

TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE NO. 19 - __

Style Definition: DocID

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 5.2.11.1 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:

Commented [RMK1]: Verizon Wireless proposes alternative language to address the Town's location/siting preference for the deployment of small wireless facilities. Verizon Wireless proposes this alternative language which has been adopted by other jurisdictions in CO. We believe this language strikes the balance between the Town's preference for collocation on existing facilities, specifically town-owned assets, and allowing for providers to deploy freestanding facilities. Further, Verizon Wireless needs to obtain information regarding the existing facilities that are in Town of Frisco and available to collocate on (e.g. street lights, traffic signals, etc.). This provision should be balanced against the availability of existing facilities or whether providers can collocate on them.

- ~~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.~~
- ~~b. 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.~~
- ~~b. 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.~~
- ~~b. 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.~~

The share use of an existing facility or structure is preferred to the construction of a new freestanding small wireless facility. The Town's preference for deployment of small wireless facilities is the following order of priority of attachment, except as set forth below or as agreed between the Town and the applicant:

- (i) existing light pole facilities lawfully owned and operated by the Town, a public utility company, or a third-party property owner; then
- (ii) Municipal facilities other than street lighting poles, but including traffic poles; and then
- (iii) Freestanding small wireless facilities

Locations will be prioritized based upon the applicant's technical and radio frequency needs and construction costs, but in any situation where the applicant has a choice of locations, the applicant and the Town shall mutually exercise good faith efforts to agree on attachments to poles in the order indicated above, provided that (a) such poles are at least equally suitable functionally for the operation of the applicant's network and (b) the construction and installation burdens associated with such attachment over the length of the term are equal to or less than applicant's burdens to attach to a pole in the category(ies) below it.

3. Height

All small cell facilities shall not ~~exceed~~ ~~extend two ten~~ feet above the light pole, traffic signal or other facility or structure to which they are attached ~~or forty (40) feet in total height with the attachment, whichever is greater,~~ or, ~~for such facilities located outside of the public right-of-way, the lesser of: (a) two ten 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, ~~the new facility shall not exceed the height of their height shall be similar to existing utility/light poles by more than ten (10') feet above the highest pole within 500 feet in the vicinity.~~

Commented [RMK2]: Verizon Wireless respectfully requests this be modified to allow for small cell facilities to extend up to ten feet above the existing pole. As a general matter, Verizon Wireless requires a facility height of 40 feet for small wireless facilities in all areas to be able to meet its RF objectives and deploy wireless services in residential areas where customer demand is the greatest. With respect to attachments to existing poles and facilities, Verizon Wireless requires ten (10) feet above the height of the pole structure in order to deploy existing and future technologies. If small wireless facilities are deployed at a lower height or are restricted in the height above the existing pole, then that will result in the proliferation of more facilities. The lower the height, the more poles or attachments are needed. The higher the height, the less poles and attachments are needed. Thus, Verizon Wireless wants to ensure there is an option for deployment of freestanding small wireless facilities and attachments to existing facilities at the height necessary to provide wireless services and reduce the visual impact by deploying fewer poles at the optimal height. Further, if the attachments are limited to two (2) feet, Verizon Wireless will not be able to deploy existing or future technologies on that structure or pole. It will require the deployment of additional attachments or freestanding poles. For these reasons, Verizon Wireless requests that the Town revise this language to allow for ten feet above the pole.

4. Spacing

No ~~freestanding~~ small cell facility shall be located within ~~one thousand six hundred feet (1000-600 ft)~~ of any other such ~~freestanding small cell 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.~~ The Town Manager 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 (e.g. the minimum separation requirement will not result in effective coverage of the area),~~ or (ii) the Town Manager 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 small cell wireless facility at a distance less than 600 feet from another small wireless facility in the public right of way will meet the intent of reducing visibility and visual clutter of small wireless facilities.

Commented [RMK3]: Verizon Wireless proposes the below modifications to the separation distance provision between small cell facilities to allow for the Town Manager to waive the separation requirement in certain circumstances. There may be situations where strict adherence to this separation requirement places an undue burden on service providers and effectively prohibits them from serving certain areas. This alternative language we propose has been adopted by other jurisdictions in Colorado. Depending on the height of the facility, small cell facilities may need to be closer together to provide capacity and coverage for the network, or closer locations may achieve certain aesthetics that the Town prefers. Verizon Wireless therefore requests an exception which would allow for some flexibility under certain circumstances.

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 or 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.~~

~~8.6. 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.~~

Commented [RMK4]: Verizon Wireless requests that this provision along with the Indemnification and Bonding provisions be included in the master license agreement between the Town and the wireless provider. The terms in this section are terms that are usually addressed in the Master License Agreement between the Town and a wireless providers for small cell facilities in the public ROW.

~~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.~~

~~10.7. 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