

ORDINANCE NO. 32

Series 2019

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE," BY AMENDING POLICY 50 (ABSOLUTE) ENTITLED "WIRELESS COMMUNICATIONS FACILITIES," CONCERNING SMALL CELL FACILITIES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The definition of "Class D – Minor" development in Section 9-1-5 of the Breckenridge Town Code is amended by the addition of a new item DD, which shall read as follows:

DD. Those small cell facilities applications described in 9-1-19-50A, subsection D(3) of this chapter.

Section 2. Section 9-1-19-50A, "Policy 50 (Absolute) of the Breckenridge Town Code is repealed and readopted with changes so as to read in its entirety as follows:

9-1-19-50A: POLICY 50 (ABSOLUTE) WIRELESS COMMUNICATIONS FACILITIES:

A. PURPOSE AND INTENT:

1. The purpose of this policy is to regulate the installation and operation of various wireless communications facilities in the Town, recognizing the benefits of wireless communications while reasonably respecting other important Town needs, including the protection of public health, safety, and welfare.
2. The overarching intent of this policy is to make wireless communications reasonably available while preserving the unique aesthetic character, beauty, integrity, and historic charm of the Town. This will be realized by:
  - (a) Minimizing the visual and physical effects of wireless communications facilities through appropriate design, siting, screening techniques, and location standards;
  - (b) Encouraging the installation of wireless communications facilities at locations where other such facilities already exist;
  - (c) Encouraging the installation of such facilities where and in a manner such that potential adverse impacts to the Town are minimized; and
  - (d) Providing for the efficient modification and upgrading of existing wireless communications facilities to accommodate changing technologies.
  - (e) Accommodating the installation of small cell facilities within the Town's right- of- ways as required by applicable federal and state law.
3. It is not the purpose or intent of this policy to:
  - (a) Prohibit or have the effect of prohibiting wireless communications services; or
  - (b) Regulate the placement, installation, or modifications of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facilities do or will comply with the applicable FCC regulations; or

(c) Unreasonably discriminate among providers of functionally equivalent wireless communications services.

4. Nothing in this policy is intended to waive, relinquish, modify, diminish, or in any way affect the Town's police power authority provided by applicable Colorado law.
5. Nothing in this policy is intended to allow the Town to preempt any state or federal law or regulation applicable to a wireless communications facility.
6. The provisions of this policy are in addition to, and do not replace, obligations a wireless communications facility permittee may have under franchises, licenses, other permits issued by the Town, or any other agreement with the Town.

**B. EXCLUSIONS:**

1. Except as specifically provided in the Spectrum Act, this policy does not apply to and no wireless communications facilities permit shall be required for: (i) ordinary maintenance of a WCF as defined in this policy; (ii) the siting of Distributed Antenna Systems facilities located within a building, stadium, or similar structure, or campus, and intended primarily to provide wireless coverage within that building, stadium, or similar structure, or campus; (iii) antennas used by residential households solely for broadcast radio and television reception; (iv) satellite antennas used solely for residential or household purposes; (v) amateur radio antennas; (vi) television and AM/FM radio broadcast towers and associated facilities; (vii) WCFs placed for a period of not more than 21 days for temporary uses related to special events if authorized by a special events permit issued pursuant to chapter 13 of title 4 of this code; (viii) WCFs owned by or exclusively operated for government agencies, including the Town; and (ix) development as defined in Section 9-1-5 that does not meet the definition of a WCF, which development is subject to the other provisions of this chapter.
2. Except as provided by applicable law, this policy does not apply to the Town when the Town is acting in its proprietary capacity as owner of land. This policy applies to the Town only when it acts as a land use regulator.

**C. DEFINITIONS:**

1. For the purposes of this policy, the following terms shall have the following meanings:

**ANTENNA:** Communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

**ANTENNA ARRAY:** Two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

**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 term does not encompass a tower as defined in this policy or any equipment associated with a tower. Base Station includes, but is not limited to:

(a) 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.

(b) 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).

