

**TOWN OF ERIE
ORDINANCE NO. ___-2019**

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF ERIE AMENDING VARIOUS PROVISIONS OF TITLE 10 OF THE ERIE MUNICIPAL CODE AND ENACTING A NEW CHAPTER 13 OF TITLE 10 OF THE ERIE MUNICIPAL CODE, ALL REGARDING WIRELESS COMMUNICATION FACILITIES

WHEREAS, currently Section 10.3.2.B.2. of the Erie Municipal Code (the "Code") regulates the siting and design of wireless communication facilities;

WHEREAS, since the enactment of Section 10.3.2.B.2. of the Code, state and federal law governing wireless communication facilities has changed;

WHEREAS, on October 16, 2019, the Planning Commission reviewed the proposed amendments, and recommended that the Board of Trustees approve the proposed amendments; and

WHEREAS, on November 12 2019, the Board of Trustees held a properly-noticed public hearing on the proposed amendments, and the Board of Trustees now wishes to amend the Code to provide for the regulation of wireless communication facilities consistent with state and federal law.

NOW BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, THAT:

Section 1. Section 10.3.1.E. of the Erie Municipal Code is hereby amended as follows:

TABLE 3-1: TABLE OF PERMITTED USES																			
P = Permitted Use by Right S = Special Review Use Blank Cell = Prohibited																			
USE CATEGORY	USE TYPE	RESIDENTIAL							COMMERCIAL				MIXED USE			OTHER			Use Standards
		RR	ER	SR	LR	MR	HR	DTR	CC	RC	B	LI	DT	NMU	CMU	AG/OS	AP	PLI	
Religious Assembly	Religious Assembly	S	S	S	S	S	S	P	P	P	P	S	P	P	P	S	S	P	
Tele-Wireless eCommunication Facilities	Antenna Collection on Existing Tower/Alternative Tower Structure & Base Station	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	3-2-B-2 Regulations Chapter 13
	Concealed Antennae and Towers	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	3-2-B-2 Regulations Chapter 13
	Non-Concealed Building-Mounted Antennae and Towers	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	3-2-B-2
	Non-Concealed Free-standing Towers	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	3-2-B-2
Utility Facilities	Utility Facility, Major	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
	Utility Facility, Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Utility, Town-Owned	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
COMMERCIAL USES																			
Agricultural	Agricultural Cultivation															P		P	
	Agricultural Grazing															P		S	3.2.C.2

Section 2. Section 10.3.2.B.2. of the Erie Municipal Code is hereby repealed in its entirety.

Section 3. Section 10.6.1.C.2. of the Erie Municipal Code is hereby amended as follows:

10.6.1. General Provisions.

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C. Alternative Equivalent Compliance.

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2. Applicability. The alternative equivalent compliance procedure shall be available only for the following Sections of this Chapter *and Chapter 13*:

- a. Section 6.4, Landscaping, Screening, and Fencing;
- b. Section 6.7, Residential Use Category Design Standards;
- c. Section 6.8, Commercial and Public/Institutional Use Categories and Mixed Use Districts Design Standards; ~~and~~
- d. Section 6.9, Aviation, Manufacturing, and Light Industrial Use Categories Design Standards; *and*
- e. *Section 13.3, Design Standards.*

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Section 4. Section 10.7.2 of the Erie Municipal Code is hereby amended as follows:

10.7.2. Common Development Procedures.

The common development review procedures in this Section 7.2 shall apply to all types of development applications under this Chapter *and Chapter 13*, unless an exception to the common procedures is expressly called for in the particular development application requirements in subsequent Sections of this Chapter *or Chapter 13*.

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B. Step 2: Development Application Submittal.

1. Form of Application. Applications and submission materials required ~~under this Chapter~~ shall be submitted in a form and in such number as required by the Community Development Director and described in the User's Guide.

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Section 5. Section 10.11.3 of the Erie Municipal Code is hereby amended by the deletion of the following definitions: Antenna Collocation on Existing Tower, Concealed Antennae and Towers, and Telecommunication Facilities.

