

ORDINANCE NO. 143, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 23 OF THE CODE OF THE CITY OF FORT COLLINS
TO ESTABLISH COMMUNICATION FACILITY ENCROACHMENT PERMITS

WHEREAS, the City Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes; and

WHEREAS, during the 2017 legislative session, the Colorado General Assembly passed and the Governor signed into law HB17-1193, codified at Title 29, Article 7 and Title 38, Article 5.5 of the Colorado Revised Statutes, which expands access to public rights-of-way and City-owned infrastructure in public rights-of-way for placement of small cell facilities, making such facilities a use by right in all zone districts; and

WHEREAS, notwithstanding the expanded access to municipal rights-of-way and City-owned infrastructure for small cell facilities, HB17-1193 also preserves the local government's right to exercise police powers to regulate the placement of such facilities, subject to certain limitations; and

WHEREAS, HB17-1193 became effective on July 1, 2017; and

WHEREAS, the City Code currently allows right-of-way obstruction permits for limited purposes and activities, and the City Council has determined a new class of encroachment permit is needed for communication facilities under HB 17-1193 and to facilitate availability of wireless communication services throughout all areas of the City; and

WHEREAS, the City Council has also determined the City Code should be amended to clarify when standards for review of communication facility encroachments will incorporate administrative standards adopted for land use, building, forestry, and public land management in other areas of the City; and

WHEREAS, on September 5, 2017, the City Council adopted Ordinance No. 105, 2017, enacting a temporary moratorium on accepting new applications and issuing permits for communication facilities in public highways in order to allow staff to develop and present for City Council consideration design standards and regulations for installation of communication facilities by third parties in public highways in the City; and

WHEREAS, based on direction provided by the City Council on September 5, 2017, staff developed new regulations to comply with HB 17-1193 and Title 47 of the United States Code to facilitate orderly review and approval of permits for communication facilities located in "public highways", as defined in HB 17-1193; and

WHEREAS, staff incorporated feedback from operators of small cell wireless communication facilities in developing the regulations described by this Ordinance; and

WHEREAS, the City Manager and staff have recommended to the City Council the following additions and revisions to Chapter 23 of the City Code to create a right-of-way encroachment permit application and review process for locating wireless communication facilities in public highways in the City; and

WHEREAS, based on the foregoing, it is the desire of the City Council to amend Chapter 23 of the City Code to establish communication facility encroachment permits for public highways.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 23-19 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-19. Bond and insurance.

(a) Every applicant for an excavation permit shall comply with the bonding and insurance requirements set forth in §§ 15-363 and 15-364.

(b) A contractor's license and endorsements package including bonding, liability insurance and endorsements must be completed and on file with the Engineering department when working in the right-of-way and/or connecting to a City utility.

Section 3. That Chapter 23, Article VII of the Code of the City of Fort Collins, currently reserved, is hereby added as follows:

**ARTICLE VII
COMMUNICATION FACILITY ENCROACHMENT PERMITS**

Sec. 23-171. - Purpose and intent.

In order to accommodate the communication needs of residents and businesses, while protecting the community's natural beauty, visual quality, and public health, safety and general welfare, the City Council finds these regulations are necessary to:

- (1) Establish a local policy concerning installation of communication facilities in public highways, minimizing the visual impact of such installations on the community, particularly in and near residences;
- (2) Promote competition in the provision of wireless communications services;
- (3) Facilitate the provision of wireless communications services to the residents and businesses of the city;

- (4) Minimize adverse visual effects of antennas, overhead attachments in public highways, and communication facilities through careful design and siting standards, including but not limited to camouflage design techniques, screening, and undergrounding of associated equipment whenever possible;
- (5) Encourage collocation of antennas and maximizing the use of existing structures in public highways to accommodate communications facilities, reduce the number of support structures needed to serve the community and minimize impacts in or near residences;
- (6) Encourage deployment of smaller, less intrusive communications facilities, including Distributed Antenna Systems (DAS) and small cell networks with components that are a fraction of the size of macro communication facilities, and which are installed with little or no impact on utility support structures; and
- (7) Ensure vertical structures in or near residential zones are approved with consideration for preserving neighborhood harmony, scenic view sheds and corridors, and the quality of living in residential areas near communication facilities;
- (8) Effectively manage communication facilities in public highways and dedicated utility easements of the City;
- (9) Establish clear guidelines and standards and an orderly process for expedited permit application review to facilitate deployment of small cell networks and personal wireless services to the City, its residents, businesses, and community at large; and
- (10) Provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Sec. 23-172. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings below:

AASHTO shall mean the American Association of State Highway and Transportation Officials.

