

Town of Erie
Ordinance No. 024-2025

**An Ordinance of the Town Council of the Town of Erie Amending
Title 10, Chapter 13 of the Erie Municipal Code Concerning
Applications for the Installation of Wireless Communication
Facilities within the Town**

Whereas, in Title 10, Chapter 13 of the Erie Municipal Code (the "Code"), the Town has adopted generally-applicable regulations to manage the development, installation, maintenance, modification, and removal of wireless facilities within the Town, balancing public safety and 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 within Erie;

Whereas, Federal law prohibits local governments from enacting regulations which prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. § 332(c)(7)(B)(i)(II). In the context of this prohibition, between 2009 and 2020, the Federal Communications Commission has promulgated a variety of rules which establish "shot clocks" within which local governments must respond to applications for the placement, construction, or modification of personal wireless service facilities;

Whereas, for applications which do not substantially change the physical dimensions of the wireless facility or its support structure and involve the collocation, like-for-like replacement, or removal of wireless transmission equipment ("Eligible Facilities Requests" or "EFRs"), local governments are required to respond to the EFR application within 60 days. 47 C.F.R. § 1.6100(c)(3);

Whereas, pursuant to C.R.S. § 29-27-405(1), local governments may not require permits of WCF applicants if the work to be undertaken is an EFR. However, notwithstanding that provision, C.R.S. § 29-27-405(2) provides that local governments retain the right to enforce any generally-applicable and non-discriminatory building, electrical, fire, or other safety requirements in connection with the modification, removal, discontinuance or replacement of any wireless facilities, including EFRs, which necessarily include the need to obtain permits related to such work;

Whereas, Section 10-13-6B of the Code addresses the application of the appropriate shot clock that governs applications for EFRs that are rejected when it is determined that the work requested does not meet the requirements for EFRs. Section

10-13-6C of the Code addresses shot clock requirements for non-EFR applications. The Town has determined that the language of these subsections should be modified to make it clearer as to when the appropriate shot clock for such applications commence;

Whereas, to effectively implement new Colorado law regarding when permits are required for EFR applications, and to clarify the applicable shot clocks that apply to EFR and non-EFR applications, the Town Council finds and determines that amendments to the Code are required, as more fully set forth herein;

Now Therefore be it ordained by the Town Council of the Town of Erie, Colorado, as follows:

Section 1. Section 10-13-3 is hereby amended as follows:

10-13-3 – Required approvals.

A. 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;

B. Any work conducted within the public right-of-way – including work conducted pursuant to an eligible facilities request as defined in Section 10-13-2 of this Code – by its very nature impacts public safety including without limitation the need to close lane(s) of traffic to conduct work, the need to ensure the structural stability of facilities and associated infrastructure, and the need to ensure adequate sightlines for both vehicles and pedestrians. Consistent with C.R.S. § 29-27-405(2), the Town may ensure that all work conducted within the public right-of-way is done under applicable permits, and is completed in accordance with all generally applicable and nondiscriminatory building, electrical, fire, or other safety requirements including without limitation the Town’s Engineering Standards & Specifications.

C. Any work conducted outside of the public right-of-way within the Town – including work conducted pursuant to an eligible facilities request as defined in Section 10-13-2 of this Code – may impact public safety. Consistent with C.R.S. § 29-27-405(2), and at the discretion of the Director, the Town may ensure that all work conducted outside of the public right-of-way is done under applicable permits, and is completed in accordance with all generally applicable and nondiscriminatory building, electrical, fire, or other safety requirements including without limitation the Town’s Engineering Standards & Specifications.

Section 2. Section 10-13-6 is hereby amended as follows:

10-13-6 – Review procedures.

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

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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.~~
Interaction with Telecommunications Act 47 U.S.C. § 332(c)(7). If the Town determines that the applicant's request is not an Eligible Facilities Request, the applicant shall be advised as to the relevant provisions of the Code that govern the process to consider the request, and whether the Code requires any additional information to be submitted for the request to be considered complete. If the applicant subsequently indicates an intent in writing for the proposal to be considered under the relevant section of the Code and submits all required information, the presumptively reasonable timeframe under 47 U.S.C. § 332(c)(7), as set forth in applicable federal and state law, will begin to run from submittal of the required information under the applicable provision of the Code.

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:

* * *

b. Ninety (90) days for a small cell facility in a right-of-way on a new tower or base station:

c. ~~Ninety days for modifications to or collocations with WCFs that do not qualify as an eligible facilities request. Sixty (60) days for a small cell facility in a right-of-way on an existing tower or base station:~~

d. 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. Request for additional information. If the Town determines that an application for a WCF is incomplete or contains insufficient information to be reviewed under this Code, the Town must provide notice within the timeframe specified below to toll the application:~~

a. Thirty (30) days for a new WCF or a non-eligible facilities request for collocation or modification of an existing WCF; or

b. Ten (10) days for a small cell facility.

3. Tolling. For a new WCF or for a non-eligible facilities request for collocation or modification of an existing WCF, 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. The "shot clock" continues from the date that the requested information to make the application complete is provided or otherwise upon mutual agreement of the parties. For a small cell application, if the Town determines that the application is incomplete, once the applicant has furnished sufficient information for the application to be considered complete, the review timeframe specified in paragraph (1) above restarts at the beginning.

4. Failure to act. If the Town fails to act on a request seeking approval for a WCF 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.

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Section 3. 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 Town Council 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 4. Safety. The Town Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 5. Effective Date. This Ordinance shall take effect 10 days after publication following adoption.

Andrew J. Moore, Mayor

Debbie Stamp, Town Clerk