Section 6. Title 10 of the Erie Municipal Code is hereby amended by the addition of a new Chapter 13, to read as follows:

CHAPTER 13
Wireless Communication Facilities

10.13.1. Purpose and Applicability.

A. Purpose. The purpose of this Chapter is to accommodate the communications needs of residents and businesses while protecting the public, health, safety, and general welfare of the community by:

1. Providing for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the Town, balancing the need to provide wireless service while minimizing the number of wireless communications facilities (WCFs) to complete and enhance a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including those that install, maintain, operate and remove WCFs;

2. Promoting the reduction in the visibility of WCFs to the fullest extent possible through techniques including without limitation to camouflage design and undergrounding of the equipment associated with WCFs;

3. Encouraging the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs;

4. Encouraging the use of wall-mounted panel Antennas;

5. Encouraging roof-mounted antennas only when wall-mounted antennas will not provide adequate service or are not otherwise feasible;

6. Encouraging the location of WCFs in non-residential areas in a manner that minimizes the total number of WCFs needed throughout the community;

7. Encouraging, strongly, the collocation of WCFs on new and existing sites when appropriate;

8. Encouraging owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;

9. Enhancing the ability of wireless communications service providers to provide such services to the community effectively, efficiently, and consistent with all applicable provisions of federal and state law; and

10. Effectively managing WCFs in rights-of-way.

11. Manage amateur radio facilities and over-the-air devices in the Town.

B. Applicability. This Chapter shall apply to the construction or modification of any WCF in the Town, except:

1. Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only antennas, provided that the height of the antenna be no more than the distance from the base of the antenna to the property line.

2. Any WCF for which a permit has been properly issued prior to the effective date of these new wireless regulations; provided that modifications to existing WCFs (including without limitation trading out of antennas for an equal number of antennas) shall comply with the operational standards in Section 10.13.4., unless the modifications qualify as an eligible facilities request, in which case the modification shall be evaluated as an eligible facilities request.

3. Antennas used for reception of television, multi-channel video programming and radio, including over-the-air reception device ("OTARD") antennas, television broadcast band antennas, and broadcast radio antennas provided that any requirements related to accessory uses contained in this Code and the requirement that the height of a freestanding antenna not attached to the primary structure be no more than the distance from the base to the property line are met, provided that the Town is authorized to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the Town, modifications are necessary to comply with federal law.

4. A WCF installed with notice to the Town upon the declaration of a state of emergency by the federal, state, or local government, or other written determination of public necessity by the Town.

5. A temporary WCF installed for providing coverage of a special event such as a news coverage or sporting event, subject to administrative approval by the Town.

10.13.2. Definitions.

For purposes of this Chapter, the following terms shall have the following meanings:

Accessory equipment: Any equipment serving or being used in conjunction with a WCF, including without limitation utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or other structures including fences.

Alternative tower structure: Clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of antennas or towers so as to make them architecturally compatible with the surrounding area pursuant to the requirements of this Code, as well as a stand-alone pole in the right-of-way, replacement pole, streetlight, or traffic signal that accommodates small cell facilities, to the extent it meets the camouflage and concealment standards of this Chapter.

Antenna: A device used to transmit or receive radio or electromagnetic waves including without limitation 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 as well as exterior apparatus designed for telephone, radio, or television communications through the sending or receiving of wireless communications signals.

Applicant: Any person who submits an application to the Town to site, install, construct, collocate, modify or operate a WCF.

Base station: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include a tower or any equipment associated with a tower, but 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, 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 supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks) that, at the time the relevant application is filed with the Town under 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.

The definition of base station does not include any structure that, at the time the relevant application is filed with the town, does not support or house equipment described in paragraphs 1 and 2 above.