ANSI/SCTE 77 shall mean the standards for underground enclosures published by the American National Standards Institute and Society of Cable Telecommunications Engineers.

Antenna(s) shall have the meaning set forth in § 29-27-402, Colorado Revised Statutes.

Applicant or *permittee* shall mean a natural person or persons, partnership, company, corporation, or other legal entity who files an application for and/or receives a CF permit under this Article.

Base Station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network,

except that a *base station* does not include or encompass a Tower or any equipment associated with a tower, as defined herein. *Base station* does include:

(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 with the City under this Article, 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.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration that, at the time the relevant application is filed with the City under this Article, has been reviewed and approved under the applicable state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Base station does not include any structure that, at the time the relevant application is filed with the City under this Article, does not support or house equipment described in sub-paragraphs (1) and (2) above.

Broadband facility shall mean any infrastructure used to deliver broadband service or for the provision of broadband service. Such definition shall not include any component of an information service system defined as a “cable system” under 47 U.S.C. §§ 153 or 522.

Broadband service shall mean any technology identified by the FCC as having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics, and video. Such definition shall exclude any information service defined as a “cable service” under 47 U.S.C. §§ 153 or 522.

Broadband provider shall mean a person that provides broadband service for a fee directly to the public or to such classes of users as to be effectively available directly to the public. Such definition shall not include any provider of a service defined as a “cable service” under 47 U.S.C. §§ 153 or 522.

Camouflage, Concealment or Camouflage Design Techniques shall mean the use of any measures in the design and siting of base stations or small cell facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A site utilizes camouflage design techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a flagpole, or (iii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or (iv) is incorporated into or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the base station or small cell facility is not readily apparent. For base stations and other associated equipment, below grade vault placement will constitute camouflage or concealment.

Collocation shall mean the mounting or installation of transmission equipment on an eligible support structure for transmitting and/or receiving radio frequency signals for communications purposes so that installation of a new support structure is not required.

Communications Facility, wireless service facility or CF shall mean a facility, including a small cell facility, used to provide personal wireless services as defined at 47 U.S.C. § 332 (c)(7)(C), or wireless information services provided by a common carrier 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 services. A *CF* may include an antenna or antennas (but does not include coaxial or fiber optic cable that is not immediately adjacent to, or directly associated with, an antenna), base stations, and towers. A *CF* does not include the support structure to which the *CF* or its components are attached if the use of such structures is not primary for a *CF*.

Communications facility permit, CF permit or permit shall mean an encroachment permit issued pursuant to this Article, authorizing placement of a *CF* in a public highway in the city or on City-owned structure.

Distributed antenna system, or DAS, shall mean a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Eligible facilities request shall mean a request for modification of an *existing tower* that does not substantially change the physical dimensions of such *tower* involving: (i) collocation of new *transmission equipment*, (ii) removal of *transmission equipment*, or (iii) replacement of *transmission equipment*.

Eligible support structure shall mean any *tower* as defined at 47 U.S.C. § 153, provided it exists at the time the relevant application is filed with the City under this Article.

Engineer shall mean the City Engineer, who shall have those duties and powers as set forth in § 24-39 of this Code.

Existing tower shall mean a constructed *tower* that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was built. For example, a *tower* that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

FAA shall mean the United States Federal Aviation Administration.

FCC shall mean the United States Federal Communications Commission.

Landowner shall mean a natural person or persons, partnership, company, corporation or other legal entity recorded, in the records of the Larimer County Clerk & Recorder, as the holder of title to the real property and or personal property on which the communications facility is located or proposed to be located. *Landowner* does not include the owner of a *CF* for which an application for a *CF permit* has been filed under this Article.

