Optional[2][3] Required	20'
Manufacturing M & LM	Yes or No	91' - 120'[3]	Optional[4]	20'

[1] If an applicant wants to construct a tower in a residential zone or within 200' of a residential zone, then stealth design is required.

[2] An additional 20 feet in height is allowed if applicant uses stealth design.

[3] DC zone requires stealth design. Preferred location on top of existing structure.

[4] An additional 30 feet in height is allowed if applicant uses stealth design.

Towers in preferred locations are subject to administrative review as long as the other requirements of this Article are met.

Section 8. Setback Requirements.

- (a) Notwithstanding the setbacks provided for in Table 1, when a residence is located on an adjacent property, the support tower structures shall be set back from property lines as required by that zone or a minimum of one foot (1') for every foot of tower height, whichever produces the greater setback, unless:
 - (1) the setback is waived by the owner of the residence; or
 - (2) the tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a 100-foot tall monopole with a breakpoint at eighty feet (80'), the minimum setback distance would be twenty-two feet (22') (110% of 20 feet, the distance from the top of the monopole to the breakpoint) or the minimum side yard setback requirements for that zone, whichever is greater. Provided, that if an applicant proposes to use breakpoint design technology to reduce the required setback from a residence, the issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer.
- (b) All equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located.

Section 9. Preferred Tower Locations.

- (a) Preferred Tower Locations. All new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, are

permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (7);

- (1) City-owned or operated property and facilities not in the downtown, infill or residential zones and not including right-of-way;
- (2) industrial zones (M and LM);
- (3) commercial zones (C-17 and C-17L);
- (4) other non-residential zones (NC and CC);
- (5) City rights-of-way in residential zones;
- (6) parcels of land in residential zones;
- (7) designated historic structures, Downtown Core (DC) zoning district and overlay zoning districts, including neighborhoods with additional protections.

The applicant for a tower located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, shall address these preferences in an alternative sites analysis prepared pursuant to Section 10 below.

(b) Gap in Coverage or Capacity. The applicant shall demonstrate the following ~~with a tower application for new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts:~~

- (1) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
- (2) The gap can only be filled through an exception to one or more of the standards herein; and
- (3) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible.

(c) Least Intrusive Means. For ~~new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts~~a new tower, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

Section 10. Submittal Requirements.

(a) Alternative Sites Analysis.

- (1) For towers in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown core or infill zoning districts, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

- (2) A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.
 - (3) For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage objectives the applicant will provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and (c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.
- (b) Collocation Consent. A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.
- (c) Documentation. Applications submitted under this Section for towers shall include the following materials:
- (1) Requirement for FCC Documentation. The applicant shall provide a copy of the applicant's FCC license or registration.
 - (2) Visual Analysis. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view, including all equipment and ground wires.
 - (3) Design Justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this Section to the maximum extent feasible. A complete design justification must identify all applicable design standards under this Section and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
 - (4) Noise Study. A noise study, if requested by the City and the proposal is in or within two hundred feet (200') of residentially zoned property, in the downtown core or in infill zoning districts, for the proposed WCF and all associated equipment.
 - (5) Additional Information Required. Applicants for a Special Use Permit for a tower shall also submit the following information:
 - (i) A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities or the County), separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, parking, utility runs and other information deemed by the Community Planning Director to be necessary to assess compliance with this Article.
 - (ii) Legal description of the parent tract and leased parcel (if applicable).
 - (iii) The setback distance between the proposed tower and the nearest residential unit and the nearest residentially zoned property.

- (iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to this Article shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - (v) A landscape plan showing specific landscape materials.
 - (vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - (vii) A description of compliance with all applicable federal, state and local laws.
 - (viii) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - (ix) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
 - (x) A clear and complete written statement of purpose which shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by an Idaho-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.
- (d) Radio Frequency (RF) Emissions Compliance Report. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. The qualified employee of the applicant shall submit his or her qualifications with the application.

Section 11. Exceptions to Standards.