Camouflage design techniques: The designing of a WCF to alter its appearance in such a manner as to hide its true character while integrating surrounding building designs or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located, including: integration as an architectural feature of an existing structure such as a cupola; integration within, or incorporation in vertical infrastructure located in the right-of-way such as a traffic signal, flag pole, light pole or other similar structure and is not readily apparent; and use of a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation stop signs or other traffic signs or replacement poles or other freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation: Mounting or installing a WCF on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure; provided that, for purposes of eligible facilities requests, the term means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes, or both.

Distribution line: A line or system of lines for distributing electric power or communications, strung above ground between utility poles.

Eligible facilities request: A request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment.

Eligible support structure: A tower or base station already existing at the time the relevant application is filed with the Town under this Chapter.

Existing tower or base station: A constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was constructed.

Micro cell facility: A small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

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

Over-the-air reception device: An antenna used to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations, but shall not include antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, digital audio radio services or Antennas used as part of a hub to relay signals among multiple locations.

Replacement pole: An alternative tower structure that is a newly constructed and permitted traffic signal, utility pole, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure to support a WCF, small cell facility or micro cell facility or to accommodate collocation, and requires removal of the pre-existing pole or structure.

Right-of-way: As defined in Section 10.11.3., provided that, for purposes of this Chapter, right-of-way does not include trails or open space property.

Site: The current boundaries of the leased or owned property surrounding a tower or eligible support structure and any access or utility easements currently related to the site. A site, for other alternative tower structures, base stations, micro cell facilities, and small cell facilities in the right-of-way, is further restricted to that area comprising the base of the structure including any related accessory equipment and to other related accessory equipment already deployed on the ground.

Small cell facility: A WCF where: each 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 primary equipment enclosures are no 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 enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. The definition of small cell facility includes micro cell facilities..

Substantial change: A modification that 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, 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 (20) 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 , 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 for towers in a 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 ground cabinets associated with the structure;

4. For any eligible support structure, it entails any excavation or deployment outside the current site;

5. For any eligible support structure, it would defeat the concealment elements of the eligible support structure; and a change which undermines the concealment elements of an eligible support structure will be considered to defeat the concealment elements; or

6. 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 subsections 1, 2 and 3 hereof.

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 building 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: A structure that is primarily built for the sole or primary purpose of supporting any FCC-licensed or FCC-authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, including without limitation private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

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 such as without limitation private, broadcast, and public safety services; unlicensed wireless services; and fixed wireless services such as microwave backhaul.

Unreasonable interference: Any use of a right-of-way which interferes with public utilities, or presents a hazard to public health, safety, or welfare, or interferes with the use of the right-of-way by the Town, the general public, or any 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.

Wireless communications facility (WCF): A facility, including antennas, base stations, support equipment, alternative tower structures, small cell facilities and towers used to provide personal wireless services as defined at 47 U.S.C. § 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 wireless utility monitoring and control service; but excluding: a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; a device attached to a building, serving that building only and that is otherwise permitted under other provisions of the Code; mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting antennas; and other facilities specifically excluded from this Chapter.

10.13.3. Required Approvals.

No WCF in the Town shall be constructed, installed or modified without the approvals required by this Chapter, as well as a building permit, if required by the building code.

10.13.4. Operational Standards.

A. Compliance with Law.

1. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other federal government agency with the authority to regulate WCFs. If such standards or regulations are changed, the owner of the WCF shall bring the WCF into compliance with any such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law or agreed to by the Town, failure to meet such revised standards and regulations within thirty (30) days of the Town's determination of such failure shall constitute grounds for the removal of the WCF by the Town or property owner at the WCF owner's expense.

2. 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 and safety codes. If upon inspection, the Town 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 thirty (30) days from the date of notice to bring the WCF into compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the Town may extend such compliance period, not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the Town may remove such WCF at the owner's expense.

B. Permission. It is the Town's policy that all WCFs located in a right-of-way shall be subject to a master license agreement with the Town granting a non-exclusive license to use the right-of-way; provided however that if an applicant chooses to move forward with an application prior to completion of a master license agreement the Town shall consider the application in accordance with this Chapter. Attachment of a WCF to 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. The applicant shall remain the owner of, and solely responsible for, any WCF installed in the ROW. Prior to seeking land use approval for a WCF on public property, the applicant shall execute a lease with the Town.

