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Ms. Joyce Allgaier and Members of the Town of Frisco Planning Commission  
Town of Frisco  
1 East Main Street  
Frisco, CO 80443

VIA EMAIL – joycea@townoffrisco.com; TofInfo@townoffrisco.com

**RE: Proposed Telecommunication Facilities Ordinance  
Amending Chapter 180, Section 5.2.11**

Dear Ms. Allgaier and Members of the Planning Commission:

Thank you for the opportunity to comment on the Town of Frisco's proposed amended telecommunications facilities ordinance. AT&T appreciates the opportunity to work with you to develop a revised code that will allow for efficient placement and design of communications infrastructure while also protecting the Town's aesthetic values.

**Skyrocketing Demand for Wireless Service**

AT&T and other carriers are responding to an exponential increase in demand for wireless services as wireless because the predominate communications infrastructure in the US. In fact, over 57.1% of homes in the US are wireless only<sup>i</sup> and 62% of homes in Colorado are wireless only.<sup>ii</sup> In addition, businesses increasingly depend on strong wireless service to carry them and their employees through the workday. Sixty-six percent (66%) of small businesses surveyed said they could not survive – or it would be a major challenge to survive – without wireless technology.<sup>iii</sup>

And, public safety is improved by the power of mobile communications. According to the Federal Communications Commission, nearly 70 percent of 911 calls are made from wireless phones and that percentage is expected to continue growing.<sup>iv</sup> This is particularly important in Colorado where the majority of homes are wireless only.

With seasonal inflows of residents and visitors, Frisco's communications infrastructure must keep pace with increased capacity and connectivity needs relative to surrounding tourist destinations. Small cell wireless facilities, in combination with traditional macro sites, will better serve the communication needs of your community. To be effective and efficient and available when needed most, communication networks require siting precision to provide targeted service to very specific locations. Small wireless facilities are a critical component of the network architecture well-suited to that need.

**AT&T**



To that end AT&T respectfully requests that Frisco consider the following comments and suggestions regarding its draft ordinance:

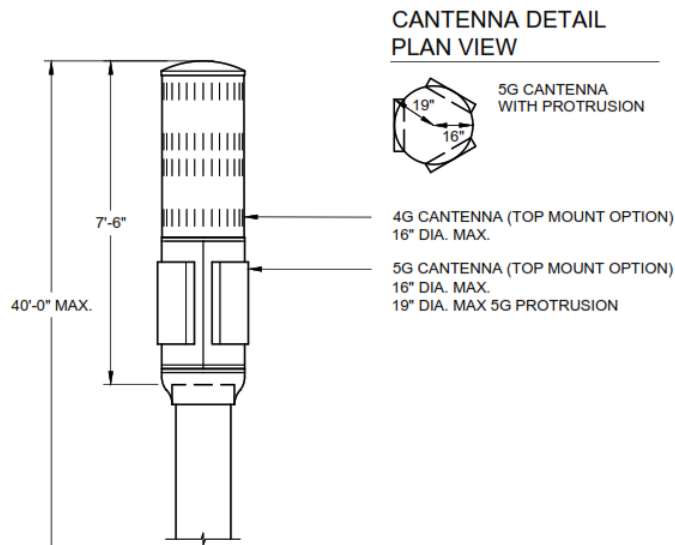
### I. 1000' Separation Requirement for Small Cell Facilities

Frisco is proposing a 1000' separation requirement between all small cell facilities.

Designing an advanced network requires that sites be placed with precision to address coverage and capacity issues in a targeted area. Higher frequency sites with high speed connections have a limited coverage area of approximately 100-250 meters. A one-thousand-foot spacing requirement between small cells would cause significant service gaps, especially with respect to capacity issues, i.e. when many people are trying to access the network, such as during a special event or emergency, when reliable and robust service is absolutely critical.

### II. Two Foot Height Limitation

Two feet is not enough space to accommodate the equipment required for a small cell pole. Antennas, radios and cable connections need to fit above the pole in order for the facility to work. Consider the graphic from the City of Denver's design guidelines that depict a small cell pole and show that the pole top equipment:



Such a restrictive limit would either result in multiple poles or prohibit service altogether.

Also, with respect to utility poles, 2' will not provide the clearance required to meet safety requirements for nearby electrical equipment.

We recommend that the permitted height be increased to accommodate the additional space required to meet vertical separation requirements and to allow for the equipment needed for the pole to function.



### III. Objective Standards

The recent FCC Order sets standards governing the review criteria for the placement of small cells:

***“Finally, in order to establish that [aesthetic standards] are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective — i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner – and must be published in advance.”<sup>v</sup>***

We have pointed out several proposed code provisions in our attached comments that do not meet the criteria above and are based upon subjective interpretations and unclear standards that could lead to inconsistent application based upon the reviewer’s opinion and interpretation.