Master license agreement or MLA shall mean a written agreement between the City and an applicant in which is set forth specific negotiated terms and conditions applicable to *applicant's* use of specific instances of City-owned infrastructure.

Micro wireless facility shall have the meaning set forth in § 29-27-402, Colorado Revised Statutes.

Public highway shall have the meaning set forth in § 38-5.5-102, Colorado Revised Statutes.

Right(s)-of-way shall mean any portion of a public highway dedicated to the City. *Rights-of-way* shall not include specific-purpose utility easements, when the specific purpose of the utility easement dedication does not include communication facilities or public access.

Screen shall mean an opaque structure, typically located on top of, but integrated with the design of, a building that conceals mechanical, communications or other equipment from view from the surrounding rights-of-ways and properties.

Signal interference certification shall mean a written statement certifying a technical evaluation of existing and any proposed CFs which identifies potential signal interference problems with a proposed CF and confirms compliance with all FCC radio frequency (RF) and signal interference requirements.

Site shall mean that area comprising the base of a City-owned structure on which is mounted wireless communication equipment subject to this Article and to other related transmission equipment already deployed on the ground surrounding such vertical structure; regarding private property structures, the site shall include the current boundaries of the leased or owned property and any access or utility easements currently related thereto.

Small cell facility or *small cell communications facility* shall mean any of the following:

(1) A compact wireless CF where each antenna, including exposed elements, is located inside an area of no more than three (3) cubic feet in volume, irrespective of whether enclosed; and primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside 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. All associated equipment, even if located outside the primary equipment enclosure, shall be included within the definition of *small cell facility*; or

(2) A micro wireless facility.

Small cell network shall mean a collection of interrelated small cell facilities designed to deliver wireless service.

Telecommunications provider shall mean a person that provides *telecommunications service(s)*, except for cable services and aggregators of telecommunications services as those terms are defined by federal law. *Telecommunications provider* does not mean a person or business using antennas, support towers, equipment, and/or buildings used to transmit high power over-the-air broadcast of AM and FM radio, VHF and UHF television, and advanced television services, including high definition television, as those services are defined by federal law.

Telecommunications service(s) shall mean the offering of telecommunications and/or broadband service for a fee directly to the public or to such classes of users as to be effectively available directly to the public, except for cable services as that term is defined by federal law.

Tower shall mean any structure built for the primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services, unlicensed wireless services, fixed wireless services such as microwave backhaul, and the associated site. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and other similar structures, though not including utility or light poles that are less than thirty-five (35) feet in height.

Transmission Equipment shall mean 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 including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Unreasonable interference shall mean any use of a public highway that disrupts or interferes with its use by the City, the public, or other person authorized to use or be present upon the highway, when there exists an alternative that would result in less disruption or interference. *Unreasonable interference* includes any use of a public highway that alters or disrupts vehicular, bicycle, or pedestrian traffic or visibility, any interference with public utilities, and any other activity that presents a hazard to public health, safety, or welfare.

Sec. 23-173. - Applicability.

(a) The provisions of this Article shall apply to any CF located principally within a public highway in the city and it shall be unlawful for a CF to be placed in any public highway except in compliance with this Article.

(b) The following facilities are not subject to the requirements of this Article, though such facilities may be subject to separate regulation under the Fort Collins Land Use Code:

(1) *Antennas or towers used by FCC-licensed amateur (ham) radio operators.* Such facilities shall be permitted subject to the Land Use Code.

(2) *Television or radio antennas.* Those antennas, including over the air reception devices, located on single family dwellings or duplexes, not exceeding one (1) meter in diameter and less than five (5) feet above the highest point of the existing principal structure, or for ground mounted antennas, the requirement that the height be no more than the distance from its base to the property line or the maximum height specified for accessory structures for that zone district, whichever is less. The City Manager or his or her designee has the authority to approve modifications to the height restriction related to over the air reception device antennas and antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.

(3) *Government-owned facilities.* City-owned communications facilities located on City-owned property and/or public rights-of-way, and any government-owned CF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City.

Sec. 23-174. Location standards.

