

ORDINANCE NO. 7

Series 2017

June 20, 2017: Introduced as Council Bill 5, Series 2017 by Councilor Al Blum, seconded by Councilor Katy Brown and considered in full text on first reading. Passed by a vote of 4 yes and 0 no.

July 18, 2017: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING SECTION 16-16-130 OF CHAPTER 16
OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE
CONCERNING WIRELESS COMMUNICATION FACILITIES**

WHEREAS, the City of Cherry Hills Village ("City") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23, Title 31 of the Colorado Revised Statutes, the City has authority to regulate the development of land within the City for the purposes of promoting the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, the City has adopted zoning regulations codified in Chapter 16 of the Municipal Code that, in relevant part, establish requirements for approval and siting of wireless communication facilities, codified in Section 16-16-130 of the Municipal Code; and

WHEREAS, the City has determined that it is necessary to amend Section 16-16-130 to implement recent state legislation enacted through House Bill 17-1193 regarding small cell antenna facilities; and

WHEREAS, the City Council finds the provisions set forth in this Ordinance are necessary to further the public health, safety and welfare of the community.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Section 16-16-130 of the Cherry Hills Village Municipal Code, entitled "Wireless communication facilities," is hereby amended to read in full as follows, with new text shown in underline and deleted text shown in strikethrough:

Sec. 16-16-130. Wireless communication facilities.

(a) Purpose and intent. The purpose and intent of this Section is to accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare of the community. The City Council finds that these regulations are necessary in order to:

- (1) Facilitate the provision of wireless communication services to the residents and businesses of the City;
- (2) Minimize adverse visual effects of towers through careful design and siting standards;
- (3) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and
- (4) Encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless communication antennas in order to reduce the number of towers needed to serve the community; ~~;~~
- (5) Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, and efficiently; and
- (6) Effectively manage wireless communications facilities in the public right-of-way.

~~This Section shall not govern any tower or wireless communication facilities owned or operated by a federally licensed amateur radio station operator or used exclusively for receive-only antennas, provided that all other zoning district requirements are met.~~

(b) Applicability.

The requirements of this Section shall apply to all wireless communication facility applications for base stations, alternative communication facilities and towers. This Section shall not govern any tower or wireless communication facilities owned or operated by a federally licensed amateur radio station operator or used exclusively for receive-only antennas, provided that all other zoning district requirements are met.

(b-c) Definitions. For purposes of this section, the following listed specific words and terms are defined as follows:

Co-location means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible facilities request 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 as measured from the original tower or base station zoning or siting approval, involving:

- (1) Co-location of new transmission equipment;
- (2) Removal of transmission equipment; or
- (3) Replacement of transmission equipment.

Eligible support structure means any existing tower or base station as defined in this Section.

Existing means a constructed tower or base station that was reviewed, approved and lawfully constructed in accordance with all requirements of applicable law as of the time of an eligible facilities request, provided that a tower that exists as a legal, non-conforming use and was lawfully constructed, is existing for purposes of this Section.

Owner means an individual or entity holding an ownership interest in property that is subject to this Section, as well as any other applicant for approval under this Section who is acting with authority of a record owner. Once any approvals are granted pursuant to this Section, any references to *Owner* shall also mean operators, managers or any other person or entity authorized by an *Owner* with responsibility for the approved facilities. Any other such person or entity shall be jointly and severally liable with an *Owner* for any violations of this Code arising out of the approved facilities.

Right-of-way means any public street or road that is dedicated to public use for vehicular traffic except for those rights-of-way owned by the Colorado Department of Transportation within the City limits. Right-of-way excludes any trails or recreational paths used for pedestrian, bicycle, or equestrian use.

Site means the specific boundaries of the leased or owned property or specifically defined area of the wireless communication facility subject to review under this Section and any access or utility easements related to the site. For towers, base stations and alternative communication facilities in the public rights-of-way, a site is limited to that area comprising the base of the structure and to associated transmission equipment located on the ground.

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 located in the public rights-of-way, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; or it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower by more than six (6) feet; or it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the tower; or it involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the tower; or

(2) For towers not located in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; or it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower at the level of the appurtenance, whichever is greater; or

(3) For base stations, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; or it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet; or it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or

(4) For any eligible support structure, it involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or it entails any excavation or placement outside the existing site; or it impairs the concealment elements of the eligible support structure necessary to qualify as an alternative communication facility; or it does not comply with the original application design elements or conditions of approval, including but not limited to colors, textures, surfaces, scale, character and siting, or any approved amendments thereto, subject to the thresholds established in subsections (1)—(4) of this definition.

(5) For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where installations are or will be separated horizontally, such as on building rooftops. In all other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved equipment and any modifications that were approved prior to February 22, 2012.

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.

Wireless communication facilities mean facilities that transmit and/or receive electromagnetic wireless communication signals. It includes antennas, microwave dishes, horns and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment buildings, parking area and other accessory development. A wireless communication facility does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. The following types of facilities are included within this definition:

Alternative communication facility shall mean a communication facility with an alternative design that camouflages or conceals the presence of antennas or towers such as, but not limited to, artificial trees, clock, light poles, and bell towers and steeples. A stand-alone pole in the public right-of-way upon which small cell antenna facilities are installed is considered an alternative communication facility to the extent it meets the camouflage and concealment standards of this Section.

Antenna means any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of wireless communications signals.

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 definition of a base station does not include

or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

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

Base station does not include any structure that, at the time the relevant application is filed with the City under this Section, does not support or house equipment described in subparagraphs (b)(1) or(2) above.

Freestanding communication facility means a communication facility that consists of a stand-alone support structure or tower, antennas and accessory equipment.

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

Small cell antenna facility means a communication facility where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

Temporary mobile wireless communication facility means a wireless communication facility that is capable of being moved and consists of a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer designed to provide expanded cellular network coverage or capacity.

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.

Wall-mounted communication facility means a communication facility that is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features such as parapets, chimneys and similar appurtenances.

(e-d) General requirements/location and design criteria. All wireless communication facilities and sites shall be designed and located using the criteria set forth in this Subsection. The City Council may withhold approval of any facility that does not meet any of these criteria.

- (1) Applications must contain an applicant's name, address, general contact telephone number and an emergency number where a representative of the applicant can be contacted twenty-four (24) hours per day, seven (7) days per week. Should any information represented on the application change, the

applicant must contact the City in writing and provide the updated information. An applicant for small cell antenna facilities involving multiple individual small cell antenna facilities may submit a consolidated application to the City that covers all individual small cell antenna facilities.

(2) Wireless communication facilities should be co-located with other wireless communication facilities or public utilities whenever possible, and to the extent the total facility remains consistent with the scale of the surrounding structures. Alternative communication facilities and small cell antenna facilities shall be consistent, to the extent reasonably feasible, with the size and shape of any pole-mounted wireless communication facilities installed by communications providers on utility poles that are within six hundred (600) feet of the alternative communication facility.

(3) The applicant shall (i) demonstrate how the proposed site fits into the overall communication network for the community, to confirm the necessity for the site; (ii) to the extent that it seeks approval to address gaps in coverage or capacity, demonstrate by a preponderance of the evidence that there are no viable alternatives to remedy gaps in the applicant's network; and (iii) to the extent that the applicant provides services under a license granted by a governmental authority, that a failure to approve the application will result in the applicant's inability to provide the minimum coverage or capacity it is required to provide pursuant to its license and any applicable law.

(4) The location and development of wireless communication facilities should, to the maximum extent possible, preserve the existing character of the topography and vegetation.

(5) Wireless communication facilities should be designed and located to avoid dominant silhouettes and to preserve view corridors of surrounding areas to the maximum extent possible.

(6) The visual impact of the wireless communication facilities shall be mitigated through the use of compatible architectural elements such as: colors, textures, surfaces, scale and character. The facilities shall be screened with vegetation, structures or topographical features. The facility should be integrated to the maximum extent possible, through its location and design, into the natural setting and the structural environment of the area. Accessory equipment in areas of high visibility shall, where possible, be sited below the ridgeline or designed (e.g., placed underground, depressed or located behind earth berms or structures) to minimize its profile.

(7) Where possible, wireless communication facilities should be concealed in accessory structures consistent with the architectural scale and character of the area. Ground mounted equipment shall be designed and located, where reasonably feasible, in a flush-to-grade underground equipment vault. The total footprint coverage of a wireless communication facility's accessory equipment shall not exceed three hundred fifty (350) square feet.

(8) Roof- and wall-mounted facilities shall be architecturally compatible with and colored to match the building or structure to which they are attached. Wall-mounted facilities shall be mounted as flush to the building wall as possible. A wall-mounted facility may encroach a maximum of thirty (30) inches into the required setback for the building to which it is attached, but shall not extend across the property line. Roof-mounted facilities shall only be permitted if the applicant has demonstrated that wall-mounted facilities cannot be installed due to physical or operational infeasibility.

(9) Freestanding wireless communication facilities shall not be artificially lighted, unless required by the FAA or other applicable governmental authority. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting must be shielded or directed to the greatest extent possible so as to minimize the amount of light falling onto nearby properties, particularly residences.

(10) Towers shall be designed to allow for co-location to the maximum extent possible.

(11) No portion of any antenna array may extend beyond the property line.

- (12) Wireless communication facilities should be screened to mitigate visual impacts to the maximum extent practicable.
- (13) The use of any portion of a wireless communication facility for signs for promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers and balloons, is prohibited. The City may require the installation of signage with safety information.
- (14) Fencing should not be used exclusively (it must be supplemented with vegetation and other things) to screen wireless communication facilities. Security fencing should be of a design which blends into the character of the existing environment.
- (15) The wireless communication facilities shall be designed, maintained and operated as required by applicable FCC licenses and regulations.
- (16) All wireless communication facilities shall comply with the setbacks within the zone district applicable to accessory structures or a setback equal to the height of the facilities as measured from the natural grade to the highest point of the wireless communication facility, whichever is greater, unless physical characteristics of the property and the facility allow for placement of the facility pursuant to Paragraph (c)(6) above. On land where the setback is measured from a property line that is not adjacent to residentially zoned property, the setback shall be the setback required for an accessory structure in that zone district.
- (17) Notwithstanding any other provision of this Section, towers shall not exceed forty (40) feet in height, as measured from the natural grade to the highest point of the wireless communication facility.
- (18) All owners and operators of wireless communication facilities shall comply with federal regulations for radio frequency emissions. At the time of application for a wireless communication facility, and thereafter at the request of the City upon complaint (but not more than annually), the owner or operator shall submit a project implementation report that provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and that compares the results with established federal standards. If, upon review, or at any time any wireless communication facility within the City is operational, the City finds that the facility does not meet federal regulations, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the wireless communication facilities at the owner's expense. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner.
- (19) To ensure the structural integrity of towers and any other freestanding communications facilities upon which other wireless communication facilities may be mounted, the owner of such structure shall ensure that it is of sufficient structural strength to accommodate reasonable co-location, if required, and is maintained in compliance with standards contained in applicable City building codes and all other applicable codes of the City. In addition to any other applicable standards and requirements, the following shall apply to all structures upon which wireless communication facilities are located:
 - a. Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.
 - b. No guy wires employed may be anchored within the area in front of any principal building or structure on a parcel.
 - c. All wireless communication facilities shall comply with the power line clearance standards set forth by the Colorado Public Utilities Commission.
 - d. All wireless communication facilities must be structurally designed and physically sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower or freestanding communication facility shall be designed and maintained to withstand without failure maximum forces expected from wind, tornadoes, hurricanes and other natural occurrences, when the facility is fully loaded with antennas, transmitters, other wireless communication facilities and

camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the City Manager and/or designee prepared by a structural engineer licensed in the State describing the structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done and documenting the actual calculations performed. Proof of ongoing compliance shall be provided upon request.

If, upon inspection, the City concludes that a wireless communication facility 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 a wireless communication facility, the owner shall have thirty (30) days to bring such facility into compliance with such standards. Upon good cause shown by the owner, the City Manager and/or designee may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such facility into compliance within said time limit, the City may remove such facility at the owner's expense.

(20) The fee and any additional application requirements for wireless communication facilities shall be the same as those for conditional uses contained in Section 16-18-50 of this Code.

(d-e) Approval process.

(1) Wireless communication facilities, except eligible facilities requests which are reviewed under subsection (h), may be allowed as accessory structures on private property, or public property owned by an entity other than the City, within all zone districts, if specifically authorized as a conditional use after public hearing by the City Council after recommendation from the Planning and Zoning Commission.

(2) Wireless communication facilities, except towers, may be allowed as accessory structures on property owned by the City, in any zone district, if approved by the City Council pursuant to a lease agreement with the wireless communication facility provider. Applications for towers on property owned by the City shall require approval through a conditional use process as a conditional use which includes public hearings.

(3) Notwithstanding any provisions of this Subsection, applications for some certain wireless communication facilities may be approved administratively as set forth in this subsection. Applications for alternative communication facilities and wall-mounted communication facilities shall be determined by the City Manager or his or her designee in accordance with the criteria set forth in this Subsection and Section 16-3-40 of this Chapter. Upon receipt of an application for administrative approval of an alternative communication facility, the City shall schedule a meeting to discuss the application with the applicant and interested parties. The applicant shall be responsible for providing written notice to all adjacent property owners to the proposed wireless communication facility or five hundred (500) feet from the wireless communication facility if such facility is located within a public right-of-way ("affected property owners"). Such notice shall occur at least fifteen (15) days prior to the meeting date and shall be sent by certified mail, return receipt requested, and must include the time and place of the meeting and a description of the application. Within five (5) days after such meeting, provided that no affected property owner makes a written request that the matter be considered by the Planning and Zoning Commission and City Council as a conditional use, the City Manager or his designee may approve or deny the application administratively. Denial of an application may be appealed to the City Council. If an affected property owner makes a written request that the matter be heard by the Planning and Zoning Commission and City Council, it shall proceed as a request for a conditional use pursuant to Paragraph (d)(1) above.

(4) Notwithstanding any provisions of this Section, the following procedures shall apply to the use of temporary mobile wireless communication facilities.

a. Use of temporary mobile wireless communication facilities for television broadcasts or to increase capacity of a wireless network for major events may be approved through the major event permit process under Article XXI of this Chapter, taking into consideration the general

requirements/location and design criteria set forth in Paragraphs (e d)(1), (11), (15) and (16) of this Section.

- b. Use of temporary mobile wireless communication facilities or television broadcast equipment in conjunction with federal, state or local emergencies, natural disasters or similar major public interest events may be approved administratively by the City Manager or his or her designee, subject to reasonable time limitations approved by the City Manager based on the nature, scope and duration of the emergency, disaster or similar public interest event.

(e-f) Wireless communication facilities in public rights-of-way: Subject to the City's permitting process, wireless communication facilities located solely exclusively within public rights-of-way shall be permitted by administrative action of the City Manager or his or her designee, based upon the following criteria:

- (1) The facilities must be placed on existing poles, upon replacement poles of the same dimensions or upon replacement poles of a dimension that would otherwise be permitted under existing regulations for any utility operating in the City.
- (2) Any necessary wiring or cabling shall be located within the pole or, if not technically feasible, located within fully enclosed sheathing attached to the pole. Such sheathing shall be of the same color as the pole, shall be limited in size to that necessary to cover the wiring or cabling and may not extend out from the pole more than three (3) inches.
- (3) The area of the facilities on any pole, other than sheathing enclosing wiring or cabling described in Paragraph (2) above, may not exceed three (3) cubic feet for antenna enclosures and seventeen (17) cubic feet for any primary equipment enclosures fifteen (15) square feet, and the facilities add no more than ten (10) feet of additional height to the pole and do not project outward in any direction a distance of more than twenty-four (24) inches.
- (4) Any ground equipment shall be buried or screened by landscaping approved by the City. The owner of the facilities shall maintain such landscaping.
- (5) ~~Notwithstanding the administrative approval set forth in this Subsection, if an applicant is proposing to add to the total number of poles located in the area impacted by its application, the City may administratively approve the application only if the proposed new pole(s) is located a minimum distance of six hundred (600) feet from any existing or other new pole proposed in the application. If a six hundred (600) feet spacing of poles cannot be achieved in the application, or if the request does not otherwise meet the criteria contained in this Subsection, the request shall require a conditional use permit.~~

(f-g) Co-location for new towers and other freestanding communication facilities. The shared use of existing towers or other freestanding communication facilities upon which wireless communication facilities can be mounted shall be preferred to the construction of new facilities. As a condition of approval of any tower or other freestanding communication facilities, the applicant shall be required to allow co-location on such facilities in the future if the facility is capable of supporting co-location, the entity wishing to co-locate is willing to pay fair market value for the space and the City requests such co-location. The application for any wireless communication facility involving a new tower or other freestanding communication facility shall include evidence that reasonable efforts have been made to co-locate within or upon an existing wireless communication facility within a reasonable distance of the proposed site, regardless of municipal boundaries. The applicant must demonstrate that the proposed wireless communication facility cannot be accommodated on existing facilities due to one (1) or more of the following reasons:

- (1) The planned equipment would exceed the structural capacity of existing and approved wireless telecommunication facilities, considering existing and planned use for those facilities.
- (2) The planned equipment, if co-located, would cause radio frequency interference with other existing or planned equipment, or exceed radio frequency emission standards which cannot be reasonably prevented.

- (3) Existing or approved wireless communication facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
- (4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.
- (5) The landowner or owner of the existing wireless communication facility refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.
- (6) No existing wireless communication facilities upon which the applicant's facilities can be mounted are located within the geographic area required to meet the applicant's engineering requirements.
- (7) Existing wireless communication facilities are not of sufficient height to meet the applicant's engineering requirements.
- (8) Existing wireless communication facilities upon which the applicant's facilities can be mounted do not have sufficient structural strength to support the applicant's proposed antennas and related equipment.
- (9) Any other reason, in the reasonable discretion of the City Manager or his or her designee.

(g-h) Eligible facilities request for existing towers and base stations. ~~This~~ The following Subsection shall apply to eligible facilities requests for co-location on, or modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

- (1) Review required. No co-location or modification to any existing tower or base station may occur except after a written request from an applicant, reviewed and approved by the City in accordance with this subsection (gh).
- (2) Application. The City shall prepare, and from time to time revise, and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is an eligible facilities request.
- (3) Review criteria. Upon receipt of an application for an eligible facilities request pursuant to this Section, the City shall review administratively such application to determine whether the application meets the following criteria for an eligible facilities request:
 - a. Does not result in a substantial change;
 - b. Does not violate a generally applicable law, regulation or other rule reasonably related to public health and safety and complies with generally applicable building, structural, electrical and safety codes;
 - c. Complies with the original application design elements or conditions of approval, including but not limited to colors, textures, surfaces, scale, character and siting, or any approved amendments thereto, subject to the thresholds established in subsections 1-4 of the definition of substantial change; and
 - d. Complies with concealment elements of the eligible support structure necessary to qualify as an alternative communication facility.
- (4) Timeframe for review. Subject to the tolling provisions of subparagraph (5) below, within sixty (60) days of the date on which the applicant submits an application seeking approval under this subsection (gh), the City shall approve the application unless it determines that the application is not covered by this subsection (gh). If the application is not considered an eligible facilities request, then the City shall process the application in accordance with section 16-16-130(de) within applicable timeframes.
- (5) Tolling of the timeframe for review. The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the applicant, or in cases where the City determines that the application is incomplete.

- a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.
- b. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness.
- c. Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Subsection. Subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(6) Failure to act. In the event the City fails to act on a request seeking approval for an eligible facilities request under this subsection (gh) within the timeframe for review (accounting for any tolling), the request shall be deemed granted. Such automatic grant of approval becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(7) Remedies; Judicial Review. Applicants and/or the City may bring claims related to this Section 16-16-130 of the Code ~~implementing Section 6409~~ in any court of competent jurisdiction.

(h-i) Decision: The decision on whether to approve or deny an application to construct or erect a wireless communication facility shall be in writing, based upon evidence presented to the City.

(i-j) Abandonment/removal of wireless communication facilities:

- a. At the time of submission of the application for a wireless communication facility, the applicant shall execute an agreement in a form acceptable to the City, to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower or freestanding communication facility used as a wireless communication facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than one hundred eighty (180) days. Upon removal, the land shall be restored, including but not limited to the landscaping of exposed soils.
- b. If, upon inspection, the City concludes that a wireless communication facility fails to comply with any applicable conditions of approval, or constitutes a danger to persons or property, then, upon written notice, the owner shall have thirty (30) days to bring such facility into compliance. If the owner fails to bring such facility into compliance within said thirty (30) days, the City may remove the facility at the owner's expense.
- c. Any wireless communication facility that is not operated for a continuous period of one hundred eighty (180) days shall be considered abandoned. The City, in its sole discretion, may require any abandoned wireless communication facility to be removed within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment. Upon removal, the site shall be restored or revegetated to blend with the surrounding environment. If such removal is not completed within said ninety (90) days, the City may consider the facility a nuisance under Subparagraph 7-1-30(12)c of this Code, and the City may remove and dispose of the same at the owner's expense. If there are two (2) or more users of a structure upon which wireless communication facilities are mounted, then this provision shall not become effective until all users cease using the structure.

(j-k) Application to existing wireless communication facilities. Any wireless communication facilities approved on or before the effective date of the amendments to this Section

September 7, 2015 ~~and related sections of this Code~~ shall comply with all applicable sections herein with respect to modification of such facilities.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 7 Series 2017, by the City Council
of the City of Cherry Hills Village, Colorado this 18th day of
July, 2017.

(SEAL)


Laura Christman, Mayor

ATTEST:


Laura Smith, City Clerk

Approved as to form:


Linda C. Michow, City Attorney

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Legal # 7574

**CITY OF CHERRY HILLS
VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 7, SERIES 2017**

A bill for an Ordinance of the
City Of Cherry Hills Village
amending Section 16-16-130 of
Chapter 16 of the Cherry Hills
Village Municipal Code concerning
Wireless Communication
Facilities

Copies of the Ordinances are on
file at the office of the City Clerk
and may be inspected during
regular business hours.

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