

**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) of 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 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.

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