We recommend updating the draft standards to set forth objective criteria that are not dependent upon subjective interpretation. Subjective standards result in inconsistent application that delay permitting and often result in disparate treatment.

The FCC Order also establishes the shot clock for application processing and the draft code does not specifically state how the Town will meet the review timelines established in the FCC Order. We recommend the review process be clarified so it is consistent with the review procedures in the FCC Order.

### Conclusion

AT&T is eager to work collaboratively with you and your staff to ensure Frisco is well positioned to meet the needs of residents and visitors like while minimizing the impact to the community. We welcome the opportunity to meet with your staff to review the draft ordinance and discuss options for updating the ordinance so that it complies with federal law while providing the connectivity Frisco expects.

I appreciate your consideration.

Sincerely,

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<sup>i</sup> <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf>

<sup>ii</sup> [https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless\\_state\\_201903.pdf](https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201903.pdf)

<sup>iii</sup> AT&T Small Business Technology Poll, 2013, <http://about.att.com/mediakit/2013techpoll>

<sup>iv</sup> FCC 911 Wireless Services Consumer Guide, <http://www.fcc.gov/consumers/guides/911-wireless-services>

<sup>v</sup> See Paragraph 88 of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018) (“FCC Order”).

**TOWN OF FRISCO  
COUNTY OF SUMMIT  
STATE OF COLORADO  
ORDINANCE NO. 19 - \_\_**

AN ORDINANCE AMENDING CHAPTER 180 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING ZONING, BY AMENDING SECTION 5.2.11 THEREOF, CONCERNING TELECOMMUNICATIONS FACILITIES, TO REVISE REGULATIONS CONCERNING SMALL CELL WIRELESS FACILITIES TO CONFORM TO FEDERAL COMMUNICATIONS COMMISSION REQUIREMENTS AND LIMITATIONS.

WHEREAS, pursuant to its home rule authority under Sec. 6 of Article XX of the Colorado Constitution and pursuant to Article 23 of Title 31, C.R.S., the Town of Frisco, Colorado (“Town”) possesses the authority to regulate the zoning of land within its jurisdiction; and

WHEREAS, pursuant to this authority, the Town previously adopted zoning regulations, codified as Chapter 180 of the Code of Ordinances of the Town of Frisco (“Code”); and

WHEREAS, Section 5.2.11 of Chapter 180 governs the zoning of wireless communications facilities, including “small cell” facilities; and

WHEREAS, the Frisco Town Council (“Council”) wishes to amend said Section 5.2.11 to address the recent Ruling and Order of the Federal Communications Commission, affecting small-cell wireless facilities; and

WHEREAS, the Council finds and determines that such amendments are desirable in furtherance of the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

Section 1. Subsection 5.2.11.I of Chapter 180 of the Code, concerning definitions of terms related to telecommunications facilities, is hereby amended to revise the definition of a “small cell facility” to read as follows:

**10. *Small Cell Facility Facilities shall mean either***

**(1) shall mean facilities that either:**

**(a) are mounted on structures 50 feet or less in height including their antennas;**

(b) are mounted on structures no more than 10 percent taller than other adjacent structures; or

(c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and

(2) Each antenna associated with the deployment is no more than three cubic feet in volume; and

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

~~(1) A personal wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended as of August 6, 2014; or~~

~~(2) A wireless service facility that meets both of the following qualifications:~~

~~a. Antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and~~

~~b. Primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch; or~~

~~(3) A Micro-Cell Facility, as defined in this Section.~~

Section 2. Subsection 5.2.11.J of Chapter 180 of the Code, concerning standards for small cell facilities and networks, is hereby amended to read as follows:

## **J. Standards for Small Cell Facilities and Networks**

### **1. Applicable Requirements**

Small cell facilities and small cell networks, shall comply in all respects with the requirements of this Subsection J., in addition to all other requirements of this Section 5.2.11 applicable to all wireless telecommunication services facilities, with the following exceptions:

- a. Setback;
- b. Design; ~~and~~
- c. Location, and.

- d. Any requirement or standard that an applicant demonstrates to operate in a manner that effectively prohibits or materially inhibits the provision of wireless service within the Town, in the context of the particular proposed application.

## 2. Location

Small cell facilities are permitted in Town rights-of-way, upon facilities in these rights-of-way and on public easements owned by the Town under the following priority:

- a. First, on a Town-owned utility pole, if any, which shall be removed and replaced with a pole designed to contain all antennae and equipment within the pole to conceal any ground-based support equipment and ownership of which pole is conveyed to the Town.
- b. Second, a Town-owned utility pole with attachment of the small cell facilities in a configuration approved by the Town.
- c. Third, on an existing third-party owned utility pole, (with the consent of the owner thereof), with attachment of the small cell facilities in a configuration approved by the Town.
- d. Fourth, on an existing traffic signal pole or mast arm in a configuration approved by the Town, or in the case of a CDOT facility, by CDOT.
- e. Fifth, on an existing freestanding or ground-mounted facility which meets the definition of and requirements for an alternative tower structure in a location and configuration approved by the Town.
- f. Sixth, on a new freestanding or ground-mounted facility, which meets all applicable requirements and standards of this Section.