C. Abandonment and Removal. If a WCF has not been in use for a period of ninety (90) days, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing ninety (90) days. Any WCF that is not operated for a continuous period of one hundred eighty (180) days shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within thirty (30) days of receipt of written notice from the Town. If such WCF is not removed within said thirty (30) days, the Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

D. 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.

E. Collocation. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Town, the owner or operator shall provide evidence explaining why collocation is not possible on a particular facility or at a particular site.

10.13.5. Design Standards.

A. General Provisions.

1. These standards shall apply to all WCFs; provided, however, that the Town may consider an alternative equivalent compliance pursuant to Section 10.6.1.C of this Code if the Town determines that the goals of this Chapter are better served thereby.

2. WCFs shall be designed and located to minimize the impact on the surrounding area and to maintain the character and appearance of the Town, consistent with other provisions of the Code.

3. Any modification to existing grade on the site shall be the minimum required to support the WCF; the grading for a WCF shall be compatible with the surrounding topography.

4. Every WCF shall be of a neutral, non-reflective material and color that is complimentary to the structure to which it is attached and which shall reduce the visual obtrusiveness of the WCF.

5. Small cell facilities may be attached to alternate tower structures, replacement poles and base stations.

B. Camouflage Design Techniques. WCFs shall, to the maximum extent reasonably practicable, use Camouflage Design Techniques including without limitation the use of materials, colors, textures, screening, undergrounding, landscaping, location or other design options that will blend the WCF into the surrounding natural setting and built environment. Camouflage design techniques are of heightened importance when a WCF is proposed in proximity to historic, natural, or aesthetically significant structures or areas, views, or community features or facilities.

1. Examples of camouflage design techniques include:

a. Integration as an architectural feature on an existing structure; such as a cupola.

b. Architectural design for an alternative tower structure which is complimentary in scale and style to nearby buildings.

c. Location on a flat roof with parapets or screening to mimic roof top mechanical equipment.

d. Attachment to the exterior of a building and painted to match the structure.

e. Integration with vertical infrastructure located in the right-of-way such as a light pole or traffic signal so that the WCF is not readily apparent.

- f. Location of WCFs to minimize the visual impact on public areas such as streets, parks, open space, trails and schools.
 - g. Equipment placement underground or in depressions that provide screening, or screened by earth berms.
 - h. Use of non-reflective, neutral materials and colors.
 - i. Use of existing access and parking associated with the principal use.
2. WCF equipment connections shall typically be placed inside the camouflage or concealment element of the WCF. WCFs that have equipment connections on the exterior of a structure shall place the equipment connections in conduit and shall use camouflage design techniques to minimize the visual impact of the conduit.
- C. Collocation. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is reasonably practicable based upon construction, engineering and design standards. Collocation shall not be required when it would materially compromise the camouflage design intent of the WCF.
- D. Lighting. If lighting is required, it shall conform to lighting standards of Section 10.6.10. WCFs shall not be artificially lighted unless:
- 1. Required by the FAA or other applicable governmental authority;
 - 2. The WCF is lighted by a source not specifically installed for lighting the WCF; or
 - 3. The WCF is mounted on a light pole or other similar structure primarily used for lighting purposes.
- E. Location.
- 1. WCFs, except for small cell Facilities in a right-of-way, shall meet the setback and height requirements of the zone district they are located in and shall be sited away from residential structures and residential district boundaries, to the extent reasonably practicable based upon construction, engineering and design standards. The setback from all property lines for tower structures shall be equal to the height of the tower. The height of a tower may exceed the zone district maximum height requirement if approved by the Town through the special review use process. The additional height shall be the minimum required to meet the applicant's service requirements.
 - 2. WCFs, except for small cell facilities, shall not be permitted in the floodplain.
 - 3. WCFs shall be sited and designed in a manner that does not reduce the required landscaping for the principal uses on the site.
 - 4. All buildings, shelters, cabinets, and other accessory components shall be grouped as closely as technically possible.