- (a) Applicability. Except as otherwise provided in this Article (under Site Design Flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this Section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this Code; provided this Section does not provide an exception from this Article's visual impact and stealth design.
- (b) Procedure Type. A WCF's exception is subject to approval by the Planning Commission.
- (c) Submittal Requirements. An application for a wireless communication facility exception shall include:
 - (1) A written statement demonstrating how the exception would meet the criteria.
 - (2) A site plan that includes:

- (i) Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
 - (ii) Elevations showing all components of the wireless communication facility, as it would appear with and without the exception.
 - (iii) Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
- (d) Criteria. An application for a wireless communication facility exception shall be granted if the following criteria are met:
- (1) The exception is consistent with the purpose of the development standard for which the exception is sought.
 - (2) Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
 - (3) The applicant demonstrates the following:
 - (i) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
 - (ii) The gap can only be filled through an exception to one or more of the standards in this Article; and
 - (iii) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this Article's standards to the greatest extent possible.
 - (4) Exceptions in Residential Zones. For a new tower proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this Article seeks to protect.

Section 12. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between them to the contrary, the owner of such unused facility and the owner of a building or land upon which the WCF is located, shall be jointly and severally responsible for the removal of abandoned WCFs and the WCFs' foundation, if any. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Section 13. Independent RF Technical Review. Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of an independent RF expert of its choice to provide technical evaluation of permit applications for WCFs, when they are subject to special use permits, conditional use or administrative review. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering. The RF expert's review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of

conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this Article. The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

Section 14. Final Inspection.

- (a) A certificate of completion will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations.
- (b) If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation.

Section 15. Compliance.

- (a) All wireless communication facilities must comply with all standards and regulations of the FCC and any State or other federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on wireless communication facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the WCF.
- (d) If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

Section 16. Indemnification. Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

Section 17. Eligible Facilities Request.

- (a) Purpose. This Section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as interpreted by the FCC in its Report and Order No. 14-153 and regulated by 47 C.F.R. § 1.40001, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this Section and Federal law.

(b) Application Review.

- (1) **Application.** The City shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The City may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) **Review.** Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
- (3) **Timeframe for Review.** Within 60 days of the date on which an applicant submits an application seeking approval of an Eligible Facilities Request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
- (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 between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will have 10 days to notify the applicant 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (5) **Failure to Act.** In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired.

Section 18. Collocation Applications.

- (a) **Purpose.** This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter timeframe is otherwise required under this Article, the following timeframes apply to collocation.
- (b) Application Review.
 - (1) **Application.** The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a collocation request.

- (2) Review. Upon receipt of an application for a collocation request pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
- (3) Timeframe for Review. Within 90 days of the date on which an applicant submits an application seeking approval of a collocation request under this Section, the City shall review and act upon the application, subject to the tolling provisions below.
- (4) Tolling of the Timeframe for Review. The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 19. New Site or Tower Applications.

- (a) Purpose. This Section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.
- (b) Application Review.
 - (1) Application. The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request for a new site or tower.
 - (2) Review. Upon receipt of an application for a request for a new site or tower pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.
 - (3) Timeframe for Review. Within 150 days of the date on which an applicant submits an application seeking approval of a request for a new site or tower under this Section, the City shall review and act upon the application, subject to the tolling provisions below.

- (4) Tolling of the Timeframe for Review. The 150-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.
 - (i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 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 when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
 - (iii) Following a supplemental submission, the City will notify the applicant within 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 this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Section 20. Application Fees. In connection with the filing of an application, the applicant shall pay all applicable application fees, according to the currently adopted fee schedule.

Section 21. Laws, Rules and Regulations. This Article shall be subject to all applicable laws, rules and regulations.

Section 22. Severability. The various parts, sentences, paragraphs, sections and clauses of this Article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Article shall not be affected thereby.

Section 23. Conflicts. These Wireless Communication Facilities regulations are in addition to other regulations in the zoning code. In case of a conflict between regulations, the most restrictive shall apply except as otherwise indicated.

WHEREUPON, a motion was passed and the Ordinance declared adopted this ____ day of _____, 2017.

CITY OF COEUR D'ALENE

Mayor

ATTEST:

City Clerk

FIRST READING:

SECOND READING: