

ZONING

ARTICLE VII
Telecommunication Facilities
[Added 7-2-02 by Ord. 02-15]

§ 180-50. Purpose and intent.

The purpose and intent of this Article VII is to accommodate the telecommunication needs of residents and businesses while protecting the public health, safety, and general welfare of the community. The Town Council finds that these regulations are necessary in order to (1) facilitate the provision of wireless telecommunication services to the residents and businesses of the Town; (2) minimize adverse visual effects of towers through careful design and siting standards; (3) avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and (4) encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

§ 180-51. Definitions.

Words and phrases used in this Article shall have the following meanings ascribed to them:

Accessory equipment shall mean equipment, including telecommunication facilities as defined herein, used to protect and enable radio switching equipment, back-up power, support structures, and other devices incidental to a telecommunication facility, but not including towers, antennas or alternative telecommunication facilities.

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

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Height means, when referring to a tower or telecommunications facility, the distance measured from the ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

Pre-existing towers and antennas shall have the meaning set forth in Section 180-52.

Public Right of Way or Right of Way shall mean public streets, alleys, ways, highways, easements and any other like access dedicated primarily for the use of the public.

Telecommunication facility means a facility that transmits and/or receives electromagnetic wireless communications signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development. The following types of facilities are included within this definition:

- (1) *Alternative telecommunication facility* shall mean a telecommunication facility with an alternative design that camouflages or conceals the presence of antennas or towers such as, but not limited to, artificial trees, clock and bell towers, light standards, flagpoles and steeples.
- (2) *Freestanding telecommunication facility* shall mean a telecommunication facility that consists of a stand-alone support structure or tower, antennas, and accessory equipment.
- (3) *Low power telecommunications facility* shall mean a telecommunications facility necessary to broadcast telecommunications for voice, data or video with emitted power levels less than 36dBm (or such other levels as may be authorized by the Federal Communications Commission to be low power telecommunications) with total frontal surface areas of all antennas not exceeding 10 square feet for any single parcel.
- (4) *Roof and/or wall mounted telecommunication facility* shall mean a telecommunication facility that is mounted to the roof or any rooftop appurtenance, or to the face of a legally existing building or structure.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antenna, including self supporting lattice towers, guy towers, or monopole towers. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and alternative telecommunication facilities.

§ 180-52. Applicability.

- (a) The standards and procedures contained in this Article apply to all applications for approval for telecommunication facilities. The Planned Unit Development process is not available to vary the standards applicable to telecommunication facilities. The applicant shall demonstrate that its proposed telecommunication facility meets all standards and provisions of this Article.
- (b) *Amateur radio antennas.* This Article shall not govern any tower or antenna owned or operated by a federally licensed amateur radio station operator or used exclusively for receive-only antennas. All other applicable zoning district requirements must be met.
- (c) *Residential services and small dish antennas.* This Article shall not govern any residential dish or antenna or the installation of any dish or antenna of less than three (3) feet in diameter or seven (7) square feet of frontal surface area.
- (d) *Pre-existing telecommunication facilities.* Any telecommunication facility for which Town approval has been properly issued prior to the effective date of this Article shall not be required to meet the requirements of this Article other than the requirements of Section 180-53 (a) through (c), and Sections 180-53 (e) through (g). Changes and additions to pre-existing telecommunication facilities must meet the applicable requirements of this Article VII.

§ 180-53. General requirements.

Unless otherwise provided by this code or other applicable law, the following general requirements shall apply to all telecommunication facilities located within the Town of Frisco.

- (a) *Federal requirements.* All towers and antennas must meet or exceed the current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this code shall bring such towers and antennas into compliance with such revised standards and regulations within the time period required by the controlling federal agency. Failure to bring a tower or antenna into compliance with such revised standards and regulations shall be a violation of this Code and constitute grounds for removal of the tower or antenna at the owner's expense.

- (b) *Radio frequency standards.*
 - (1) All owners of telecommunication facilities shall comply with federal standards for radio frequency emissions.
 - (2) With the exception of any low power telecommunications facility, at the time of application for a tower, antenna or related telecommunication facilities, and thereafter at the request of the Town upon complaint (but not more than annually), the owner 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.
 - (3) If, upon review, or at any time any telecommunications facility within the Town is operational, the Town finds that the facility does not meet federal standards, the Town may require corrective action within a reasonable period of time, and if not corrected, may require removal of the telecommunication facilities at the owner's expense. Any reasonable costs incurred by the Town, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner.

- (c) *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that the tower is of sufficient structural strength to accommodate reasonable co-location, if required, and is maintained in compliance with standards for towers that are published by the Electronic Industries Association, as amended from time to time, and all other applicable codes of the Town.
 - (1) In addition to any other applicable standards and requirements, the following shall apply to all towers and telecommunication facilities:
 - (i) Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.
 - (ii) No guy wires employed may be anchored within the area in front of any principal building or structure on a parcel.

- (iii) All telecommunication facilities shall comply with the power line clearance standards set forth by Colorado Public Utilities Commission.
 - (iv) All telecommunication facilities must be structurally designed and physically sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower shall be designed and maintained to withstand without failure maximum forces expected from wind, snow, ice, tornadoes, and other natural occurrences, when the tower is fully loaded with antennas, transmitters, other telecommunication facilities and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Town's Building Official prepared and stamped by a structural engineer licensed in the State of Colorado describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided upon request.
- (2) If, upon inspection, the Town concludes that a telecommunication facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of a telecommunication facility, the owner shall have thirty (30) days to bring such telecommunication facility into compliance with such standards. Upon good cause shown by the owner, the Town's 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 telecommunication facility into compliance within said time limit, the Town may remove such telecommunication facility at the owner's expense.
- (d) *Order of preference.*
- (1) *Zone district.* Applicants are encouraged to construct alternative telecommunication facilities in commercial districts. An applicant requesting approval to construct a telecommunication facility in a residential district must first

demonstrate to the reasonable satisfaction of the Town that a location in a commercial district would not meet the applicant's service needs.

- (2) *Facility type.* Wall- or roof-mounted telecommunication facilities and low power telecommunications facilities are preferred over freestanding telecommunication facilities. An applicant requesting approval to construct a freestanding telecommunication facility, which is not a low power facility must first demonstrate to the reasonable satisfaction of the Town that a wall- or roof-mounted facility is not feasible or is inadequate to provide service. When appropriate, the Town may require that an alternative telecommunication facility that reflects the character of the surrounding property (developed or undeveloped) be employed.

- (e) *Design standards.* The guidelines set forth in this subsection 180-53(e) shall apply to the location of all telecommunication facilities governed by this Article VII; provided, however, that the Town may waive these requirements if it determines that the overall intent of this Section 180-53, as defined in 180-50, is not served by the implementation of a particular guideline with respect to a particular telecommunication facility.
 - (1) The location and design of a telecommunication facility and any accessory equipment shall use materials, colors, textures, screening, and landscaping that will blend the telecommunication facility to the surrounding natural setting and built environment. Accessory equipment in areas of high visibility shall, where possible, be sited below the ridge line or designed (e.g., placed underground, depressed, or located behind earth berms) to minimize its profile.
 - (2) Any accessory equipment located within an architectural overlay district (GGO District, MO District, SBCO District, and any other architectural overlay district adopted by the Town) must generally conform with the intent of the specific district standards.
 - (3) Roof- and wall-mounted facilities shall be architecturally compatible with and colored to match the building or structure to which they are attached. Wall-mounted facilities shall be mounted as flush to the building wall as

possible. A wall-mounted facility shall not encroach into the required setback for the building to which it is attached, and shall not extend across any required utility, pedestrian or sidewalk easement or extend across the property line.

- (4) Freestanding telecommunication facilities shall not be artificially lighted, unless required by the FAA or other applicable governmental authority. If lighting is required, the Town 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.
- (5) No portion of any antenna array may extend across a required property setback or beyond the property line.
- (6) All applicants under this Article VII shall comply with the landscaping requirements and guidelines found in section 180-20.1 of this chapter.
- (7) The height, bulk and setback requirements for the telecommunication facility shall be controlled by the district regulations of the zone district in which the facility is located. Accessory equipment shall be compatible with the surrounding area and must conform with all zoning requirements.

(f) *Co-location.*

- (1) No building permit shall be granted to construct a new freestanding telecommunication facility unless the applicant first demonstrates to the reasonable satisfaction of the Town that no existing tower or structure can accommodate the applicant's needs. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed telecommunication facility shall consist of one or more of the following:
 - (i) No existing towers or structures are located within the geographic area required to meet the applicant's coverage requirements.

- (ii) Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
 - (iii) Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
 - (iv) The applicant's proposed antenna would cause electromagnetic interference with the antennas on the existing towers or structures, or the antennas on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (v) The applicant demonstrates that there are other limiting factors, including but not limited to engineering factors, that render existing towers and structures unsuitable for co-location.
 - (vi) There is insufficient land area to accommodate the placement of additional accessory equipment on the property.
- (2) No telecommunication facility owner or operator shall unreasonably exclude a telecommunication competitor from using the same facility or location. Upon request by the Town, the owner or operator shall provide evidence and a written statement to explain why co-location is not possible at a particular facility or site.
- (3) If a telecommunication competitor attempts to co-locate a telecommunication facility on an existing or approved telecommunication facility or location, and the parties cannot reach an agreement, the Town may require a third-party technical study to be completed at the expense of both parties to determine the feasibility of co-location.
- (g) *Prohibited use.* Advertising or communication of any visual messages from a tower or antenna is prohibited.
- (h) *Abandonment; removal.* The owner of any telecommunication facility located within the Town shall notify the Community Development Department when such telecommunication facility and any associated accessory equipment is no longer in operation. Upon such notification, or if the telecommunication facility is

otherwise determined not to be in operation, the Town shall consider the facility abandoned. For the purposes of this subsection, a telecommunications facility that is not operated for a continuous period of six (6) months shall be deemed to be abandoned. The Town, in its sole discretion, may thereafter require removal of the abandoned facility by the owner and shall notify the owner accordingly. If the facility is not removed within ninety (90) days, the facility shall be considered a nuisance under Chapter 124 of the Town Code and may be removed by the Town. All costs for the removal shall be paid for by the owner of the facility. Upon removal the site shall be restored and/or revegetated to blend with the surrounding environment. After the antenna or tower is removed and the site is restored to the satisfaction of the Town, the Town shall return to the owner the performance bond required pursuant to section 180-54(b)4. If the antenna or tower is not removed within said ninety (90) days, the Town may remove and dispose of such antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

§ 180-54. Permit and application requirements.

- (a) *Building permit.* It shall be unlawful for any person, firm or corporation to construct or erect a telecommunication facility without first obtaining a building permit.
- (b) *Information required.* In addition to any other information required by this code, the following information shall be submitted with all telecommunication facility building permits:
 - (1) The identity and legal status of the applicant, including any affiliates.
 - (2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the application.
 - (3) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license, or other approvals required by the FCC to provide telecommunication services or facilities within the Town.
 - (4) An agreement to post a deposit at the time a permit is issued, in an amount to be set by the Town, reasonably related to the removal costs that may be incurred by the

Town, should the applicant fail to comply with any of its obligations with regard to the removal of a telecommunication facility, any accessory equipment, and revegetation of the site.

- (5) An agreement to (i) consider co-location proposals from other commercial radio providers with an interest in applicant's facility and (ii) not unreasonably to exclude co-location by such entities, along with a statement explaining how the facility may be used for co-location.
- (6) An agreement to notify the Town at least ten (10) days prior to introduction of new services or changes in existing service, and to allow the Town to monitor interference levels with public safety communications during the testing process.
- (7) Except for low power telecommunications facilities, a verified statement of a qualified radio frequency engineer certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems, or if such potential interference problems exist, a description of the nature of the potential interference and a plan to mitigate and eliminate any such interference.
- (8) A narrative and map description of the applicant's existing or then currently proposed telecommunication facilities within the Town, and outside of the Town within three (3) miles of its boundaries, including specific information about the location, height, and design of each tower and any accessory equipment. In addition, the applicant shall inform the Town generally of the areas of the Town in which it believes telecommunication facilities may need to be located within the next three years.
 - (i) This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding the location of facilities within the Town. Rather, it is an attempt to provide a mechanism for the Town and all applicants for telecommunication facilities to share general information, assisting in the Town's master planning process, and promote co-location by identifying areas in which

telecommunication facilities might be appropriately constructed for multiple users.

(ii) The Community Development Department may share such information with other applicants applying for administrative approvals or special use permits under this Article VII or other organizations seeking to locate antennas within the jurisdiction of the Town, provided, however that the Community Development Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(9) Such other information as the Town may reasonably require.

(c) *Supplemental Information.* After issuance of a permit, each owner or operator of a telecommunication facility shall inform the Town, within (60) days, of any change of the information set forth in this Section 180-54.

§ 180-55. Fees.

In addition to any other fees required by this code or other applicable law, the applicant shall pay a telecommunication facility permit fee. Each application shall be submitted with the telecommunication facility permit fee. Such fee schedule shall be reasonably related to the cost of administering this Article VI. In addition, any reasonable costs incurred by the Town, including reasonable costs to verify compliance with any requirements under this Article VI, shall be paid by the applicant.

§ 180-56. Permitted uses.

(a) Provided that a telecommunication facility is a permitted use in the applicable zone district and the use is described in subsection (b) hereof, said facility shall not require a special use permit. Nevertheless, all such uses shall comply with subsections 180-43 and 180-54 and the zone district regulations for permitted structures in the zone district in which they are located. Telecommunication facilities shall be considered a permitted use in the following zone districts: Public Facilities District (PF); Central Core District (CC); Auto-Oriented Commercial District (AO); Accommodations District (AC); Mixed Used District (MU). A low power telecommunications facility intended for residential

uses and services may be considered a permitted use in all zone districts.

(b) *Specific uses considered permitted uses.*

- (1) Locating a wall- or roof-mounted facility that is within the maximum height limit and as long as all other requirements of the zoning district are met.
- (2) Locating a freestanding telecommunications facility either as the principal use on a site, or on a site where a principal use already exists, so long as all other requirements of this Chapter 180, including setbacks and height limitations, are met and as long as all accessory equipment on the property disturb less than 350 square feet of lot area.
 - (i) No site may have more than 1 freestanding telecommunications facility as a principal use. If more than 1 freestanding telecommunications facility is requested, the application for the freestanding telecommunications facility shall be considered a special use.
- (3) Installing an antenna on an existing tower, so long as said additional antenna does not exceed the height limit for the zone district or adds no additional height to said existing structure, does not extend laterally a distance of more than twelve (12) feet, and is consistent with any applicable conditions of approval for the subject site that previously have been imposed by the Town.
- (4) Installing an antenna on an existing alternative telecommunication facility, so long as said additional antenna does not exceed the height limit for the zone district or adds no additional height to said structure, is consistent with any applicable conditions of approval for the subject site that previously have been imposed by the Town and does not negatively affect the aesthetic appearance of the facility such that it no longer acts to camouflage or conceal the presence of antennas or towers.
- (5) Installing a low power telecommunications facility on any structure, including a tower, provided:

- (i) That the structure or tower does not exceed the maximum building height on the zoning district plus an additional 12 feet.
 - (ii) That the low power telecommunications facility is not allowed within any required setback, and any such facility in excess of eight (8) feet in height shall be located one foot from the required setback for each foot in height above eight (8) feet.
 - (iii) That the earth disturbance associated with providing access and or utilities to a low power telecommunications facility does not exceed 500 square feet; and
 - (iv) That no solar panels greater than thirty-two (32) square feet in size are installed in association with a low power telecommunications facility.
- (c) *Design review and approval.* Applications to construct telecommunication facilities that are permitted uses as provided in this section 180-56 shall undergo small project review by the Community Development Department in accordance with section 180-19 of this chapter.

§ 180-57. Special uses.

- (a) *Generally.* All telecommunication facilities not treated as permitted uses pursuant to section 180-56 are deemed to be special uses and shall require a special use permit. An applicant proposing a telecommunication facility that exceeds the height limitations set by the zoning district in which such facility is proposed shall obtain a special use permit, in lieu of a variance.
- (b) *Review and approval.* Applications to construct telecommunication facilities that require a special use permit shall be processed according to the following procedure:
 - (1) *Preapplication conference.* The applicant shall schedule an informal conference with the Community Development Department prior to the submittal of an application.
 - (2) *Information required.* Each applicant requesting special use approval under this section shall submit, in addition to the information required by section 180-19.C.(6) of this chapter, documentation, signed and sealed by appropriate registered professionals, showing the location and dimensions of the proposed telecommunication facilities,

including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and all other information deemed by the Community Development Department to be necessary to assess compliance with this Article.

- (3) *Planning Commission.* The Planning Commission, at its next available meeting, a minimum of 45 days after the filing of a complete application, shall hold a public hearing on the application and consider the recommendations of the Community Development Department staff and the merits of the proposed application. The application shall be noticed in accordance with Section 180-46.E. In approving any application, the Planning Commission may impose any reasonable conditions to ensure that the proposal satisfies the criteria set forth in this chapter.

- (c) *Height.* An applicant proposing to construct a telecommunication facility that exceeds the height limitations set by the zone district in which such facility is proposed shall provide a statement that justifies the need for the proposed facility and height requested. Such a statement shall include evidence that:
 - (1) The facility is designed to be the minimum height necessary to provide service; and
 - (2) A greater number of towers built at a lesser height would be inadequate to meet the applicant's service demands.

- (d) *Factors considered in granting special use permits for telecommunication facilities.* In addition to the applicable requirements of this Chapter 180, the Town shall consider the following factors in determining whether to issue a special use permit:
 - (1) Demonstrated need for a facility that exceeds the height limitation for the zone district; and
 - (2) Proximity of the tower to residential structures and residential district boundaries; and
 - (3) Nature of uses on adjacent and nearby properties; and
 - (4) Surrounding topography; and

- (5) Surrounding coverage and tree foliage; and
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - (7) Proposed ingress and egress to the property; and
 - (8) An evaluation of the applicant's plans for development of its telecommunication facilities within the Town, as well as those plans on file from other telecommunication providers; and
 - (9) An evaluation of the criteria set forth in sections 180-53 and 180-54 above; and
 - (10) Availability of suitable existing towers and other structures as discussed in subsection 180-53(e); and
 - (11) Any other information that the Town deems reasonably necessary in connection with the review of the application.
- (e) The following additional provisions shall govern the issuance of special use permits for telecommunication facilities:
- (1) In granting a special use permit, the Town may impose conditions to the extent it concludes such conditions are necessary to minimize any adverse effect of the proposed telecommunication facility on adjoining properties.
 - (2) Telecommunication facilities approved as a special use shall not require a variance for any specific conditions approved as part of the special use process.
 - (3) Any information of an engineering nature that the applicant submits, whether civil, mechanical, structural or electrical, shall be certified by a registered professional engineer, or a qualified radio frequency engineer.
- (f) All applications and the subsequent decision on whether to approve, approve with conditions or deny an application for a special use permit shall be in writing, based upon evidence presented to the Town.

§ 180-58. Public property.

- (a) A telecommunication facility applicant proposing to locate a telecommunication facility on any public property or public right-of-way shall contact the Public Works Department and the Community Development Department prior to submitting an application.
- (b) Any telecommunications facility proposed to be located in a public right of way is additionally subject to the following requirements:
 - (i) The facility must meet all setback and other requirements of the zoning district in which it is located, unless located in a public right-of-way.
 - (ii) The facility must not create any threat or impairment to public health and safety, including but not necessarily limited to blocking vehicular and pedestrian sightlines.
 - (iii) The height of the facility shall not exceed the maximum permitted height of public utility poles located in the same zoning district.