(a) *Preferred locations.* To the maximum extent feasible, in all zoning districts, the preference of this Article shall be that CFs be located on main corridors and arterials, and not on residential streets, unless necessary for network operations. CFs shall maintain least six hundred (600) feet of separation from another CF, or as otherwise set forth in a master license agreement, except when collocated.

(b) *CF equipment.* To the extent any transmission equipment is approved to be located above ground, it shall be placed as close as reasonably feasible to the vertical support structure to reduce the overall visual profile, and shall comply with all design standards set forth in § 23-176.

(c) *Separation.* No freestanding CF shall be placed within six hundred (600) feet of another freestanding CF in a public highway, unless otherwise set forth in a master license agreement. This separation requirement does not apply to attachments made to existing CFs. The Engineer may modify this requirement if the applicant demonstrates the need for the CF and cannot otherwise reasonably satisfy this requirement, or as may otherwise be as set forth in a master license agreement.

(d) *Residential areas.* When placed in a single family residential areas, the CF shall be sited in a manner that evaluates the proximity of the facility to single family residential structures. When placed near single family residential property, the CF shall be placed adjacent to the common side yard property line between adjoining residential properties, so the CF minimized visual impacts equitably among adjacent properties. In the case of a corner lot, the CF may be placed adjacent to the common side yard 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 Engineer requesting the CF be exempt from these requirements.

(e) *Above-ground equipment.* Transmission equipment shall be located out of view to the maximum extent feasible. The Engineer may where appropriate and reasonably feasible based upon technical, construction and engineering requirements, require a flush-to-grade underground equipment vault.

Sec. 23-175. - Operational standards.

(a) *Federal requirements.* All CFs shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate CFs. If such standards and regulations are changed, the CF owners shall bring such facility into compliance with such revised standards and regulations within the time mandated by the controlling federal agency.

(b) *Radio frequency standards.* All CFs shall comply with federal standards for radio frequency emissions. An MLA may establish methods to demonstrate compliance with radio frequency emissions standards and require reimbursement by the applicant of reasonable costs incurred by the City to verify such compliance.

(c) *Signal interference.* All small cell facilities shall be designed and sited so as not to cause interference with the normal operation of licensed radio, television, telephone and other communication services on adjacent properties; nor shall any such facilities interfere with any public safety communications. As further set forth in § 23-177 (d)(1), at the time of submitting a permit application the applicant shall certify under penalty of perjury compliance with all FCC RF and signal interference requirements.

(d) *Legal access.* The applicant shall warrant and represent for all CF permit applications that the applicant has a letter of authorization from the landowner of any private property or a master license agreement for any public highway affected by the application providing legal access to/from the CF and the utilities necessary to operate and maintain the facility.

(e) *Operation and maintenance.*

(1) To ensure structural integrity of CFs, the CF owner shall ensure the CF and all associated support infrastructure is maintained in compliance with local building and safety codes, and applicable state and federal government agency wireless communication facility standards. If upon inspection, the City reasonably concludes a CF fails to comply with such codes and constitutes a danger to persons or property, upon written notice provided to the CF owner, the owner shall have thirty (30) days from the date on the notice to bring the CF into compliance. Upon good cause shown by the CF owner, the Engineer may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the CF owner fails to bring the CF into compliance within said period, the City may remove such facility at the permittee's expense.

(2) The site and the CF including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans. Graffiti and damage must be timely removed or repaired by the CF owner after notification by the City.

(3) If any FCC, state or other governmental license or approval to provide personal wireless services is revoked as to any CF permitted or authorized under this Article, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

(4) No trees may be removed or pruned in maintaining or operating a CF, except upon satisfying the necessity standards in § 23-176 (c)(5)d. and all requirements in Chapter 27 of this Code.

(5) To ensure proper identification of underground elements of CFs, upon request by the City, the applicant shall provide as-built drawings and a statement of compliance with all permit location conditions for CFs permitted under this Article. The failure of an

applicant to submit completed as-built drawings shall be interpreted as a waiver of all claims for damages or injuries arising from inaccurate locates by the City or third parties as to the location of applicant's underground CF elements.