5. Access drives shall be minimized to the maximum extent practicable. Access is preferred to be from an existing parking lot or drive and should minimize the impacts on streets and adjacent properties.

6. WCFs located near residential properties shall be placed adjacent to a common 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 a common 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 Town requesting review under Section 10.13.14.D as to whether the WCF should be exempt from these requirements.

F. Ground-mounted Accessory Equipment.

1. Ground-mounted accessory equipment shall be located in a manner necessary to address both public safety and aesthetic concerns. The equipment shall be generally located to the rear of a structure and away from public areas, streets, open space, parks and other similar areas to reduce the visual and safety impacts to the maximum extent reasonably practicable.

2. Ground-mounted accessory equipment shall not exceed eight (8) feet in height, and shall be fully screened within a walled or fenced yard that meets the design of Section 10.6.4.G.8.a, b and c; or, placed in an enclosed building that is of the same materials and style as the principal building.

3. The Town may require landscaping to better integrate the facility into the site. Landscaping shall comply with Section 10.6.4 F.

4. Where fencing is required, it shall comply with Section 10.6.4 H.

5. The Town may, where appropriate and reasonably feasible from a construction, engineering, or design perspective, require a flush-to-grade underground equipment vault where the siting of the equipment would affect the visual aesthetic of the site or where the equipment may create a safety risk.

G. Design Standards by Type.

1. Base Station Mounted. Base Station mounted WCFs, other than small cell facilities, shall not be permitted on single-family dwellings or duplex dwellings.

2. Roof Mounted. WCFs and accessory equipment on a flat roof with parapets shall not extend more than ten (10) feet above the parapet and shall comply with the screening requirements of Section 10.6.4.G.6. WCFs shall not be located on a flat roof without parapets. WCFs and accessory equipment on a sloped roof shall be fully screened by enclosing the WCF within an architectural element of the building that is designed to match the building. The architectural element shall be in scale and architecturally compatible with the building.

3. Wall Mounted. WCFs shall be painted or screened in a style and by materials that architecturally integrate the WCF with the building to which it is

mounted. WCFs and related components shall not extend above the height of the wall or the roofline of the base station on which it is mounted. The maximum projection of WCFs and related components from a structure face shall be three (3) feet.

4. Alternative Tower Structures.

a. Alternative tower structures that are not small cell facilities shall not be permitted on a lot with a single-family dwelling or duplex dwelling. Alternative tower structures shall use similar materials and form to compliment the principal structure, or if there is not a principal structure, then the alternative tower structure should be compatible with the character of adjacent and nearby properties. Alternative tower structures shall be compatible with the site and the character of the Town. The size of an alternative tower structure shall be the minimum size needed to obtain coverage objectives. If the alternative tower structure is a light pole, the height shall comply with Section 10.6.10.

b. Alternative tower structures for small cell facilities in the right-of-way may be deployed on street light poles, distribution lines (for micro cell facilities), utility poles, traffic signal poles, replacement poles, stand-alone poles or other similar structures; provided that the deployment complies with the Standards and Specifications.

c. Any small cell or micro facilities in the right-of-way on utility infrastructure or on stand-alone facilities are subject to the Town's undergrounding requirements and all provisions of applicable law.

d. To the extent that an alternative tower structure is a vertical structure located in the right-of-way, its pole-mounted components shall be located on or within an existing utility pole or replacement pole where reasonably feasible from a technical, construction, engineering or design perspective.

e. To the extent reasonably practicable from a technical, construction, engineering or design perspective, alternative tower structures shall be consistent with the size and shape of the existing pole-mounted equipment installed on utility poles near the alternative tower structure.

f. Alternative tower structures shall be sized to minimize the negative aesthetic impacts to the right-of-way and surrounding properties.

g. Alternative tower structures shall be designed such that antenna installations on traffic signal poles are placed in a manner so that the size, appearance, maintenance ability and functionality of the signal will not be altered.

h. Ground-mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the Town, such as being screened from view, located a minimum of two (2) feet away from a sidewalk or not located in a vision sight triangle. Where appropriate and reasonably feasible from a

construction, engineering or design perspective, the Town may require a flush-to-grade underground equipment vault.

i. Alternative tower structures shall 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. No alternative tower structure may be located or maintained in a manner that causes unreasonable interference.

j. Alternative tower structures that are stand-alone poles or existing or replacement street light poles may not be more than ten (10) feet taller (as measured from the ground to the top of the pole) than allowed by the Town Standards and Specifications for a street light pole on the street type where it is being located.

k. Stand-alone small cell alternative tower structures shall be separated from any other stand-alone small cell alternative tower structure in a right-of-way by a distance of at least six hundred (600) feet.

l. To the extent reasonably practicable from a technical, construction, engineering and design perspective, collocations are strongly encouraged to limit the number of poles within a right-of-way.

m. The Director may exempt an alternative tower structure from the applicable height or separation requirements if: the applicant demonstrates through technical network engineering documentation that the maximum height or minimum separation cannot be satisfied for technical reasons, or the 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 WCF at the location requested by the applicant will meet the intent of reducing visibility and visual clutter of vertical structures in the right-of-way.

5. Towers.

a. Towers shall be monopoles, tapering from the base to the tip. Lattice and guy towers with support are not permitted.

b. Towers shall be either a galvanized steel finish, or, subject to any applicable FAA standards and Town design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.

c. Towers shall use existing landforms, vegetation, and structures to aid in screening the facility from view, or blending in with the surrounding built and natural environment where possible.

d. Towers shall be enclosed by a fence or wall that complies with Section 10.6.4 G.8.a, b and c.

10.13.6. Review Procedures.

A. Decisions. Every decision to approve, approve with conditions, or deny an application under this Chapter shall be in writing and supported by substantial

evidence in a written record, and a copy of the written decision shall be provided to the applicant.

B. Eligible Facilities Requests. In all zone districts, eligible facilities requests shall be considered a permitted use, subject to administrative review.

1. Application. The Town shall require submittal of information necessary for the Town to determine whether an application is an eligible facilities request, as set forth in the WCF User's Guide. Such required information may include without limitation whether the project constitutes a substantial change, or violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety, or both. The application shall not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

2. Timeframe. Upon receipt of an application for an eligible facilities request, the Town shall review such application to determine whether the application so qualifies. Subject to subsection (3) hereof, within sixty (60) days of the date on which an applicant submits an application seeking approval under this Subsection, the Town shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise is not in conformance with applicable codes.

3. Tolling. The review period begins to run when the application is filed, and may be tolled only by mutual agreement of the Town and the applicant, or in cases where the Town notifies the applicant that the application is incomplete.

a. To toll the timeframe for incompleteness, the Town 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. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the Town's notice of incompleteness.

b. Within ten (10) days of a supplemental submission, the Town will notify the applicant if the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection a. hereof. In the case of a second or subsequent notice of incompleteness, the Town may not specify additional missing information or documents that were not delineated in the original notice of incompleteness.

4. Failure to Act. If the Town fails to act on a request seeking approval for an eligible facilities request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the Town in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

5. Interaction with Section 332(c)(7) of the Telecommunications Act. If the Town determines that the application is not an eligible facilities request, the

presumptively reasonable timeframe under Section 332(c)(7) of the Telecommunications Act, as prescribed by the FCC Order entitled "In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, WT Docket No. 08-165, FCC 09-99 (rel. Nov. 18, 2009)", will begin to run from the issuance of the Town's decision that the application is not an eligible facilities request. The Town may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

C. Other WCFs. Each new WCF or modification of an existing WCF that is not an eligible facilities request shall comply with the following:

1. Timeframe. Subject to tolling as provided for below, and unless a longer review period is agreed to by the applicant, applications for WCFs shall be subject to a review period as follows:

- a. One-hundred and fifty (150) days for a new WCF other than a small cell facility in a right-of-way;
- b. Ninety (90) days for a small cell facility in a right-of-way;
- c. Ninety (90) days for modifications to or collocations with WCFs that do not qualify as an eligible facilities request.

2. Tolling. The review period begins to run when the application is filed and may be tolled where the Town determines that the application is incomplete, or by mutual agreement of the Town and the applicant.

D. Specific Review Procedures.

1. Administrative Review of Alternative Tower Structures and Base Stations. The following review steps of Section 10.7.2 shall apply:

Step 1: Pre-Application Conference. Applicable, but optional for Small Cell Facilities.

Step 2: Development Application Submittal. Applicable.

Step 3: Determination of Application Completeness. Applicable.

Step 4: Neighborhood Meeting. Not applicable.

Step 5: Application Referral, Review and Staff Report. Applicable.

Step 6: Notice. Not applicable.

Step 7: Public Hearing. Not applicable.

Step 8: Decision and Findings. The Director shall review each application relative to the approval criteria and shall act to approve, approve with conditions or deny the application. The Director's decision may be appealed to the Board of Trustees. A written appeal shall be filed with the Director not more than seven (7) days after the decision, stating in detail the basis for the appeal. The Board of Trustees shall consider the appeal and may

affirm the decision or overturn the decision. The decision of the Board of Trustees shall be final.

Section 9: Approval Criteria. Applicable. The Director shall consider whether the proposed WCF complies with all applicable requirements of Section 10.13.3 that are specifically applicable to the proposed type of WCF; whether any significant adverse impacts reasonably anticipated to result from the use will be mitigated or offset to the maximum extent reasonably practicable; and whether the WCF proposed is or will be compatible with the character of the surrounding land uses.

Section 10: Conditions of Approval. Applicable.

Section 11: Amendments. Applicable.

Section 12: Lapse. Applicable. If a WCF is not operational within one (1) year after the date of its approval, unless an extension has been agreed to in writing by the Town, its approval shall become null and void.

2. Planning Commission Review of Towers. The following review steps from Section 10.7.2 shall apply.

Step 1: Pre-Application Conference. Applicable.

Step 2: Development Application Submittal. Applicable.

Step 3: Determination of Application Completeness. Applicable.

Step 4: Neighborhood Meeting. Applicable.

Step 5: Application Referral, Review and Staff Report. Applicable.

Step 6: Notice. Applicable.

Step 7: Public Hearing. Applicable.

Step 8: Decision and Findings. Applicable. Only if there is sufficient time for the completion of Board of Trustees action in accordance with the timeframes required by applicable law, as extended by agreement of the applicant, the decision of the Planning Commission may be appealed to the Board of Trustees. If there is insufficient time for an appeal, the Planning Commission decision shall be final. A written appeal shall be filed with the Director not more than seven (7) days after the decision, stating in detail the basis for the appeal. The Board of Trustees shall consider the appeal and may affirm the decision or overturn the decision. The decision of the Board of Trustees shall be final.

Step 9: Approval Criteria. Applicable. The Planning Commission shall consider whether the proposed WCF complies with all applicable requirements of Section 10.13.3 that are specifically applicable to the proposed type of WCF; whether any significant adverse impacts reasonably anticipated to result from the use will be mitigated or offset to the maximum extent reasonably practicable; and whether the WCF proposed is or will be compatible with the character of the surrounding land uses.

Step 10: Conditions of Approval. Applicable.

Step 11: Amendments. Applicable.

Step 12: Lapse. Applicable. If a WCF is not operational within one (1) year after the date of its approval, unless an extension has been agreed to in writing by the Town, its approval shall become null and void.

Section 8. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 9. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 10. Effective Date. This Ordinance shall take effect 30 days after publication following adoption.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 12th day of November, 2019.

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk