

**ORDINANCE NO. 10**  
**Series 2019**

October 2, 2019: Introduced as Council Bill 9, Series 2019 by Councilor Al Blum, seconded by Councilor Mike Gallagher and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

October 15, 2019: Considered in full text on second reading. Passed by a vote of 4 yes and 0 no.

**A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE,  
CREATING CHERRY HILLS VILLAGE MUNICIPAL CODE CHAPTER 20, WIRELESS  
TELECOMMUNICATIONS FACILITIES**

**WHEREAS**, the City of Cherry Hills Village is a home rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Home Rule Charter of the City of Cherry Hills Village ("Charter"); and

**WHEREAS**, in accordance with Article IV of the Charter, the City Council is authorized to adopt ordinances regarding the use and development of property, and provide for penalties for the violation thereof; and

**WHEREAS**, the City Council finds that the creation of a new Chapter of the Cherry Hills Village Municipal Code to regulate wireless telecommunications facilities is desirable in order to comply with Federal Communications Commission regulations regarding the processing of applications for approval of such facilities, and to provide approval procedures for both publicly and privately owned property; and

**WHEREAS**, the creation of a new Chapter 20 for wireless telecommunications facilities will allow the City to respond more quickly to new technologies, and to federal and state requirements regarding said technologies, without creating unintended consequences for other types of land use and development, which are subject to Chapter 16; and

**WHEREAS**, at a duly noticed meeting held on September 10, 2019, the Cherry Hills Village Planning and Zoning Commission considered a proposed new Chapter 20 and voted unanimously to recommend that the City Council adopt the new Chapter 20; and

**WHEREAS**, the City Council finds and determines that the new Chapter 20 advances the health, safety, and general welfare of the public.

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

**Section 1.** New Chapter 20 Adopted. Chapter 20 of the Cherry Hills Village Municipal Code, a copy of which is attached hereto as **Attachment A** and incorporated herein by reference, is hereby adopted.

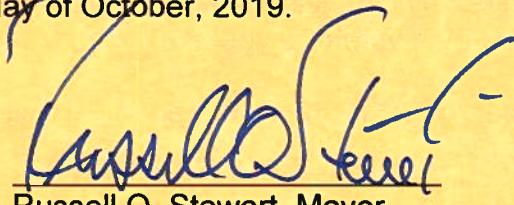
**Section 2.** Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining 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 be declared invalid.

**Section 3.** Safety. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

**Section 4.** Codification Amendments. The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Cherry Hills Village Municipal Code.

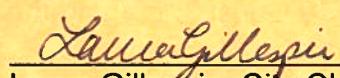
**Section 5.** Effective Date. This ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 10 Series 2019, by the City Council of the City of Cherry Hills Village, Colorado this 15<sup>th</sup> day of October, 2019.

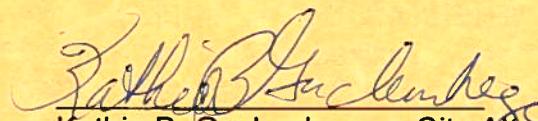


Russell O. Stewart, Mayor

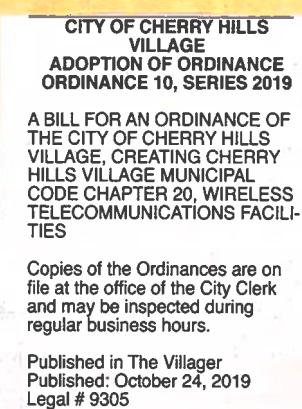
ATTEST:

  
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

  
Kathie B. Guckenberger, City Attorney

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**ATTACHMENT A**

# **CHAPTER 20 -**

## **Wireless Telecommunications Facilities**

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# **Article I. - Preliminaries**

## **Division 1. - Title, Purpose, and Applicability**

### **Sec. 20-1-10. - Title**

This Chapter shall be known and may be cited as the “City of Cherry Hills Village Wireless Communications Facilities Code,” and may be referred to herein as “this Code” or “WCF Code.”

### **Sec. 20-1-20. - Purpose and Findings.**

- (a) **Generally.** The purpose and intent of this Code is to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community.
- (b) **Findings.** The City Council finds that the regulations set out in this Code 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;
  - (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.

### **Sec. 20-1-30. - Applicability**

- (a) **Generally.**
  - (1) The requirements of this Chapter shall apply to all proposed new and proposed modifications to wireless communication facilities, including base stations, alternative communication facilities, towers, and small wireless facilities. The City may withhold approval of any facility that does not meet

one or more of the requirements or criteria set out in this Chapter or other provisions referenced herein.

- (2) Any wireless communication facilities approved on or before September 7, 2015 shall comply with all applicable sections herein with respect to modification of such facilities.

(b) **Exceptions.** This Code 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; however, such facilities may be subject to regulation pursuant to other regulations, including Chapter 16, Zoning.

# Article 2. - Location and Design

## Division 1. - Location

### Sec. 20-2-10. - Generally.

All wireless communication facilities are subject to the requirements of this Division.

### Sec. 20-2-20. - Need.

- (a) **Generally.** No wireless communication facility shall be approved unless the decision-maker finds that the need for the facility in its proposed location has been demonstrated as provided in this Section.
- (b) **Required Demonstrations.** The applicant shall:
  - (1) Demonstrate how the proposed site fits into the overall communication network for the community, to confirm the necessity for the location;
  - (2) 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
  - (3) 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.

### Sec. 20-2-30. - Siting Considerations.

- (a) **Generally.** The siting considerations set out in this Section shall be used to optimize the location of a wireless communication facility outside of public rights-of-way within the areas in which need is demonstrated pursuant to Sec. 20-2-20, Need, and within the setbacks set out in Sec. 20-2-40, Setbacks, except as provided therein.
- (b) **Hazards.** All wireless communication facilities must be physically sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements.
- (c) **Topography and Vegetation.** The location and development of wireless communication facilities shall, to the maximum extent possible, preserve the existing character of the topography and vegetation.
- (d) **Silhouettes and Views.** Wireless communication facilities shall be designed and located to avoid dominant silhouettes and to preserve view corridors of surrounding areas to the maximum extent possible.

### **Sec. 20-2-40. - Setbacks.**

- (a) **Generally.** All wireless communication facilities that are located outside of the public right-of-way shall be set back the greater of:
  - (1) The lesser of the setback that is applicable to accessory structures in:
    - a. The zoning district in which the subject property is located (see Chapter 16, Zoning); or
    - b. The adjoining zoning district, if the affected property line is a zoning district boundary and the adjacent property is not zoned for residential use; and
  - (2) The height of the wireless communications facilities, as measured from the natural grade to the highest point of the facilities.
- (b) **Alternative Setbacks.** In the alternative to the requirements of subsection (a), above, modified setbacks may be applied (subject to subsection (c), below) if the physical characteristics of the proposed site and the wireless communication facilities are such that:
  - (1) Mitigation of visual impacts pursuant to Section 20-1-160, Concealment Elements, will be materially improved through the application of alternative setbacks; or
  - (2) The siting considerations set out in Section 20-2-30, Siting Considerations, subsections (b), (c), and (d) would all be better served through the application of alternative setbacks.
- (c) **Limitations.** No portion of the facility, including any antenna array, may extend beyond the property line.

### **Sec. 20-2-50. - Public Rights of Way**

- (a) **Generally.** Wireless Communications Facilities within public rights-of-way must be installed upon, in descending order of priority:
  - (1) Existing poles;
  - (2) Replacement poles of the same dimensions; or
  - (3) Replacement poles of a dimension that would otherwise be permitted under existing regulations for any utility operating in the City.
- (b) **Wiring.**
  - (1) 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.

- (2) 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 inches.
- (c) **Volume.** The volume of wireless communications facilities on any pole, other than sheathing enclosing wiring or cabling described in subsection (b), above, shall not exceed three cubic feet for antenna enclosures and 17 cubic feet for any primary equipment enclosures, and the facilities shall add no more than 10 feet of additional height to the pole.
- (d) **Ground-Level Equipment.** Any ground-level equipment shall be buried or screened by landscaping approved by the City. The owner of the facilities shall maintain such landscaping.
- (e) **Pole Spacing.** 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 600 feet from any existing or other new pole proposed in the application. If a 600-foot 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 public hearing permit.

#### **Sec. 20-2-60. - Prohibitions.**

Wireless communications facilities are allowable on public and private property within the City as provided in this Chapter. However, in no event shall such facilities be allowed on a residential lot that is  $\frac{1}{2}$  acre or less in area.

## **Division 2. - Design and Operation**

#### **Sec. 20-2-110. - Generally**

All wireless communication facilities shall be designed using the criteria set forth in this Division.

#### **Sec. 20-2-120. - Co-Location.**

- (a) **General Requirement.** 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. Wireless communication facilities shall be co-located with other wireless communication facilities or public utilities whenever possible, provided that the original wireless communication facility and the co-located facilities, combined, remain consistent with the scale of the surrounding structures.

- (b) **Tower Design.** Towers shall be designed to allow for co-location to the maximum extent possible. 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.
- (c) **Co-Location Agreement as Condition of Approval.** As a condition of approval of any tower or other freestanding communication facility, the applicant shall be required to agree to allow co-location on such facilities in the future if:
  - (1) The facility is capable of supporting co-location;
  - (2) The entity wishing to co-locate is willing to pay fair market value for the space; and
  - (3) The City requests such co-location.

#### **Sec. 20-2-130. - Height.**

Towers shall not exceed 40 feet in height.

#### **Sec. 20-2-140. - Footprint.**

The total footprint of a wireless communication facility's accessory equipment shall not exceed 350 square feet per operator.

#### **Sec. 20-2-150. - Hazards.**

- (a) **Generally.** 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.
- (b) **Towers and Other Freestanding Facilities.**
  - (1) Any tower or freestanding communication facility shall be designed and maintained to withstand without failure maximum forces expected from wind, tornadoes, blizzards, and other natural occurrences, when the facility is fully loaded with antennas, transmitters, other wireless communication facilities and camouflaging.
  - (2) Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.
  - (3) All wireless communication facilities shall comply with the power line clearance standards set forth by the Colorado Public Utilities Commission ("PUC").

## **Sec. 20-2-160. - Consistency Among Alternative Communication Facilities and Small Cell Antenna Facilities.**

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 600 feet of the alternative communication facility.

## **Sec. 20-2-170. - Concealment Elements.**

- (a) **Generally.** All wireless communication facilities and support equipment shall be concealed according to a concealment element plan. The concealment element plan shall address the requirements of this Section, and may also address the siting considerations of Section 20-1-30, Siting Considerations, to the extent that such siting considerations are part of the strategy for concealing the facilities and equipment.
- (b) **Concealment Elements.**
  - (1) *All Facilities.* Wireless communication facilities (all types) shall be concealed using colors, textures, surfaces, scale, materials, geometries, or screening materials that blend into or compliment their context and the background upon which they will be viewed (*e.g.*, tree canopy, the sky, a building wall, etc.). Applications for approval of wireless communications facilities shall specify and illustrate the concealment elements that are applied.
  - (2) *Facilities Integrated into Buildings or Structures.* Where possible, wireless communication facilities shall be concealed by integration into architectural features or accessory structures that are consistent with the architectural scale and character of the area.
  - (3) *Facilities Attached to Buildings.*
    - a. Wall-mounted facilities are allowed only if roof-mounted facilities that are hidden behind screening materials cannot be installed due to physical or operational infeasibility.
    - b. Wall-mounted facilities shall be mounted as flush to the building wall as possible. A wall-mounted facility may encroach a maximum of 30 inches into the required setback for the building to which it is attached, but shall not extend across the property line.
  - (4) *Towers and Freestanding Facilities.*
    - a. Towers and other freestanding facilities shall be screened with vegetation, buildings or structures, or topographical features. The facilities shall be integrated to the maximum extent possible, through

its location and design, into the natural setting and the structural environment of the area.

b. No guy wires employed may be anchored within the area in front of any principal building or structure on a parcel.

(5) *Accessory Equipment.* Accessory equipment shall be located to minimize visual impact on adjacent properties and public rights-of-way in one or more of the following ways, listed in descending order of priority:

a. Enclosure within a building;

b. Installation in a flush-to-grade underground equipment vault;

c. Depressed or located behind earth berms or structures to minimize its profile; or

d. Located behind screen walls, privacy fences, buildings or structures, dense landscaping, or a combination thereof.

#### **Sec. 20-2-180. - Operations.**

(a) **Generally.** The wireless communication facilities shall be designed, maintained and operated as required by applicable FCC licenses and regulations.

(b) **Federal Emissions Regulations.** All owners and operators of wireless communication facilities shall comply with federal regulations for radio frequency (“RF”) emissions.

### **Division 3. - Fencing, Screening, Signage, and Lighting**

#### **Sec. 20-2-210. - Fencing.**

Fencing, if used to enclose a wireless communication facility, shall be supplemented with vegetation and other landscape features to screen the wireless communication facility. Security fencing shall be of a design that blends into the character of the existing environmental context.

#### **Sec. 20-2-220. - Screening**

Wireless communication facilities shall be screened to mitigate visual impacts on adjacent properties and public rights-of-way to the maximum extent practicable.

#### **Sec. 20-2-230. - Signs.**

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, or balloons, is prohibited. Signage that is required by the Federal

Communications Commission (“FCC”), or state or federal law or regulation is exempt from this provision. The City may further require the installation of signage if it determines that such signage is necessary to protect public safety or enhance security.

#### **Sec. 20-2-240. - Lighting.**

- (a) **Generally.** Freestanding wireless communication facilities shall not be artificially lighted, unless required by the Federal Aviation Administration (“FAA”) or other governmental authority with jurisdiction to mandate lighting.
- (b) **Mandated Lighting.** If lighting is required by a governmental authority, 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.

### **Division 4. - Public Hearing Permit Approval Standards**

#### **Sec. 20-2-310. - In General**

Certain types of wireless communications facilities require a public hearing permit. *See Article III, Review Procedures.* The standards set out in this Division are in addition to any other applicable standards of this Code.

#### **Sec. 20-2-320. - Public Hearing Permit Standards**

- (a) **Generally.** The standards of this Section apply to all applications for deployment of a wireless communications facility that require a public hearing permit.
- (b) **Required Findings.**
  - (1) The proposed facility, at the size and form contemplated, and at the proposed location, is necessary, and physically and functionally compatible with the surrounding community.
  - (2) The proposed facility will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or to property, improvements, or potential development in the vicinity of the proposed use. For the purposes of this standard, emissions of electromagnetic radiation that are within Federal regulatory standards shall not be considered “detrimental.”
  - (3) The proposed use will comply with all applicable zoning district regulations, use-specific standards, and all other applicable provisions of this Chapter 16 and of this Code, and will not be inconsistent with the Master Plan.

# **Article 3. - Review Procedures**

## **Division 1. - General Provisions**

### **Sec. 20-3-10. - Applicability; Application Requirements.**

Applications for approval of wireless communications facilities shall be processed according to the applicable procedures of this Article. Specific application requirements are promulgated by the Director, who shall make them available to the public.

### **Sec. 20-3-20. - Approval Process by Application Type**

- (a) **Generally.** The approval process varies depending upon the types of wireless communication facility that is the subject of the application and the location that is proposed for the siting of the wireless communication facility. The Director shall determine the type of application based on the information presented.
- (b) **New Facilities on Private Property.**
  - (1) Applications for new wireless communications facilities on private property shall be processed as provided in this subsection, unless another subsection more specifically applies.
  - (2) Approval of a new wireless communications facility on private property requires:
    - a. A Public Hearing Permit; and
    - b. A Building Permit.
- (c) **New Facilities on City Property.**
  - (1) Applications for new wireless communications facilities on City property shall be processed as provided in this subsection, unless another subsection more specifically applies.
  - (2) Approval of a new wireless communications facility on City property requires:
    - a. A Public Hearing Permit; and
    - b. A Building Permit.
    - c. A lease or license agreement between the applicant and the City that allows for such installation; and
    - d. If the proposed site is within the right-of-way, a right-of-way permit.
- (d) **Eligible Facilities Requests for Existing Towers and Base Stations.**

- (1) The Director shall process an application as an eligible facilities request, as provided in subsection (d)(2), below, if the Director finds that:
  - a. The proposal does not result in a substantial change;
  - b. The proposal 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. The proposal 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. The proposal complies with concealment elements of the eligible support structure necessary to qualify as an alternative communication facility.
- (2) Approval of eligible facilities requests requires:
  - a. An Administrative WCF Permit;
  - b. A building permit; and
  - c. If located within public property, including but not limited to rights-of-way:
    - i. A lease or license agreement between the applicant and the City that allows for such installation; and
    - ii. If the proposed site is within the right-of-way, a right-of-way permit.

**(e) Building-Mounted Wireless Communications Facilities.**

- (1) The Director shall process applications for building-mounted wireless communications facilities.
- (2) Approval of such facilities requires:
  - a. An Administrative WCF Permit;
  - b. A building permit; and
  - c. If located within public property, a lease or license agreement between the applicant and the City that allows for such installation.

**(f) Small Wireless Facilities.**

- (1) The Director shall process applications for small wireless facilities, except those that do not qualify for administrative review due to the pole spacing requirements of Section 22-2-50(e), above.
- (2) Approval of such facilities requires:
  - a. An Administrative WCF Permit (except as provided in subsection (f)(1), above);
  - b. A building permit; and
  - c. If located within public property, including but not limited to rights-of-way:
    - i. A lease or license agreement between the applicant and the City that allows for such installation; and
    - ii. If the proposed site is within the right-of-way, a right-of-way permit.

(g) **Temporary Wireless Communications Facilities.**

- (1) Placement and 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 Director or City Manager, subject to reasonable time limitations approved by same based on the nature, scope and duration of the emergency, disaster or similar event.
- (2) 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 special event permit process under Section 16-7-330, *Major Special Events*, and Article II, Division 6, *Major Special Events*, taking into consideration the requirements of this Chapter to the extent practicable.

## **Division 2. - Standardized Review Procedures**

### **Sec. 20-3-105. - Standardized Review Process**

(a) **Generally.** The standard approval procedures of this Division apply to all applications for approvals or permits under this Chapter.

(b) **Process.** The approval procedures set out in Section 20-3-110 to Section 20-3-185, inclusive, are undertaken in sequence until an application is considered and decided by the designated decision-maker for the type of application at issue. Table 20-3-105, *Standardized Procedures*, lists the approval steps that are required, based on the type of review.

TABLE 20-3-105 STANDARDIZED PROCEDURES		
Process Step <sup>1</sup>	Type of Review	
	Administrative WCF Permit	Public Hearing WCF Permit
20-3-110	Not Applicable	Applicable
20-3-115	Optional	Optional
20-3-120	Required	Required
20-3-125	Required	Required
20-3-130	Required	Required
20-3-135	Applicable	Applicable
20-3-140	Applicable	Applicable
20-3-145	Required	Required
20-3-150	Applicable	Applicable
20-3-155	Not Required	Required
20-3-160	Not Applicable	Required
20-3-165	Not Applicable	Applicable
20-3-170	Applicable	Applicable
20-3-175	Applicable	Applicable
20-3-180	Applicable	Applicable
20-3-185	Applicable	Applicable

**TABLE NOTE:**

<sup>1</sup> The references in this column are to the Sections of this Division that describe the process step.

## Sec. 20-3-110. - *Ex Parte* Communications

(a) **Generally.** It is the policy and practice of the City to decide applications only on the merits presented in the application, on-record public comments, and at public hearings (if public hearings are required). Therefore, *ex parte* communications are not allowed.

(b) **Timing.** The prohibition on *ex parte* communications begins on the date of application and ends when the appeal period for an issued development order has expired.

(c) **Inadvertent Communications.**

- (1) It is not always possible to prevent *ex parte* communications. Elected and appointed officials who hear applications required by this Chapter shall not privately discuss the merits of a pending application.
- (2) If a communication is received outside of the record (*e.g.*, it is not in the application, agency comments, or public comments, nor was it presented at a noticed public hearing), then the official shall disclose the communication, including the speaker and the substance of the communication, on the record of the public hearing before the application is heard.
- (3) The decision-maker or recommending body must base its decision only on the evidence presented on the record. The contents of the *ex parte* communication shall not be considered part of the record for decision-making unless the information in the communication is also presented at the hearing (other than through the required disclosure).

### **Sec. 20-3-115. - Pre-Application Meeting**

- (a) **Generally.** A pre-application meeting is an opportunity, at the potential applicant's option, for the potential applicant to meet with City staff before filing an application, in order to:
  - (1) Identify the applicable review procedures and timelines;
  - (2) Review preliminary materials and identify potential issues and related information requirements; and
  - (3) Identify what fees will be due, including whether an escrow payment will be required for professional consultant review.
- (b) **Limitations.** Suggestions and comments by City Staff at a pre-application meeting are advisory in nature and shall not bind the City with respect to decision-making on the subsequent application.
- (c) **Meeting Logistics.** Pre-application meetings may be conducted in person, by telephone, or by internet-based communication tools, as may be agreed between the potential applicant and the Director.
- (d) **Meeting Materials.** The potential applicant shall bring to (or submit prior to) the pre-application meeting sufficient supporting materials to explain, as applicable to the type of application to be submitted.
- (e) **Summary.** Upon request by the potential applicant, within 10 business days after the pre-application meeting, The Director shall deliver to the applicant:
  - (1) A checklist of submittal materials that will be necessary for the type(s) of application(s) sought; and

(2) A copy of the City's application fee schedule.

### **Sec. 20-3-120. - Application**

(a) **Generally.** Every application for approval that is required by this Chapter shall be submitted on a form approved by the Director, along with the corresponding application fee (fees are established by resolution of the City Council). Unless waived by the Director, all applications shall include electronic versions of all attachments in a format approved by the Director.

(b) **Forms.**

(1) The Director shall promulgate and periodically revise, as necessary, forms for each type of application required by this Chapter.

(2) Application forms and related checklists shall include the specific information that is required to process each type of application. The specific information requirements shall be established and periodically revised by the Director, and have the purpose of facilitating:

- a. The evaluation of applications for compliance with the standards of this Chapter; and
- b. The administration of this Chapter.

(3) The Director is authorized to establish a standardized format for each type of required submittal, and to allow deviations from the format in instances where the Director finds that an alternative format would provide for more efficient review.

(4) Application forms and checklists shall be dated by the Director on the date that they are promulgated. Applicants may utilize the form of application that is available on the date of application, or the prior form, if the form that is available on the date of application was promulgated less than 14 days prior to the date of application.

(c) **Reporting of Updates.** If the Director promulgates an update or amendment to the application forms, the Director shall report same to the Planning and Zoning Commission and the City Council at their next regular meetings. The City Council may overrule a decision by the Director to update or amend application forms.

(d) **Waiver of Requirements.** Application checklist requirements may be waived by the Director if the nature of the application is such that the requirements would serve no useful purpose. The Director may not waive application fees.

## **Sec. 20-3-125. - Application Fees and Escrows**

- (a) **Generally.** Fees shall be charged to offset the cost of application processing (including any application for amendments of existing approvals), reviews, public notices, hearings, and recordkeeping. Application fees to be charged by the City shall be established, from time to time, by resolution adopted by the City Council.
- (b) **Recording Fees.** Recording fees of the Arapahoe County Clerk and Recorder's Office shall be paid to the County by the Applicant at the time of any required recording.
- (c) **Referral Agency Fees.** The Applicant may be required to pay any fees assessed by referral agencies in advance of their review and comment. Failure to obtain comments from referral agencies due to failure to pay review fees may result in denial of an application.
- (d) **Escrow for Consultant Review.**
  - (1) *Consultant Review Authorized.*
    - a. The Director is authorized to retain professional consultants at the Applicant's expense to assist in the review of applications or petitions submitted pursuant to this Chapter, Chapter 15, Chapter 16, Chapter 17, Chapter 18, or Chapter 19.
    - b. The Director may make an initial determination as to the use of consultants at the time of the pre-application meeting, and may revise the determination at the time of application if new or changed information in the application materials justifies the revision.
  - (2) *Initial Escrow Payment.*
    - a. If the Director determines that an application will require review by professional consultants, then the Director shall execute an escrow agreement in a form approved by the City Attorney, and make an initial escrow payment in an amount sufficient to cover the estimated review costs. A schedule of minimum required escrows for different application types may be attached to the fee resolution described in subsection (a), above.
    - b. The Director shall provide the Applicant with a preliminary estimate of professional consultant review fees at a time established during the pre-application meeting by agreement with the Applicant. Alternatively, the Director may advise the Applicant regarding the amount of a fixed-fee that has been established in advance for the type of application presented.

- (3) *Use of Escrow Payment.* The City may draw upon the escrow, in the City's discretion, to pay the fees and expenses of professional consultants retained by the City to review the application.
- (4) *Additional Escrow Funds.*
  - a. The Director may require additional escrow funds to be paid for additional services related to the application, should they become necessary. Failure of the applicant to timely provide additional escrow funds may result in delays in application processing.
  - b. If a balance is due at the time an application is approved, it shall be paid by the applicant as a condition of approval.
  - c. If a balance is due at the time an application is denied, it shall be paid by the applicant within 30 days after delivery of an invoice to the applicant.
- (5) *Return of Escrow Funds.* Escrow funds shall be returned to the Applicant as follows:
  - a. If the Director decides not to use consultants, then escrow funds shall be returned to the Applicant within 30 days of said decision.
  - b. If the Applicant withdraws the application, then the Director shall notify the consultants to stop work within one business day after the withdrawal. Promptly after receipt of a final invoice from the consultants, the Director shall return the escrow to the Applicant, less the amount required to pay the consultants for work actually performed.
  - c. When the application is decided, any positive escrow balance shall be returned to the Applicant within 60 days.
- (6) *Account Reports.* Applicants shall be provided with a monthly accounting of the use of escrow funds.
- (7) *Delinquent Payments.*
  - a. If the Applicant does not pay additional escrow funds required by subsection (d)(4), above within 10 days after written notice from the City, then, in addition to the other remedies the City may have, the City shall be entitled to a lien on the subject property, or the City may elect to certify the assessed costs and expenses to the office of the County Treasurer for collection in the same manner as general property taxes are collected. Such lien shall be perfected and may be foreclosed upon in accordance with applicable state laws.

- b. Nothing herein shall authorize the City to charge the applicant for costs and expenses the City incurs as a result of litigating a matter against the applicant or against a third party, unless such charges are otherwise authorized by law.

(8) *Fixed-Fee Consultant Review.* The Director is authorized to establish:

- a. A roster of consultants that are pre-qualified to conduct reviews of various types; and
- b. For routine application types with predictable review fees, a schedule of fixed-fees for consultant review.

### **Sec. 20-3-130. - Completeness Review**

- (a) **Generally.** The Director shall review all submitted applications for completeness. A complete application includes:
  - (1) All of the materials required on the application forms, except as waived by the Director;
  - (2) All required professional certifications and signatures; and
  - (3) All fees and escrows that are required for application processing.
- (b) **Incomplete Applications.** If the application is not complete, the Director shall deliver a Notice of Deficiency to the applicant. A timely Notice of Deficiency tolls the shot clock.
- (c) **Complete Applications.** Complete applications shall be processed according to the applicable procedures of this Article.

### **Sec. 20-3-135. - Shot Clocks**

- (a) **Generally.**
  - (1) Shot clocks are FCC-mandated time frames for review of applications under this Chapter. If the City does not act on the application on or before the expiration of the shot clock period, the City is presumed not to have acted within a “reasonable period of time” under FCC regulations.
  - (2) The shot clock commences upon the filing of an application. The City shall not refuse to accept an application during business hours on a business day.
- (b) **Shot Clocks by Application Type; Batching.**
  - (1) *Generally.* The following are the presumptively reasonable periods of time (“shot clocks”) for action on applications seeking authorization for deployments in the categories set forth below:

- a. Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.
- b. Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
- c. Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.
- d. Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.*

- a. If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (b)(1)a. or paragraph (b)(1)c. of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.
- b. If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (b)(1)a. and deployments that fall within paragraph (b)(1)c. of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(c) **Tolling of Shot Clock.** Unless a written agreement between the applicant and the City provides otherwise, the tolling period for an application (if any) is as set forth below.

(1) *Initial Application to Deploy Small Wireless Facilities.* If the Director issues a Notice of Deficiency to the applicant on or before the 10<sup>th</sup> day after submission of an initial application to deploy small wireless facilities, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the Director to render the application complete.

(2) *All Other Initial Applications.* For all other applications not included within subsection (c)(1), above, the tolling period shall be the number of days from—

- a. The day after the date when the Director issues a Notice of Deficiency to the applicant until the date when the applicant submits all the documents and information identified by the Director to render the application complete;

- b. But only if the Notice of Deficiency is delivered on or before the 30<sup>th</sup> day after the date when the application was submitted.
- (3) *Supplemental Submissions Following a Notice of Deficiency.* For supplemental submissions following a Notice of Deficiency, the tolling period shall be the number of days from—
  - a. The day after the date when the Director issues a second Notice of Deficiency based on the Director's original notice under paragraph (c)(1) or paragraph (c)(2) of this Section (or a subsequent Notice of Deficiency), until the date when the applicant submits all the documents and information identified by the Director to render the application complete;
  - b. But only if the second or subsequent Notice of Deficiency is delivered on or before the 10<sup>th</sup> day after the date when the applicant makes a supplemental submission.
- (d) **Shot Clock Date.** The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock identified pursuant to paragraph (b)(1) of this Section; provided that if the date calculated in this manner is a "holiday" as defined in 47 C.F.R. § 1.4(e)(1), or a legal holiday within the State of Colorado or the City of Cherry Hills Village, the shot clock date is the next business day after such date.
- (e) **Shot Clock Period.** Action shall be taken on applications under this Chapter within the shot clock period. The shot clock period is the shot clock date, plus the number of days that the shot clock is tolled (if any); provided that if the date calculated in this manner is a "holiday" as defined in 47 C.F.R. § 1.4(e)(1), or a legal holiday within the State of Colorado or the City of Cherry Hills Village, the shot clock date is the next business day after such date.

### **Sec. 20-3-140. - Stale Applications**

- (a) **Generally.** This Section is intended to extinguish applications that become stale due to inaction by the Applicant.
- (b) **Expiration of Stale Applications.** When an action by the Applicant is required for further processing of an application, the application shall become void one year after the date that the action is requested if the Applicant either fails to take action or fails to request an extension of time pursuant to subsection (c) below.

(c) **Extension of Time.** The time for expiration of an application may be extended by up to six additional months upon written request of the Applicant before the end of the period set out in Subsection (b), above.

### **Sec. 20-3-145. - Administrative Review**

(a) **Generally.** Upon determination that an application is complete and sufficient, the Director shall cause the application to be reviewed for technical compliance with all applicable requirements of this Chapter, as follows:

- (1) Appropriate City staff or consultants shall review the application; and
- (2) The application may be referred to applicable referral agencies and individuals for review and comment pursuant to Section 20-3-150, *Referrals*, provided that such referrals do not toll the applicable shot clocks except by agreement with the Applicant.

(b) **Staff Comments.** Before the shot clock period expires, the Director shall provide comments from City staff or consultants (collectively, "STAFF COMMENTS"), if any, to the Applicant. The staff comments shall provide Staff or consultant input and address or include comments by referral agencies. The Applicant may revise and resubmit the application with appropriate changes based on staff comments (executing an agreement to toll the shot clock, if appropriate to allow for further review), or the Applicant may request action on the application.

(c) **Administrative Recommendation, Decision, or Referral.** After revisions are received or action is requested according to subsection (b), above, and within the shot clock period—

- (1) If the application is for an administrative permit, then the Director shall approve, approve with conditions, or deny the application, as appropriate, and promptly provide written notice, including the reasons for the decision, to the applicant; or
- (2) If the application is for a public hearing permit, then the Director shall make a recommendation regarding the application and forward the recommendation and the application materials and staff comments to the next body that will consider it for further recommendation or approval.

(d) **Meeting Logistics.**

- (1) If the application is for a public hearing permit, then the Director shall set the application on the agenda of the next body that will consider the application. The Director shall coordinate with recommending and decision-making bodies to fix reasonable times for hearings. The Director may request a special meeting of that body if necessary to act upon the application within the shot clock period.
- (2) The Director, or a designee, shall notify the Applicant regarding the time and place of scheduled public hearings.

### **Sec. 20-3-150. - Referrals**

- (a) **Generally.** Applications may be referred for additional review by agencies or consultants according to the procedures set out in this Section.
- (b) **Inter-Jurisdictional Referrals.**
  - (1) As part of the review process, the City may seek review and comment by referral agencies that have expertise in the subject matter impacted by the application, that have jurisdiction over one or more aspects of the proposed development, or whose operations will likely be affected by the proposed development. Referral agency comments are advisory to the City.
  - (2) The Director may refer an application to any agency, jurisdiction, ditch company, land management entity, utility, or department that the Director determines is likely to be materially affected by the application. The Director's determination regarding referrals is not appealable.
  - (3) The Director shall advise the referral agency of the applicable shot clock, and shall set a time for response that provides the Director with a reasonable time period to consider the referral agency's comments.
  - (4) Failure of an agency to respond within the prescribed time period (or extended period) is interpreted as consent by that agency to the contents of the application. However:
    - a. Such consent does not waive the authority of agencies which have concurrent jurisdiction with the City; and
    - b. Such consent is not implied if the Applicant fails to pay the agency's required review fees.
- (c) **Consultant Review.** Upon notice to the Applicant, the Director may refer the application to consultants selected by the City, in order to obtain technical review and recommendations. The cost of such referrals shall be borne by the Applicant.

## **Sec. 20-3-155. - Public Notice**

- (a) **Generally.** For public hearing permits, public notice shall be provided according to the standards of this Section for a public hearing of the Planning and Zoning Commission, which shall make a recommendation to the City Council; and for a public hearing of the City Council, which shall act upon the application.
- (b) **Contents of Public Notice.** Public notice shall include the following elements:
  - (1) The phrase “PUBLIC NOTICE” or “NOTICE OF PUBLIC HEARING” at the top of the notice. For posted notice, these letters shall be not less than two inches in height.
  - (2) A brief description of the type of application.
  - (3) The date, time, and place of the hearing.
  - (4) A brief summary of what the Applicant is requesting.
  - (5) The physical address of the subject property, or if an address is not available, a location map of the property or a statement that the legal description is on file with the Administrator.
  - (6) A notice that interested persons may obtain more information from the Director.
  - (7) Contact information for the Director.
- (c) **Required Notice Types.**
  - (1) *Generally.* Public notice of hearings shall be posted and mailed not more than 21 days, and not less than 14 days, prior to the date of the hearing.
  - (2) *Posting.* Posted notice shall be on a sign in a form approved by the City.
  - (3) *Mail.* Mailed notice shall be sent via first class U.S. Mail to all owners of property within 1,000 feet of the proposed site.
- (d) **Optional Notices.**
  - (1) *Electronic Mail.* Electronic mail notice may be delivered to an opt-in distribution list that is created for the purpose of notifying people about applications for approvals and permits in the City. Electronic mail notice shall include the subject line “PUBLIC NOTICE OF PROPOSED WIRELESS COMMUNICATIONS FACILITY,” and the statement in the body of the e-mail that “Electronic mail notice is provided as a courtesy to opt-in subscribers. Failure of an e-mail communication to reach a subscriber does not constitute failure of public notice.”

(2) *Internet.* Internet notice may be posted on the official web site of the City, on a page or pages that are designated for such notices. However, internet notice is also provided as a courtesy and is not official notice. Therefore, failure of internet notice shall not constitute a failure of public notice.

(e) **Errors in Notices.** The standard for compliance with this Section shall be "substantial compliance." If the Director determines that there has been substantial compliance with the requirements of this Section, despite any particular technical error, then the decision or recommendation reached at the noticed hearing shall be final. If the Director determines that there has not been substantial compliance with the requirements of this Section due to an error, then the decision or recommendation reached at the noticed hearing shall be vacated (or the hearing on the item cancelled), and a new hearing shall be scheduled with proper notice provided.

### **Sec. 20-3-160. - Public Hearings**

(a) **Generally.** Public hearings are required for public hearing permits. Public hearings shall be carried out in accordance with the procedural rules of the body conducting the meeting or hearing.

(b) **Planning and Zoning Commission.** The Planning and Zoning Commission shall review the application and Director recommendation, hear evidence at public hearing, and thereafter make a recommendation to the City Council regarding whether the application complies with the requirements of this Chapter.

(c) **City Council.** The City Council shall act upon the application.

### **Sec. 20-3-165. - Continuances and Withdrawal**

(a) **Continuances.** Requests for continuance by the Applicant of any proceeding called for in this Chapter may be granted at the discretion of the body holding the public hearing. If granted, the Applicant shall pay all additional costs associated with the rescheduling of the proceeding.

(b) **Withdrawal.** Any application may be withdrawn, either in writing or on the record, prior to or during the hearing at which the application is considered, provided that it is withdrawn before official action is taken on the application.

### **Sec. 20-3-170. - Form of Decision**

(a) **Approval of Application.** All approved permits shall be in writing and shall specify all design elements that are intended to conceal the wireless telecommunications facility.

(b) **Denial of Application.** All denials of applications under this Chapter shall be in writing and shall specify the reasons for denial, including reference to substantial evidence in the record that supports the denial.

### **Sec. 20-3-175. - Effect of Approvals**

(a) **Generally.** It is the intent of the City that development approved pursuant to this Chapter be carried out in a timely manner pursuant to the specifications, terms, and conditions of approval; and that the steps within each approval process be carried out with diligence.

(b) **Effect of Approval or Permit.**

- (1) Approval of an application means that the City consents to the particular use, plan, or other specific activity for which the approval was granted. Physical development of land may require a sequence of related (and increasingly detailed) approvals.
- (2) Supplemental materials that are provided in support of an approval become part of the approval (*e.g.*, elevations, concealment elements, lists of building materials, etc.) unless otherwise noted in the approval itself.
- (3) Approvals and permits may be transferred to a subsequent owner of the property for which the approval or permit was issued. Transferred permits shall continue to be valid for their the duration of their original terms, and the transferee may apply for an amendment to the approval or permit in the same manner as the original Applicant.

### **Sec. 20-3-180. - Duration of Approvals**

Permits granted under this Chapter shall expire one year from the date of approval if they are not utilized, except that a lease, license, or development agreement is valid for the term set out therein.

### **Sec. 20-3-185. - Extensions of Approvals**

(a) **Generally.** The term of permits may be extended by written request according to the standards and procedures of this Section.

(b) **Timing of Application for Extension.** Expired permits cannot be extended. Written requests for extensions shall be received not later than 30 days prior to the expiration of the permit. Untimely requests for extensions will not be granted unless it is demonstrated that extraordinary circumstances (*e.g.*, an unusual severe weather event) justify the request.

(c) **Extensions for Extraordinary Circumstances.** The City Council may, by resolution, extend the term of all permits City-wide or in designated areas of the City in response to extraordinary circumstances, such as flood, wildfire, tornado, or other natural or man-made disaster which makes it temporarily infeasible to commence or continue with construction. The period of such extensions shall be determined by the City Council.

(d) **Administrative Extensions.** Unless otherwise provided in the permit, the Director may grant one extension of any permit for a period not to exceed 12 months. Such extensions may be granted upon timely written request with good cause shown.

(e) **Extensions after Hearing.**

(1) Unless otherwise provided in the permit, a hearing is required for:

- a. Extensions for terms that are longer than those which can be granted by the Administrator pursuant to subsection (d), above; and
- b. Second (and subsequent) extensions.

(2) Extensions may be granted after hearing if it is demonstrated that:

- a. There is good and reasonable cause for the request; and
- b. The Applicant has provided reasonable assurances that it will perform (or cause to be performed) the work authorized by the permit or approval within the extended term.

(f) **Extensions Pursuant to Permit or Approval Terms.** If a method of extension is provided within a permit or related agreement between the Applicant and the City, then such method of extension shall supersede this Section with respect to said permit.

(g) **Effect of Appeals, Litigation, or Mediation.**

(1) If there is an appeal, litigation, or mediation during the time period that limits the Applicant's ability to deploy a facility pursuant to a permit, lease, or license granted by the City, then the term of the permit shall be tolled for the duration of the appeal, litigation, or mediation, and the date shall be recalculated upon conclusion of the appeal, litigation, or mediation.

(2) The new expiration date shall be established by adding the number of days that the approval would have remained valid before the appeal, litigation, or mediation commenced to the date the appeal, litigation, or mediation was concluded by:

- a. The expiration of the subsequent appeal period after final judgment or order in the initial appeal or litigation, or, if no appeal is available, after issuance of the final judgment or order; or
- b. The termination of mediation by resolution of the conflict or impasse.

(3) This subsection does not apply to litigation that is related to enforcement of a violation of any part of the Cherry Hills Village Municipal Code.

## **Article 4. - Enforcement and Remedies**

### **Division 1. - Reporting Obligations and Approval Conditions**

#### **Sec. 20-4-10. - Reporting**

##### **(a) Electromagnetic Radiation Compliance Reporting.**

- (1) At the time of application for a wireless communication facility, and thereafter at the request of the Director 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.
- (2) If, upon review, or at any time any wireless communication facility within the City is operational, the Director finds that the facility does not meet federal regulations, the Director may order corrective action within a reasonable period of time established by the Director. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner.

##### **(b) Hazards.**

- (1) Proof of ongoing compliance with Section 20-1-150(b) (regarding hazards) shall be provided by the owner or operator upon the Director's request.
- (2) If, upon inspection or review of a report by the Owner or Operator, the City concludes that a wireless communication facility fails to comply with the standards of this Code or applicable building codes (see Chapter 18, Building Regulations) and standards, and that the facility thereby constitutes a danger to persons or property, then upon notice being provided to the owner of a wireless communication facility, the owner shall have 30 days to bring such facility into compliance. Upon good cause shown by the owner, the Director may extend such compliance period not to exceed 90 days from the date of said notice.

##### **(c) Removal of Facility.** If after order of the City to correct a violation under subsections (a) or (b), above, the owner fails to timely bring such facility into compliance, the City may remove such facility at the owner's expense.

#### **Sec. 20-4-20. - Failure to Comply with Conditions of Approval**

If, upon inspection, the City determines 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 30 days to bring such facility into compliance. If the owner fails to bring such facility into compliance within said 30 days, the City may remove the facility at the owner's expense.

## **Division 2. - Abandonment and Removal**

### **Sec. 20-4-110. - Obsolescence**

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 180 days..

### **Sec. 20-4-120. - Abandonment**

Any wireless communication facility that is not operated for a continuous period of 180 days shall be considered abandoned. The City, in its sole discretion, may require any abandoned wireless communication facility to be removed within 90 days of receipt of notice from the City notifying the owner of such abandonment. 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 as to the structure until all users cease using the structure.

### **Sec. 20-4-130. - Site Restoration**

Upon removal of a facility as provided in this Division, the site shall be restored and revegetated to blend with the surrounding context. If removal is ordered by the City and not completed within 90 days, the City may consider the facility a nuisance under subparagraph 7-1-30(12)c of this Code, and may remove and dispose of the facility at the owner's expense.

## Article 5. - Definitions

**TABLE 16-10-110**  
**TABLE OF ACRONYMS**

Acronym	Meaning
ac.	Acre
Art.	Article
ASTM	American Society for Testing and Materials
CATV	Cable Television
CC	City Council
CCR	Colorado Code of Regulations
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Public Health and Environment
C.F.R.	Code of Federal Regulations
C.O.	Certificate of Occupancy
C.R.S.	Colorado Revised Statutes
DAS	Distributed Antenna Systems
dBA	A-weighted Decibels
Div.	Division
e.g.	exempli gratia (translation: "for example"), which is followed by illustrative, non-exclusive examples
EPA	United States Environmental Protection Agency
ESMR	Enhanced Specialized Mobile Radio
FCC	Federal Communications Commission
ft.	Feet
i.e.	id est (translation: "that is"), which is followed by an elaboration of the topic
lf.	Linear Feet
LAN	Local Area Network
Max.	Maximum
Min.	Minimum
MSDS	Material Safety Data Sheet
N/A	Not Applicable
NOV	Notice of Violation
PC	Planning Commission
PCS	Personal Communications Services
RF	Radio frequency
ROW	Right-of-Way
Sec.	Section
sf.	Square Feet
U.S.C.	United States Code
WTF	Wireless Telecommunications Facilities

## A

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**Action or To Act** on an application means to approve the application or to deny the application in writing.

**Alternative Communication Facility** means a wireless communication facility with an alternative design that camouflages or conceals the presence of antennae or towers; such as, but not limited to, artificial trees, clocks, light poles, 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 definition.

**Antenna** means an apparatus designed for the purpose of emitting radiofrequency ("RF") radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission ("FCC") authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term "antenna" does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. part 15.

**Antenna Equipment** means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

**Antenna Facility** means an antenna and associated antenna equipment.

**Applicant** means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

**Application.** See Siting Application.

**Authorization** means any approval that the City must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, approval under this Chapter and building permit.

## B

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**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 phrase "base station" includes, but is not limited to:

- (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;
- (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 and small-cell networks).

- (3) Any structure other than a wireless communications tower that, at the time an application is filed, already supports or houses equipment described in items (1) or (2), above (for the purposes of this definition, "WIRELESS EQUIPMENT"), that has been reviewed and approved by the City, even if the structure was not built for the sole or primary purpose of providing such support.

The phrase "base station" does not include:

- (1) A wireless communications tower or any equipment associated with a wireless communications tower.
- (2) Any structure that, at the time an application is filed, does not support or house wireless equipment.

**Business Day** means any day that is not a holiday as defined in 47 C.F.R. § 1.4(e)(2), and any day that is not a legal holiday as defined by the State of Colorado or the City of Cherry Hills Village.

## C

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**City** means the City of Cherry Hills Village, Colorado.

**Code of Federal Regulations** ("CFR") means the codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

**Co-location**, in general, 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.

**Commercial Mobile Services** means any mobile service (as defined in 47 U.S.C. § 153) that is provided for-profit and makes interconnected service available:

- (3) To the public; or
- (4) To such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the FCC.

## D

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**Deployment** means placement, construction, or modification of a personal wireless service facility.

**Director** means the Community Development Director or designee thereof.

## **E**

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**Eligible Facilities Request** means any request for modification of an existing wireless communications 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: co-location of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment.

**Eligible Support Structure** means any existing wireless communications tower or base station.

**Existing**, in reference to wireless communications towers or base stations, 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; or wireless communications tower that exists as a legal, non-conforming use which was lawfully constructed.

## **F**

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**Federal Register** means the official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

**Fence** means a structure that serves as an enclosure, barrier, screen, or boundary, or that serves to mark a boundary, enclose a piece of land or divide a piece of land into distinct portions and that is usually constructed from wood, metal, wire, vinyl, masonry, stone, or other manufactured material.

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

## **H**

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**Height** means “Structure Height” or “Building Height” as same are described in Chapter 16 of this Code, according to the context in which the word is used.

## **N**

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**Notice of Deficiency** means a written notice from the Director to the Applicant that the application is materially incomplete, clearly and specifically identifying the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information.

## **O**

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**Other Wireless Communications Facility** means:

- (5) Communications facilities that are mounted on a base station; or

(6) Modification of an existing wireless communications tower or base station that involves:

- a. Collocation of new transmission equipment;
- b. Removal of transmission equipment; or
- c. Replacement of transmission equipment.

**Owner** means an individual or entity holding a fee-simple or leasehold ownership interest in property that is subject to this Chapter, and includes an applicant for approval under this Chapter who is acting with the consent or direction of a fee-simple owner. The term "owner" also includes operators, managers, or any other person or entity who have responsibility for the approved facilities, as authorized by a fee-simple owner.

**P**

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**Personal Wireless Service** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

**Personal Wireless Service Facility** means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

**Public Right-of-Way** means a strip of land, generally located between private property boundaries, which is owned by a governmental entity, dedicated to public use, or impressed with an easement for public use, which is primarily used for pedestrian or vehicular travel, and which is publicly maintained, in whole or in part, for such use. Public right-of-way may include without limitation the street, gutter, curb, shoulder, sidewalk, sidewalk area, on-street parking area or parking strip, drainage swale, planting strip, and any public way.

**R**

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**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.

**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.

**S**

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**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 Chapter and any access or utility easements related to same. 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.

**Shot Clock** means a period of time set by the Federal Communications Commission that is presumptively reasonable for the processing of various types of applications under this Chapter.

**Siting Application** means a written submission to the City requesting authorization for the deployment of a personal wireless service facility at a specified location.

**Small Cell Antenna Facility** means a communication facility where each antenna is located inside an enclosure of no more than three 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 cubic feet; and primary equipment enclosures are no larger than 17 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

**Small Wireless Facilities** are facilities that meet each of the following conditions:

- (7) The facilities—
  - a. Are mounted on structures 50 feet or less in height including their antennas, or
  - b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (8) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three cubic feet in volume;
- (9) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (10) The facilities do not require antenna structure registration under 47 C.F.R. part 17; and
- (11) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

**Substantial Change**, in reference to telecommunications towers or base stations, means A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (12) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater;
  - a. Changes in height shall 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 shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.
- (13) 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 20 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;
- (14) 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 percent larger in height or overall volume than any other ground cabinets associated with the structure;
- (15) It entails any excavation or deployment outside the current site;
- (16) It would defeat the concealment elements of the eligible support structure; or
- (17) 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 enumerated in provisions numbered (1) through (4), inclusive, above.

**Structure** means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

## T

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**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.

**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 phrase "transmission equipment" 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

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**Unlicensed Wireless Service** means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in 47 U.S.C. § 303(v)).

## W

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**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.

**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 otherwise permitted under other provisions of this Chapter.

**Wireless Communications Tower.** *See “Tower.”*