(6) The CF will remain free from graffiti and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in all instances upon the earlier of ten (10) calendar days from the date of notification by the City and/or discovery by the applicant or CF operator.

(7) In the event of conflict between the requirements of this subsection (e) and a master license agreement, the master license agreement shall have priority.

(f) *Abandonment and removal.* If a small cell facility has not been in use for a period of three (3) months, the permittee shall notify the City of the non-use and indicate whether re-use is expected within the ensuing three (3) months. Any CF that is not operated for a continuous period of six (6) months shall be considered abandoned without regard to whether the permittee has provided notice, and any CF permit issued in connection therewith shall be deemed to have expired.

(1) The City, in its sole discretion, may require an abandoned CF to be removed. The permittee shall remove the same within thirty (30) days of the date on a written notice from the City. Upon removal, the land shall be restored and re-landscaped, at the permittee's expense, to the level of finish of the adjacent landscaped area.

(2) If such CF is not removed within said period, the City may remove it at the permittee's expense and any approved permits for the CF shall thereupon expire. Reimbursement for all such removal costs shall be paid by applicant to the City prior to permittee's receipt of any additional permit under this Article.

(3) In addition, a CF shall be removed within one hundred twenty (120) days after notification by the City that the public highway is needed for expansion, construction, or reconstruction, or other use by the City for any city project. Such removal shall be at the sole expense of the applicant and if the applicant fails to remove the CF within the said one hundred twenty (120) days, or such longer period as may be established in a master license agreement, the City may remove the CF and charge the costs to the applicant. Reimbursement for all such removal costs shall be paid by the permittee to the City prior to issuance of any additional permit under this Article.

(g) *Rules and regulations.* The Engineer may promulgate rules and regulations consistent with the provisions of this Article for the administration of CF installations and extensions, including minor additions, revisions and corrections thereto as may, in the judgment of the Engineer, be necessary to better conform to good engineering and/or construction standards and practice. The Engineer shall approve only those proposed technical revisions that:

- (1) are consistent with all existing policies relevant to the revisions,
- (2) do not result in any significant additional cost to persons affected by the revision, and

- (3) do not materially alter the standard or level of service to be accomplished through the specified infrastructure.

Upon adoption of any technical revisions pursuant to this subsection (g), the Engineer shall provide to the City Clerk documentation of such technical revisions specifying the date upon which they shall become effective, and shall maintain said documentation on file in the permanent records of the City Clerk and shall make the same available for public inspection.

Sec. 23-176. - Design standards.

(a) *Standards.* The requirements set forth in this Section shall apply to the location and design of all CFs governed by this Article as specified below. To that end and to the maximum extent reasonably feasible, CFs shall be designed and located to minimize their impacts, consistent with this Article.

(b) *Site Design Flexibility.* To the maximum extent feasible, individual CFs shall be installed to best camouflage, disguise, or conceal the facility to make it more closely compatible with and blend into the setting and/or host structure. The Engineer may nevertheless grant a modification of the standards in this Section, provided he or she finds the modification would not be detrimental to the public good, and that:

- (1) the plan in the application as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

- (2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Article, substantially alleviate an existing, defined and described problem of city-wide concern or result in a substantial benefit to the City by reason of the fact that the proposed CF would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the CF practically infeasible; or

- (3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to the site, including, but not limited to, physical conditions, including shallowness or topography, or physical conditions which hinder the applicant's ability to overcome existing physical signal obstructions, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the applicant, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

- (4) the plan in the application as submitted will not diverge from the standards of this Article that are authorized by this Section to be modified except in a nominal, inconsequential way when considered from the perspective of the affected public highway, and will continue to advance the purposes of this Article.

(c) *Conditions.*

(1) **Camouflage/concealment.** All CFs shall use camouflage design techniques, including, but not limited to undergrounding, installing equipment internal to the pole, use of materials, colors, textures, screening, landscaping, or other design options that blend the CF into the surrounding natural setting and built environment.

a. *Vault standards.* No vault shall be larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and, if so located, is not included in the calculation of vault volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch. All vaults shall at a minimum meet ANSI/SCTE 77, Tier 15 standards for non-deliberate traffic applications.

b. *Pole standards.* A small cell facility may be deployed in the public highway using vertical components of a street light pole or similar structure. Such facilities shall be subject to the following:

1. All utility poles approved under this Article to host CFs shall be electrically and structurally sound, meeting all applicable structural requirements and permanent installation criteria of Chapter 5 of this Code and otherwise satisfy AASHTO and National Electric Code standards adopted under § 5-80 of this Code and applicable to City utility structures installed in public highways.

2. The pole or structure shall be no more than ten (10) feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within six hundred (600) feet of the pole or structure.

3. In no case shall any CF be higher than forty (40) feet, unless the applicable support structure is already existing at a greater height prior to attachment of the CF.

4. The applicant shall provide appropriately authorized written permission from the landowner at the time the application is submitted, pursuant to § 23-175(d).

c. *Antenna.* No antenna shall extend more than five (5) feet above the principal host structure, relative to original height of such structure. Nor shall any antenna significantly exceed the diameter of any host structure to which the antenna is attached or exceed a total of eighteen (18) inches in diameter, including housing and shroud elements.

d. Where the Engineer determines particular sensitivity (e.g., proximity to historic or aesthetically significant structures, views, and/or community features) warrants special consideration and in areas of high visibility, CFs shall to the extent reasonably feasible be designed to minimize their profile.

- e. All visible CF components, such as antennas, vaults, and equipment enclosures, shall be constructed of non-reflective materials, be painted to match the surrounding environment, and blend in with adjacent structures and vegetation.
 - f. Any CF sited on a traffic signal standard shall be designed so the antenna is placed in a manner so the size, appearance, and function of the traffic signal is not altered.
- (2) Hazardous materials. No hazardous materials shall be permitted in association with CFs, except those necessary for the operations of the CF and only in accordance with all applicable laws governing such materials.
- (3) Siting.
- a. All elements of CF permitted under this Article shall be located principally within the boundaries of a public highway.
 - b. The number of poles within the public highway shall be limited as much as possible and shall adhere to structural requirements set forth in an MLA.
 - c. Applicants may be required to design and construct CFs to accommodate equipment for at least two (2) service providers on the same structure, unless the Engineer approves an alternative design, to the extent reasonably feasible based upon construction, engineering and design standards. No permittee or CF operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Engineer, the permittee shall provide evidence explaining why collocation is not possible at a particular facility or site. No applicant shall unfairly exclude a competitor from using a site when collocation is reasonably feasible based upon applicable construction, engineering, and design standards.
 - d. CFs shall be sited in a location that does not alter or reduce parking or otherwise inhibit another principal uses of the public highway.
 - e. Without regard to whether any portion of a CF is approved to be installed above ground, all elements of a CF shall be grouped as closely as reasonably feasible, contained within a total footprint area no greater than thirty-five (35) square feet, and otherwise located in a manner necessary to address public safety and aesthetic concerns in the reasonable discretion of the Engineer.
 - f. A CF shall not be located or maintained in a manner that causes unreasonable interference with a public highway.
- (4) Lighting. A CF shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the CF is mounted on a structure primarily used for lighting purposes. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the

surrounding views. Lighting shall be shielded or directed to the greatest extent possible to minimize glare and light falling onto nearby properties.

(5) Landscape and fencing requirements.

a. CFs shall be sited in a manner that does not reduce landscaped areas of the public highway.

b. Applicants shall restore all landscaping impacted during CF installation to City street vegetation standards. Supplemental landscaping will be a condition of approval for any CF requiring visible ground-mounted equipment not internal to the support structure or in a below-grade vault.

c. Existing tree growth and natural landforms on the site shall be preserved and negative impacts to tree canopies and root systems avoided to the maximum extent feasible.

d. No tree may be removed in siting a CF, unless authorized by the City Forester. To obtain authorization the applicant shall show wireless services are not technically feasible without tree removal; the applicant's plan minimizes the total number of trees to be removed, avoids removal of any tree larger than four (4) inches at four and one-half (4 ½) feet high, and replaces any tree to be removed at a ratio of 2:1; and all new trees meet the replacement size standards in § 3.2.1.(d)(4) of the Land Use Code.

(6) Noise. Noise generated on the site must not exceed levels permitted in Chapter 20.

(7) Anticipated redevelopment. If the built environment is anticipated to change significantly during the usable life of a CF, such as within an urban renewal district, the CF shall be compatible with the anticipated future built environment.

(8) Additional design requirements. Other requirements applicable to various types of CFs are specified below:

a. *Non-city utility structure attachments.* If a CF is installed on a City structure other than utility, light, or traffic infrastructure, the CF shall be of a neutral, non-reflective color identical to, or closely compatible with, the color of the supporting structure, or use other camouflage/concealment design techniques to make the CF as visually unobtrusive as possible, e.g., painting antennas and equipment, and meet the following:

1. All pole-mounted components of the CF shall be located on or within an existing utility pole serving another utility;

2. To the extent reasonably feasible, the CF shall be consistent with the size and shape of pole-mounted equipment installed by telecommunication providers on utility poles near the CF; and

3. The CF shall be sized to minimize the negative aesthetic impacts to the public highway, and designed and constructed to resemble structures typically found in the area.

b. *Related Accessory Equipment.* Transmission equipment, other than antennae, sited in a public highway must comply with § 23-174.

Sec. 23-177. - Application, review procedures and requirements.

(a) *Small cell facilities.* Small cell facilities shall be a permitted use by right in all zoning districts, and permits shall be issued pursuant to this Article.

(b) *Submittal Required.* No new CF shall be constructed and no collocation or modification to any CF may occur except after a written request from an applicant, reviewed and approved by the Engineer and issuance of an encroachment permit in accordance with this Article.

(c) *Consolidated applications and collocation.*

(1) A single permit may be issued for siting and collocating multiple small cell facilities spaced to provide wireless coverage in a contiguous area, provided all associated equipment is underground, or attached to or inside an existing structure that provides required clearances for the CFs' operation without the necessity of constructing any apparatus to extend an antenna more than five (5) feet above the existing structure.

(2) Additional site-specific reviews are required when the applicant proposes a new vertical support structure or above-ground accessory equipment, pursuant to subsection (d)(2) and (3).

(3) If any support structure must be constructed to achieve needed elevation or if an attachment adds more than ten (10) feet or ten percent (10%) to the height of an existing structure, the proposal is subject to additional review, as described in § 23-176 (c)(1)b. The height limitation applies to cumulative increases and includes in the measurement any height additions previously approved under this Section.

(d) *Submittal requirements and review procedures for collocation and small cell facilities.* CF permit applications shall be reviewed pursuant to the following procedures:

(1) *Elements.* A complete application for a permit under this Article must include the following:

a. Application form, as provided by the Engineer;

b. Executed master license agreement or letter of authorization,

c. Statement made under penalty of perjury by the applicant or the CF owner, representing that all CFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

d. Signal interference certification signed under penalty of perjury by the applicant or CF owner, representing that all CFs covered by the application shall be designed, sited and operated in accordance with applicable federal signal interference requirements, and as otherwise described in § 23-175 (c);

e. Submittal fees;

f. Scaled site plan, photo simulation, scaled elevation view and supporting drawings, calculations, showing the location and dimension of all improvements, including information concerning topography, tower height, setbacks, drives, parking, street trees, adjacent uses, drainage;

g. Narrative for each new installation proposed in a residential zone district or within one hundred fifty (150) feet of an existing residential lot; and

h. Proof of bonding and insurance satisfying the requirements of § 23-19 for any CF installation that entails excavation of a public highway.

i. Other information reasonably deemed by the Engineer to be necessary to assess compliance with this Article. Documents requiring signatures and seals by appropriate qualified professionals shall be provided by applicant prior to issuance of a permit under this Article.

(2) Structural Assessment. Prior to issuance of a CF permit for any CF proposing a new pole or attachment to a non-city-owned structure, the applicant shall submit a stamped and signed structural assessment for each new proposed CF host support structure conducted by a professional engineer, licensed in the State of Colorado.

a. When the structural assessment indicates a need for a stronger structure to address issues such as wind load factor, applicant shall provide a replacement structure at applicant's cost satisfactory to the Engineer in consultation with Fort Collins Utilities, as applicable.

b. All costs for conducting an assessment under this subsection (3) shall be borne by the applicant, and shall be paid by the applicant prior to issuance of a permit under this Article.

(3) New structures. All applications for new vertical structures associated with a CF in a public highway shall demonstrate that other alternative siting options, including collocations, are not reasonably feasible. Notwithstanding anything in this Article to the contrary, all structures located in a public highway shall satisfy the location and design criteria set forth in §§ 23-174 and 23-176.

(4) Decision. Except for eligible facilities requests, within ninety (90) days of the date on which the Engineer deems an application is complete, the Engineer shall render a decision to issue or deny a CF permit. Any decision to approve, approve with conditions, or deny an application for a CF permit, shall be in writing and supported by substantial evidence in a written record. The Engineer shall cause a copy of the decision to be provided

to the applicant. The foregoing shall apply only to applications for CF permits under this Article and shall not apply to any building, excavation, or any other permit issued pursuant to or required by other Articles of this Code.

(e) *Submittal requirements and review procedures for eligible facilities requests.*

(1) **Application.** The City shall prepare, and from time to time revise and make publicly available, an application form which shall be limited to the information necessary for the Engineer to consider whether an application is an eligible facilities request. Such information may include, without limitation, whether the project:

- a. Results in a substantial change; or
- b. Violates a generally applicable law, regulations, or other rule codifying objective standards reasonably related to public health and safety.

The application may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

(2) **Type of Review.** Upon receipt of an application for an eligible facilities request pursuant to this Section, the Engineer shall review such application to determine whether the application so qualifies.

(3) **Timeframe for review.** Subject to the tolling provisions of subsection (4) c. below, within sixty (60) days of the date on which an applicant submits a complete application under this Section, the Engineer shall act on the application unless he or she determines the application is not covered by this subsection.

(4) **Tolling of the timeframe for review.** The 60-day review period begins to run when the application is filed, and may be tolled only by agreement of the Engineer and applicant, or in cases where the Engineer determines the application is incomplete:

- a. To toll the timeframe for incompleteness, the City 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;
- b. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
- c. Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection (4) a. In the case of a second or subsequent notice of incompleteness, the City is not required to specify missing information or documents that were not delineated in the original notice of incompleteness.

(5) Failure to act. In the event the Engineer 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. In such event, the grant becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(6) Interaction with Telecommunications Act 47 U.S.C. § 332(c)(7). If the Engineer determines the applicant's request is not an eligible facilities request as defined in this Article, the presumptively reasonable timeframe under 47 U.S.C. § 332(c)(7), as prescribed FCC Order 14-153, part VI ("Shot Clock" order), will begin to run from the issuance of the Engineer's decision that the application is not a covered request. To the extent such information is necessary, the Engineer may request additional information from the applicant to evaluate the application under 47 U.S.C. § 332(c)(7) reviews.

(f) *Abandonment and removal.* Unless otherwise provided in a master license agreement, prior to approval, the applicant shall submit affidavits acknowledging responsibility for removal of a CF that is abandoned or is unused for a period of six (6) months, pursuant to § 23-175 (f).

Sec. 23-178. - Standards for approval.

(a) *Administrative approval.* An applicant for a CF permit shall be subject to administrative review and determination as to whether it may be approved under the applicable standards set forth in §§ 23-174 through 177.

(b) Notwithstanding the approval of an application for collocation or a new non-city-owned structure as described herein, all work performed on CFs must be completed in accordance with applicable building and safety requirements of the City.

Section 4. That Sections 23-179 through 23-185 of Chapter 23, Article VII shall remain reserved.

Section 5. That the temporary moratorium established under Ordinance No. 105, 2017 shall terminate upon the effective date of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 21st day of November, A.D. 2017, and to be presented for final passage on the 5th day of December, A.D. 2017.



Mayor

ATTEST:


City Clerk



Passed and adopted on final reading on the 5th day of December, A.D. 2017.



Mayor Pro Tem

ATTEST:



City Clerk

