

**ORDINANCE NO. 5
SERIES OF 2019**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN
LAND USE CODE RELATED TO WIRELESS REGULATIONS.**

WHEREAS, in accordance with Sections 26.208 and 26.310 of the City of Aspen Land Use Code, the City Council of the City of Aspen directed the Community Development Department to draft a code amendment to amend the language regarding wireless regulations in order to comply with requirements of state and federal law; and,

WHEREAS, pursuant to Section 26.310, applications to amend the text of Title 26 of the Municipal Code shall begin with Public Outreach, a Policy Resolution reviewed and acted on by City Council, and then final action by City Council after reviewing and considering the recommendation from the Community Development; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach and received comments from the Planning and Zoning Commission and Historic Preservation Commission regarding the code amendment; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on February 25, 2019, the City Council approved Resolution No. 13, Series of 2019, by a five to zero (5 - 0) requesting a code amendment to amend the wireless and related sections of the City's Land Use Code; and,

WHEREAS, the Aspen City Council has reviewed the proposed code amendments and finds that the amendments meet or exceed all applicable standards pursuant to Chapter 26.310; and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO THAT:

Section 1: Code Amendment Objective

The objective of the proposed Land Use Code amendment is to bring the Land Use Code into compliance with state and federal regulations related to wireless facilities.

Section 2: Aspen Land Use Code sub-section 26.575.130, *Wireless communications facilities and equipment*, is hereby rescinded.

Section 3: Aspen Land Use Code Chapter 26.505, *Wireless communications facilities and equipment*, is hereby added as follows:

Chapter 505
Wireless Communication Facilities and Equipment

Sec. 26.505.010	Purpose
Sec 26.505.020	Applicability
Sec 26.505.030	Definitions
Sec 26.505.040	Operational Standards
Sec 26.505.050	Procedures for Review
Sec 26.505.060	Application Contents
Sec 26.505.070	General Provisions and Requirements
Sec 26.505.080	Design Standards

26.505.010 Purpose

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

26.505.020 Applicability

All applications for the installation or development of WCFs and/or equipment must receive building permits and/or right-of-way permits, as applicable, prior to installation. Prior to the issuance of appropriate building permits, WCFs and/or equipment shall be reviewed for approval by the Community Development Director in conformance with the provisions and criteria of this Chapter. WCFs and equipment subject to the provisions and criteria of this Chapter include without limitation, WCFs within the Public Rights of Way, cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. These provisions and criteria do not apply to noncommercial satellite dish antennae, radio and television transmitters and antennae incidental to residential use. All references made throughout this Chapter, to any of the devices to which this Chapter is applicable, shall be construed to include all other devices to which this Chapter is applicable.

A. Future Amendments to Chapter 26.505.

All future amendments to this Chapter shall be exempt from the requirement of Policy Resolution for code amendments (Section 26.310.020.B.1-2). Future amendments may proceed directly to a First and Second Reading, pursuant to Section 26.310.020.B.3.

26.505.030 Wireless Definitions.

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

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

Alternative Tower Structure. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are intended to be compatible with the natural setting and surrounding structures, and camouflage or concealment design techniques so as to make the presence of antennas or towers compatible with the surrounding area pursuant to this Chapter. This term also includes any antenna or antenna array attached to an Alternative Tower Structure and a Replacement Pole. A stand-alone Monopole in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Chapter.

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

Base Station. A structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any 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 pursuant to this chapter has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the city pursuant to title 26 of the Code

has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the application is filed with the city under this chapter, does not support or house equipment described herein in sub-paragraphs 1 and 2 of this definition.

Camouflage, Concealment, Or Camouflage Design Techniques. A Wireless Communication Facility (“WCF”) is camouflaged or utilizes Camouflage Design Techniques when any measures are used in the design and siting of Wireless Communication Facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated in an outdoor fixture such as a flagpole, or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or is integral within, incorporated on or replaces existing permitted facilities or vertical infrastructure located in the right-of-way (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation. (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Request. Any request for modification of an Existing Tower that does not Substantially Change the physical dimensions of such Tower involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement of Transmission Equipment.

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

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

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

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

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

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

Small Cell Facility. A WCF 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 seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Pole, and Base Stations.

Substantial Change to a WCF. A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:

(1) For Towers, other than Alternative Tower Structures or Towers in the Right-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 feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;

(2) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;

(3) For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or

(4) For Towers in the Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinets associated with the structure;

(5) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;

(6) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or

(7) For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (i), (ii), (iii) and (iv) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Tower. Any structure that is designed and constructed for the sole or primary purpose of supporting one or more 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. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

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

26.505.040 Operational Standards.

A. **Federal Requirements.** All WCFs shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate WCFs, including, without limitation, the requirement that WCFs shall not present a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the WCF owner's expense.

B. **Radio Frequency Standards.** All WCFs shall comply with federal standards for radio frequency emissions. Applicants for WCFs shall submit a letter certifying that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions. The owner or operator of an approved WCF shall also provide the City with the FCC license for the WCF at the time the license is issued for the facility.

C. **Signal Interference.** All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. The Applicant shall provide a written statement from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems and shall allow the City to monitor interference levels with public safety communications during this process. Additionally, the Applicant shall notify the City at least ten calendar days prior to the

introduction of new service or changes in existing service, and shall allow the City to monitor interference levels with public safety communications during the testing process.

D. **License to Use.** The Applicant may execute a license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.

E. **Operation and Maintenance.** To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building, safety, and engineering codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

F. **Abandonment and Removal.** If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall commence removal of the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the City, in its sole discretion, shall not approve any new WCF application until the Applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the City.

G. **Hazardous Materials.** No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

H. **Collocation.** No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Community Development Department, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

I. **Compliance with Applicable Law.**

Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, engineering, electrical,

and safety requirements as set forth in the Aspen Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
3. Be maintained in good working condition and to the standards established at the time of application approval; and
4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the City.

26.505.050 Procedures for Review.

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the City in accordance with this Chapter.

A. Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Public Rights-of-Way, but excepting Eligible Facilities Requests, and Small Cell Facilities in the Right-of-Way.

In all zone districts, applications for these WCF facilities shall be reviewed by the Community Development Department for conformance to this Section and using the Design Review procedures set forth in Section 26.505.080. For WCFs in the rights-of-way, except for Small Cell Facilities in the Right-of-Way, that are found to have a significant visual impact (e.g., proximity to historical sites, obstructing views), be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Community Development Department may refer the application to Planning and Zoning Commission or Historic Preservation Commission, as applicable, for a Special Review determination.

B. Review Procedures for Towers.

In all zone districts, Towers, other than those defined or excepted in (A) above, must apply for Special Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 26.505.050.L. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

C. Review Procedures for Eligible Facilities Requests.

1. In all zone districts, Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information may include, without limitation, whether the project:
 - a. Constitutes a Substantial Change; or
 - b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

The application shall not require the applicant to demonstrate a need or business case for the proposed modification or Collocation.

2. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Community Development Department shall review such application to determine whether the application so qualifies.
3. Timeframe for Review. Subject to the tolling provisions of subparagraph 4 below, within 60 calendar days of the date on which an applicant submits a complete application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.
4. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the applicant, or in cases where the Community Development Department 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 the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - c. Following a supplemental submission, the City will notify the applicant within ten (10) days that if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify

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

5. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
6. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7) of the Telecommunication Act, as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

D. Review Procedures for Small Cell Facilities in the Public Right-of-Way.

1. Small Cell Facilities in the Public Right-of-Way may be approved pursuant to a Master License Agreement or similar form of authorization or individually in accordance with the provisions of this subsection.
2. Within ten (10) days of receipt of the application, the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Chapter.
3. The Director shall review the completed application for conformance with the provisions in this Chapter and may approve or deny an application within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on city infrastructure.
 - a. To toll the timeframe for incompleteness, the City must provide written notice to the Applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - b. The timeframe for review resets to zero (0) when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - 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 paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

4. Consolidated applications. The City shall allow a wireless provider to file a consolidated application for up to twenty small cell facilities and receive a single permit for the small cell network. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

E. General.

Except for applications under subsections C and D above, pursuant to Section 26.304.020, the applicant shall conduct a pre-application conference with staff of the Community Development Department. The planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

F. Administrative review.

Except for applications under subsections C and D above, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by staff and the Community Development Director, respectively. In order to proceed with additional land use reviews or obtain a development order, the Community Development Director shall find the submitted development application consistent with the provisions, requirements and standards of this Chapter.

G. Decision

Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.

H. Appeal of Director's determination.

The Community Development Director may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria in Section 26.505.080. If the Community Development Director determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Community Development Director, the applicant may apply for special review (Chapter 26.430) by the Planning and Zoning Commission or, if applicable, by the Historic Preservation Commission, and such

application must be made within fifteen (15) calendar days of the day on which the Community Development Director's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Paragraphs 26.304.060.E.3.a, b and c of this Code.

I. Historic Preservation Commission review.

With the exception of Eligible Facilities Requests and Small Cell Facilities in the ROW, proposals for the location of WCFs or equipment on any historic site or structure, shall be reviewed by the Historic Preservation Commission (HPC). Review of applications for WCFs and/or equipment by the HPC shall replace the need for review by the Community Development Director. Likewise, if the Historic Preservation Commission determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Historic Preservation Commission, the applicant may appeal the decision to the City Council, and such appeal must be filed within fifteen (15) calendar days of the day on which the Historic Preservation Commission's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Paragraphs 26.304.060.E.3.a, b and c of this Code.

J. Building permit.

A building permit application cannot be filed unless and until final land use approval has been granted and a development order has been issued. When applying for building permits, the applicant shall submit a signed letter acknowledging receipt of the decision granting land use approval and his/her agreement with all conditions of approval, as well as a copy of the signed document granting the land use approval for the subject building permit application.

K. Right of Way permit.

A Right of Way permit application cannot be filed unless and until final land use approval has been granted and a development order has been issued. When applying for Right of Way permits, the applicant shall submit a signed letter acknowledging receipt of the decision granting land use approval and his/her agreement with all conditions of approval, as well as a copy of the signed document granting the land use approval for the subject building permit application.

L. Special review.

An application requesting a variance from the review standards for height or location of WCFs and/or equipment as set forth in this chapter (except for Eligible Facilities Requests) or an appeal of a determination made by the Community Development Director, shall be processed as a special review in accordance with the common development review procedures set forth in Chapter 26.304, and the Special Review Chapter, 26.430. The special review shall be considered at a public hearing for which notice has been posted and mailed, pursuant to Paragraphs 26.304.060.E.3.b and c.

1. **Review is by the Planning and Zoning Commission.** If the property is listed on the Aspen inventory of historic landmark sites and structures or within a Historic Overlay District and the application has been authorized for consolidation pursuant to Chapter 26.304, the Historic Preservation Commission shall consider the special review. Such special review may be approved, approved with conditions or denied based on conformance with the following criteria:
 - a. Conformance with the applicable review standards of Subsection 26.505.080.
 - b. If the facility or equipment is located on property listed on the Aspen inventory of historic landmark sites and structures or within any historic district, then the applicable standards of Chapter 26.415 (Development involving the Aspen inventory of historic landmark sites and structures or development in an "H," Historic Overlay District) shall apply.
 - c. If the facility or equipment is located on property that is subject to the Commercial Design Standards of Chapter 26.412, those applicable standards shall apply.

26.505.060 Application Contents

An application for approval of new WCFs and modified or additional WCFs that are not Eligible Facilities Requests or Small Cell Facilities Requests shall comply with the submittal requirements applicable to conditional use reviews pursuant to Chapter 26.304, Common development review procedures and Chapter 26.425, Conditional uses of the Aspen Municipal Code. Also, WCFs and equipment applications shall contain at least the following additional information:

- A. Site plan meeting the requirements of Title 29, Engineering Design Standards (29.01.020).
- B. Visual "before and after" photographs (simulations) specifying the location of antennas, support structures, transmission buildings and/or other accessory uses, access, parking, fences, signs, lighting, landscaped areas and all adjacent land uses within one hundred fifty (150) feet. Such plans and drawings should demonstrate compliance with the review standards of this Chapter.
- C. Site improvement survey including topography and vegetation showing the current status, including all utilities, easements and vacated rights of way, of the parcel certified (wet ink signed and stamped and dated within the past twelve (12) months) by a registered land surveyor, licensed in the State, which meets the requirements of Title 29, Engineering Design Standards (29.01.020).

D. Landscape plan drawn to a scale of one (1) inch equals ten (10) feet or one (1) inch equals twenty (20) feet, including "before and after" photographs (simulations) indicating size, spacing and type of plantings and indicating steps to be taken to provide screening as required by the review standards of this Section. The landscape plans shall also indicate the size, location and species of all existing vegetation and whether each of those indicated are proposed for removal (indicate proposed mitigation), relocation (indicate from and to) or preservation. The planner can determine if a landscape plan is necessary; for instance, when an antenna is to be attached to a building, this requirement may be waived by the Community Development Director.

E. Lighting plan and photometric study indicating the size, height, location and wattage of all proposed outdoor lighting sources. This study must also include a graphic indicating backlight, up-light, and glare of light from each source/fixture. This requirement can be waived by the Community Development Director if little or no outdoor lighting is proposed.

F. Prior to the issuance of the building permit, structural integrity report from a professional engineer licensed in the State of Colorado documenting the following:

1. Tower height and design, including technical, engineering, and other pertinent factors governing selection of the proposed design;
2. Total anticipated capacity of the structure, including number and types of antennas which can be accommodated;
3. Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris in the event of failure; and
4. Specific design and reconstruction plans to allow shared use. This submission is required only in the event that the applicant intends to share use of the facility by subsequent reinforcement and reconstruction of the facility; and
5. Specific design considerations for impact or breakaway characteristics as required in specific roadway right of ways.

G. Evidence that an effort was made to locate on an existing wireless telecommunication services facility site including coverage/ interference analysis and capacity analysis and a brief statement as to other reasons for success or no success.

H. Written documentation demonstrating a good faith effort in locating facilities in accordance with site selection order of preference outline below.

I. Inventory of Existing Sites. On an annual basis at the request of the City, each applicant for a WCF shall provide to the Community Development Department a narrative description, a map, and a GIS compatible data file of the applicant's existing or currently proposed WCFs within the City, and outside of the City within one mile of its boundaries. The inventory list should identify the site name, address, and a general description of the Facility (i.e., rooftop Antennas and ground-mounted equipment).

J. Abandonment and Removal. Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.

26.505.070 General Provisions and Requirements

The following provisions apply to all WCFs and equipment applications, sites and uses.

A. Prohibitions.

1. Lattice towers (a structure, with three or four steel support legs, used to support a variety of antennae; these towers generally range in height from sixty (60) to two hundred (200) feet and are constructed in areas where great height is needed, microwave antennas are required or where the weather demands a more structurally sound design) are prohibited within the City.

2. Towers, excluding Alternative Tower Structures and Small Wireless Facilities attached to Towers, shall be prohibited in the following Zone Districts: Medium-Density Residential (R-6); Moderate-Density Residential (R-15, R-15A, R-15B); Low-Density Residential (R-30); Residential Multi-Family (RMF, RMFA); and Affordable Housing/Planned Unit Development (AH-1/PUD); Conservation (C); Agricultural (Ag); Park (P); Open Space (OS); Rural Residential (RR).

3. All WCFs and equipment not prohibited by the preceding statements shall be allowed in all other zone districts subject to review and approval by the Community Development Director pursuant to the provisions, requirements and standards of this Chapter, including consistency with the dimensional requirements of the underlying zone district.

B. Site selection. Except for Small Cell Facilities in the Public Rights-of-Way, Wireless communication facilities shall be located in the following order of preference:

- First: Collocated on existing structures such as buildings, communication towers, flagpoles, church steeples, cupolas, ball field lights, nonornamental/antique street lights such as highway lighting, etc.
- Second: In locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.
- Least: On vacant ground or highly visible sites without significant visual mitigation and where screening/buffering is difficult at best.

C. Historic sites and structures. In addition to the applicable standards of Chapter 26.415, all of the foregoing and following provisions and standards of this Chapter shall apply when

wireless telecommunication services, WCFs and equipment are proposed on any historic site or structure or within any historic district.

D. Public buildings, structures and rights-of-way. Leasing of public buildings, publicly owned structures and/or public rights-of-way for the purposes of locating WCFs and/or equipment is encouraged. In cases where a facility is proposed on City property that is not in the Public Right-of-Way, specific locations and compensation to the City shall be negotiated in lease agreements between the City and the provider on a case-by-case basis and would be subject to all of the review criteria contained in this Section. Such agreements would not provide exclusive arrangements that could tie up access to the negotiated sites or limit competition and must allow for the possibility of Collocation with other providers as described in Section 26.505.080.B, below.

26.505.080 Design Standards

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

A. Camouflage/Concealment. All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of industry best practices materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.

1. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., placed underground, inside of existing structure, depressed, or located behind earth berms) to minimize their profile.
2. The camouflage design may include the use of Alternative Tower Structures should the Community Development Department determine that such design meets the intent of this Code and the community is better served thereby.
3. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only). Coloring of welds, bands, bolts, and the like, shall be of a similar color to the main WCF.

4. When located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the WCF such that it does not negatively impact the business. WCFs shall not be located in-front of store front windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building. WCFs should be located between properties as much as possible.

5. When located within a city right-of-way, deployment shall not impede existing and future facilities, including sidewalks, stormwater infrastructure, water infrastructure, and electric infrastructure, and other infrastructure included in adopted city plans, inclusive of the Capital Asset Plan, and Bike-Ped Master Plan.

B. Collocation. Collocation of facilities with other providers is encouraged. Collocation can be achieved as either building-mounted, roof-mounted or ground-mounted facilities. In designing or retrofitting Towers, applicants are strongly encouraged to consider the possibility of present or future co-location of other WCFs by structurally overbuilding in order to handle the loading capacity of additional WCFs, for the use of the applicant and for other wireless service providers to use as well. Applicants shall use good faith efforts to negotiate lease rights to other users who desire to use an approved WCF site. Collocation on an existing support structure shall be permitted as an accessory use. Projections of any type on the monopole, which are not antennas, are strongly discouraged.

1. Multiple use facilities are encouraged as well. WCFs and equipment may be integrated into existing, replacement of existing, or newly developed facilities that are functional for other purposes, such as ball field lights, flagpoles, church steeples, highway lighting, etc. All multiple use facilities shall be designed to make the appearance of the antennae relatively inconspicuous.

2. The collocation requirement may be waived by the Community Development Director upon a showing that either federal or state regulations prohibit the use, the proposed use will interfere with the current use, the proposed use will interfere with surrounding property or uses, the proposed user will not agree to reasonable terms, such co-location is not in the best interest of the public health, safety or welfare or collocation is not reasonably feasible from a technological, construction or design perspective. Time needed to review a collocation request shall not greatly exceed that for a single applicant.

C. Setbacks. All WCFs shall comply with setback requirements. At a minimum, except for WCFs in the Public Right-of-Way all WCFs shall comply with the minimum setback requirements of the underlying zone district; if the following requirements are more restrictive than those of the underlying zone district, the more restrictive standard shall apply.

1. All WCFs (except for WCFs in the Public Right-of Way) shall be located at least fifty (50) feet from any property lines, except when roof-mounted (above the eave

- line of a building) or wall mounted. Flat-roof mounted facilities visible from ground level within one-hundred (100) feet of said property shall be concealed to the extent possible within a compatible architectural element, such as a chimney or ventilation pipe or behind architectural skirting of the type generally used to conceal HVAC equipment, and shall comply with any applicable design requirements of Chapter 26.412, Commercial Design Review, and 26.415, Historic Preservation. Pitched-roof-mounted facilities shall always be concealed within a compatible architectural element, such as chimneys or ventilation pipes.
2. Monopole towers (except for monopole towers in the Public Right-of-Way) shall be set back from any residentially zoned properties a distance of at least three (3) times the monopole's height (i.e., a sixty (60) foot setback would be required for a twenty (20) foot monopole) and the setback from any public road, as measured from the right-of-way line, shall be at least equal to the height of the monopole.
 3. No WCF may be established within one-hundred (100) feet of any existing, legally established WCF except when located on the same building or structure.
 4. No portion of any antenna array shall extend beyond the property lines or into any front yard area. Guy wires shall not be anchored within any front yard area, but may be attached to the building.
 5. Any Alternative Tower Structure utilizing existing facilities shall meet all Right-of-Way design guidelines, pursuant to adopted standards in Title 21, Streets, Sidewalks, and Other Public Places, and Title 29, Engineering Design Standards. Considerations should be given to the general safety of the traveling public.

D. Height. The following restrictions shall apply:

1. WCFs not attached to a building shall not exceed twenty-five (25) feet in height or the maximum permissible height of the given Zone District, whichever is more restrictive.
2. Whenever a WCF antenna is attached to a building roof, the antenna and support system for panel antennas shall not exceed ten (10) feet above the highest portion of that roof, including parapet walls and the antenna and support system for whip antennas shall not exceed ten (10) feet in height as measured from the point of attachment.
3. The Community Development Director may approve a taller antenna height than stipulated in b. above if it is his or her determination that it is suitably camouflaged, in which case an administrative approval may be granted.

4. If the Community Development Director determines that an antenna taller than stipulated in b. above cannot be suitably camouflaged, then the additional height of the antenna shall be reviewed pursuant to the process and standards (in addition to the standards of this Section) of Chapter 26.430 (Special review).

5. Support and/or switching equipment shall be located inside a building, unless it can be fully screened from view as provided in the "Screening" standards (26.475.130 and 26.505.080.F-G) below or no building exists in which to locate the equipment.

E. **Architectural compatibility.** WCFs shall be consistent with the architectural style of the surrounding architectural environment (planned or existing) considering exterior materials, roof form, scale, mass, color, texture and character. In addition:

1. If such WCF is accessory to an existing use, it shall be constructed out of materials that are equal to or of better quality than the materials of the principal use and shall exhibit compatible architectural characteristics to the principal use.
2. WCF equipment shall be of the same color as the building or structure to which or on which such equipment is mounted, unless otherwise required by Chapter 26.412, Commercial Design Review or 26.415, Historic preservation, or as required by the appropriate decision-making authority (Community Development Director, Historic Preservation Commission, Planning and Zoning Commission or City Council, as applicable).
3. Whenever WCF equipment is mounted to the wall of a building or structure, the equipment shall be mounted on a dark, neutral tone, whichever is found to provide better camouflage, in a configuration designed to blend with and be architecturally integrated into a building or other concealing structure, be as flush to the wall as technically possible and shall not project above the wall on which it is mounted. Variations to this standard in order to meet applicable requirements of Chapter 26.412, Commercial Design Review or 26.415, Historic Preservation, may be approved during the review.
4. Monopole support buildings, which house switching devices and/or other equipment related to the use, operation or maintenance of the subject monopole, must be designed to match the architecture of adjacent buildings. If no recent and/or reasonable architectural theme is present, the Community Development Director may require a particular design that is deemed to be suitable to the subject location.
5. All utilities associated with WCFs shall be underground (also see "Screening" below), unless the applicant demonstrates that it is not reasonably feasible from a construction, design, and engineering perspective.

F. **Compatibility with the natural environment.** WCFs shall be compatible with the surrounding natural environment considering land forms, topography and other natural

features and shall not dominate the landscape or present a dominant silhouette on a ridge line. In addition:

1. If a location at or near a mountain ridge line is selected, the applicant shall provide computerized, three-dimensional, visual simulations of the WCF and other appropriate graphics to demonstrate the visual impact on the view of the affected ridges or ridge lines; an 8040 Greenline Review, pursuant to the provisions of Section 26.435.030, may also be required.
2. Site disturbances shall be minimized and existing vegetation shall be preserved or improved to the extent possible, unless it can be demonstrated that such disturbance to vegetation and topography results in less visual impact to the surrounding area.
3. Surrounding view planes shall be preserved, as required in Section 26.435.050, Mountain View Plane Review.

G. **Screening.** All WCF equipment, including accessory equipment, shall be screened from adjacent and nearby public rights-of-way and public or private properties placing equipment internal to the structure, by paint color selection, parapet walls, screen walls, fencing, landscaping and/or berming in a manner compatible with the building's and/or surrounding environment's design, color, materials, texture, land forms and/or topography, as appropriate or applicable in a given zone district. In addition:

1. Whenever possible, if monopoles are necessary for the support of antennas, they shall be located near existing utility poles while maintaining National Electric Safety Code clearance and/or other governing regulations, trees or other similar objects; consist of colors and materials that best blend with their background; and, have no individual antennas or climbing spikes on the pole other than those approved by the appropriate decision-making authority (Community Development Director, Historic Preservation Commission, Planning and Zoning Commission or City Council, as applicable).
2. For ground-mounted facilities, landscaping may be required to achieve a total screening effect at the base of such facilities or equipment in order to screen the mechanical characteristics; a heavy emphasis on coniferous plants for year-round screening may be required. Landscaping shall be of a type and variety capable of growing within one (1) year to a landscape screen which satisfactorily obscures the visibility of the facility. This requirement may be waived by the Community Development Director if it is determined it is not necessary or reasonably feasible.
3. Unless otherwise expressly approved, all cables for a WCF shall be fully concealed from view underground or inside of the screening or monopole structure supporting the antennas; any cables that cannot be buried or otherwise hidden from view shall be painted to match the color of the building or other existing structure.

4. All screening shall meet the requirements of applicable Historic Preservation Design Guidelines and Commercial Design Guidelines. Additionally, all fence screening shall meet the requirements of 26.575.050, Fence Materials.
5. Notwithstanding the foregoing, the WCF shall comply with all additional measures deemed necessary to mitigate the visual impact of the facility. Also, in lieu of these screening standards, the Community Development Director may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls, sign and structural applications, manufactured devices and other features designed to screen, camouflage and buffer antennas, poles and accessory uses. The plan should accomplish the same degree of screening achieved by meeting the standards outlined above.

H. **Lighting and signage.** WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required it shall conform to other applicable sections of the code regulating signage or outdoor lighting. The following standards shall apply to WCFs and equipment:

1. The light source for security lighting shall feature down-directional, sharp cut-off luminaries to direct, control, screen or shade in such a manner as to ensure that there is no spillage of illumination off-site.
2. Light fixtures, whether free standing or tower-mounted, shall not exceed twelve (12) feet in height as measured from finished grade.
3. The display of any sign or advertising device other than public safety warnings, certifications or other required seals on any wireless communication device or structure is prohibited.
4. The telephone numbers to contact in an emergency shall be posted on each facility in conformance with the provisions of Chapter 26.510, Signs, of this Title.

I. **Noise.** Noise generated on the site must not exceed the levels permitted, pursuant to Title 18, Noise Abatement, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the City.

J. **Additional design requirements shall be applicable to the various types of WCFs as specified below:**

1. **Base Stations.** If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of

the Manager, and may, where appropriate, and reasonable feasible from a technological, construction or design perspective, require a flush-to-grade underground equipment vault.

2. Alternative Tower Structures not in the Public Right-of-Way.

- a. Alternative Tower Structures shall be designed and constructed to look like a building, facility, or structure typically found in the area.
- b. Be camouflaged/concealed consistent with other existing natural or manmade features near the location where the Alternative Tower Structure will be located.
- c. Such structures shall be architecturally compatible with the surrounding area;
- d. Height or size of the proposed alternative tower structure should be minimized as much as possible;
- e. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries;
- f. WCFs should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
- g. Compatibility with the surrounding topography;
- h. Compatibility with the surrounding tree coverage and foliage;
- i. Compatibility of the design of the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- j. Impact on the surrounding area of the proposed ingress and egress, if any.

3. Alternative Tower Structures in the Public Right-of-Way. Alternative Tower Structures and associated Small Cells, or Micro Cells may be deployed in the Public Right-of-Way through the utilization of a street light pole, distribution lines, utility poles, traffic signal or similar structure. Such facilities shall remain subject to the Alternative Tower Structures standards of approval noted above, and subject to the following additional design criteria below:

- a. To the extent that an Alternative Tower Structure is a vertical structure located in the Public Right-of-Way, with respect to its pole-mounted components, be located on or within an existing utility pole serving another utility;
- b. With respect to its pole components, such components shall be located on or within a new utility pole, if there are no reasonable alternatives, and the Applicant is authorized to construct the new utility poles; or
- c. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the Alternative Tower Structure;

- d. Be sized to minimize the negative aesthetic impacts to the Public Right-of-Way;
- e. Be designed such that antenna installations on traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered.
- f. Require that any ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the Director, and may, where appropriate, and reasonable feasible from a technological, construction or design perspective require a flush-to-grade underground equipment vault.
- g. Not alter vehicular circulation or parking within the Right-of-Way or impede vehicular, bicycle, or pedestrian access or visibility along the Right-of-Way. The Alternative Tower Structure must comply with the Americans With Disabilities Act and every other local, state, and federal law and regulations. No Alternative Tower Structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the City, the general public, or other person authorized to use or be present upon the Right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the Right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.
- h. The pole or structure is not more than 5 feet taller (as measured from the ground to the top of the pole) than any existing utility or traffic signal pole within a radius of 500 feet of the pole or structure.
- i. Any such pole shall in no case be higher than 28 feet in height or the maximum permissible height of the given Zone District, whichever is more restrictive.
- j. Any such pole shall be separated from any other wireless communication facility in the Right-of-Way by a distance of at least 600 feet unless deployed on an existing structure in the Public Right-of-Way. The Community Development Director may exempt an applicant from this requirement if: (i) the applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or (ii) the Community Development Director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and the height of existing structures in the vicinity, that placement of a wireless facility at a distance less than 600 feet from another wireless facility in the public right of way will meet the intent of reducing visibility and visual clutter of Telecommunications Towers.

k. To the extent reasonably feasible, Collocations are strongly encouraged to limit the number of poles within the Right-of-Way.

l. Equipment enclosures shall be located out of view as much as possible and shall comply with City criteria (e.g. sight line criteria).

m. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on the corner formed by two intersecting streets. If these requirements are not reasonably feasible from a construction, engineering or design perspective, the applicant may submit a written statement to the Director requesting the WCF be exempt from these requirements.

4. Towers

a. Towers shall be painted a neutral color so as to reduce visual obtrusiveness as determined by the City;

b. Tower structures should use existing land forms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment;

c. Monopole support structures shall taper from the base to the tip;

d. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be equipped with an appropriate anti-climbing device.

5. **Director to adopt design standards:** Pursuant to the powers and authority conferred by the Charter of the City, the Community Development Director shall adopt additional Small Cell Infrastructure Design Guidelines, as may be amended from time to time. Said guidelines are incorporated herein as if fully set forth and shall apply to the location and design of all WCFs governed by this Chapter. Said guidelines shall be published and at least one (1) copy of the Small Cell Infrastructure Design Guidelines shall be available for public inspection at the Community Development Department.

K. **Related Accessory Equipment.** Accessory equipment for all WCFs shall meet the following requirements:

1. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;

2. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet per carrier;

3. No related accessory equipment or accessory structure shall exceed 12 feet in height;

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

L. **Access ways.** In addition to ingress and egress requirements of the Building Code, access to and from WCFs shall be regulated as follows:

1. No WCF shall be located in a required parking, maneuvering or vehicle/pedestrian circulation area such that it interferes with or in any way impairs, the intent or functionality of the original design.
2. The WCF, except for Small Wireless Facilities in the Public Right-of-Way, must be secured from access by the general public but access for emergency services must be ensured. Access roads must be capable of supporting all potential emergency response vehicles and equipment.
3. The proposed easements for ingress and egress and for electrical and telecommunications shall be recorded at the County Clerk and Recorder's Office prior to the issuance of building permits.

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

Approval by the Community Development Director for a WCF and/or equipment application shall not be construed to waive any applicable zoning or other regulations; and wherein not otherwise specified, all other requirements of this Code shall apply, including Title 21(Street, Sidewalks, and other public places, and Title 29 (Engineering Design Standards). All requests for modifications of existing facilities or approvals shall be submitted to the Community Development Director for review under all provisions and requirements of this Section. If other than minor changes are proposed, a new, complete application containing all proposed revisions shall be required.

Section 4: Any scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 5: Effect Upon Existing Litigation.

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 6: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a

separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 7: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

Section 8:

A public hearing on this ordinance shall be held on the 11th day of March, 2019, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 25th day of February, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY, adopted, passed and approved _____, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to form:

James R. True, City Attorney