## 3. Height

All small cell facilities shall not exceed two feet above the light pole, traffic signal or other facility or structure to which they are attached, or, for such facilities located outside of the public right-of-way, the lesser of: (a) two feet above the pole or other facility or structure to which they are attached; or (b) the maximum height in the relevant zone district, whichever is less. When new utility poles are proposed as an alternative tower, their height shall be similar to existing utility/light poles in the vicinity.

#### 4. Spacing

No small cell facility shall be located within one thousand feet (1000 ft) ~~any~~ other such facility or such lesser distance as proven by the applicant to be necessary to locate an operational small cell facility within the Town, given all reasonably available location sites,, existing technology, and other small cell facilities in the vicinity at the time of application.

#### 5. Design Standards

The purpose and goals of these design standards are to: (i) ensure that the design, appearance, and other features of small cell facilities are compatible with nearby land uses; (ii) manage the Town's rights-of-way to ensure traffic safety and coordinate and accommodate various uses; and (iii) protect the integrity of the Town's historic, cultural, and scenic resources and quality of life.

All small cell facilities shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the Town, consistent with this Code.

- (i) Camouflage/Concealment. All small cell facilities shall, to the extent possible, use camouflage and concealment techniques designed to minimize ~~and~~ eliminate the visual impact of such facilities to surrounding uses, including, but not limited to the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the facilities to the surrounding natural setting and/or built environment. Design, materials and colors of small cell facilities shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located on the public right-of-way and on adjacent parcels. All visible exterior features of a small cell facility shall be constructed out of or finished with non-reflective metals.
- (ii) Proximity to Residential Uses. Small cell facilities shall be sited in a manner that evaluates the proximity ~~of~~ the facility to residential structures and uses and, to the extent practical, equitably distributes any visual impacts of such facilities among adjacent residential uses and properties.

~~Small cell facilities shall be designed to blend with and be camouflaged in relation to the structure upon which they are located (e.g.: painted to match the structure or same material and color as adjacent utility poles). To the greatest degree possible, support equipment shall be located underground.~~

## 6. Relocation and Removal

All facilities in Town right-of-way or easements shall be removed and/or relocated at the applicant's expense in the event the Town's use of the right-of-way or easement precludes the continued presence of such facilities.

## 7. Permitting and Shot Clocks

All small cell facilities and networks shall be reviewed pursuant to the procedure within this Section 5.2.11. Small cell facilities and networks shall also make application for a permit for work in the right-of-way, as applicable. The Town may accept applications for a small cell network, provided each small cell facility shall be separately reviewed. ~~The Town may take up to ninety days to process a complete application.~~ Once determined to be complete by the Community Development Department, an application to locate a small cell facility shall be acted upon: (a) within sixty days, for a facility collocating on an existing structure; or (b) within ninety days, for a facility locating on a new site or structure. For purposes of this subsection, an application to locate a small cell facility means and includes all applications for Town-approvals necessary to locate and operate said facility.

## 8. Indemnification

The operator of a small cell facility which is permitted to locate on a Town right-of-way or easement or on a Town-owned utility pole, traffic signal or other structure owned by the Town, or within a Town-owned right-of-way or easement, shall, as a condition of permit approval, indemnify the Town from and against all liability and claims arising as a result of that location or attachment, including repair and replacement of damaged poles and equipment, in a form approved by the Town attorney.

## 9. Bonding

All permits for location of small cell facilities on real property not owned by the small cell permittee shall include as a condition of approval a bond, in form approved by the Town attorney, to guarantee payment for any damages to the real property and removal of the facility upon its abandonment.

## 10. Permit Timing and Expiration

Notwithstanding the seasonal limitation imposed by Section 87-4 of this Code on excavations, if a small cell facility installation requires an excavation permit in order to complete the facility's installation without undue delay, the Town Manager may permit an excavation permit to be issued if the Manager determines that the welfare of the Town's residents and visitors will not be unnecessarily adversely affected by said excavation. Applicants for small cell installations requiring excavation permits



must state on their application the reasons why such excavation must occur between November 1 and April 14, in order to assist the Manager in making a determination.  
A permit for a small cell facility shall expire nine (9) months after approval unless construction of the permitted structure has been initiated, unless extended as a result of the seasonal time limits imposed by Section 87-4.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining sections or provisions of this Ordinance, it being the intent of the Town Council of the Town of Frisco that such invalid or unenforceable provisions are severable.

Section 4. Safety Clause. The Town Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Effective Date. This ordinance shall become effective in accordance with the Home Rule Charter of the Town of Frisco.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
Gary Wilkinson, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Wohlmuth, CMC  
Town Clerk