(c) Any structure other than a tower that, at the time the relevant application is filed with the Town, supports or houses equipment described in subsections (a) and (b) of this definition that has been reviewed and approved under this chapter or policy, even if the structure was not built for the sole or primary purpose of providing such support.

The term 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 subsections (a) and (b) of this definition.

**BROADBAND FACILITY:** Any infrastructure used to deliver broadband service or for the provision of broadband service.

**BROADBAND SERVICE:** Has the same meaning as set forth in 7 U.S.C. sec. 950bb(b)(1) as of August 6, 2014, and for the purposes of this policy includes: (a) “cable service”, as defined in 47 U.S.C. sec. 522(6) as of August 6, 2014; (b) “telecommunications service”, as defined in 47 U.S.C. sec. 153 as of August 6, 2014; and (c) “wireless service”, which means data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as all of these terms are defined by federal law and regulations.

**CAMOUFLAGED OR CONCEALED WIRELESS COMMUNICATIONS FACILITY:** A WCF that: (a) is integrated as an architectural feature of an existing structure such as a false facade; (b) is integrated in an outdoor fixture such as a flagpole; (c) uses a design that mimics and is consistent with nearby natural or architectural features; or (d) is incorporated into or replaces existing permitted facilities (including, but not limited to, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

**COLLOCATION:** (1) The mounting or installation of a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or

	installing a WCF on that structure. Provided, that, for the purposes of Eligible Facilities Requests, "Collocation" means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
CONSERVATION DISTRICT:	Has the meaning provided in Section 9-1-5.
DISTRIBUTED ANTENNA SYSTEM (OR DAS):	A network of one or more antennas and related fiber optic nodes typically mounted to streetlight poles, or utility poles, which provide access and signal transfer for wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel," where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.
ELIGIBLE FACILITIES REQUEST:	Any 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: (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.
ELIGIBLE SUPPORT STRUCTURE:	Any tower or base station as defined in this policy, provided that it is existing at the time the relevant application is filed with the Town under this policy.
EXISTING:	A constructed tower or base station if it has been reviewed and approved by the Town under this chapter or policy; provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully installed, is existing for purposes of this chapter and policy.
FCC:	The Federal Communications Commission.
LATTICE TOWER:	An open framework structure used to support one or more antennas, typically with three or four support legs.
MICRO WIRELESS FACILITY:	A small wireless facility that is no larger in dimensions than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that has an exterior antenna, if any, that is no more than eleven inches in length.
MONOPOLE:	A single freestanding pole used to act as or support an externally mounted antenna or antenna arrays.
ORDINARY MAINTENANCE:	Ensuring that WCFs and support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing, and modifications that maintain

functional capacity, and aesthetic and structural integrity (e.g., the strengthening of a support structure's foundation or of the support structure itself). Ordinary maintenance includes: (i) replacing existing antennas with antennas of the substantially similar color, when such replacement antennas will not increase the overall height or footprint of the WCF; (ii) replacing accessory equipment within an existing WCF; and (iii) relocating the antennas of approved WCFs to different height levels on an existing monopole or vertical facility upon which they are currently located if such height level is in compliance with the applicable requirements of this chapter. Ordinary maintenance does not constitute a modification to a WCF, whether classified as an eligible facilities requests or otherwise.

- RF: Radio frequency.
- RADOME: A visually-opaque, radio frequency transparent enclosure which may contain one or more antennas, cables, and related facilities therein.
- REVIEWING AUTHORITY: The Director, the Planning Commission, or the Town Council with respect to a Class D - Major or a Class D – Minor WCF permit application, or the Planning Commission or Town Council with respect to a Class A WCF permit application.
- RIGHT-OF-WAY: Any publicly-owned or controlled street, roadway, alley, sidewalk, and other public way, including any public utility easements that extend beyond the curb onto private property.
- SITE: For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures. For other towers in the public right-of-way, a site is further restricted to that area comprising the base of the structure and to other transmission equipment already deployed on the ground.
- SMALL CELL FACILITY: A wireless communication facility that meets both of the following qualifications:
- (a) each antenna is located inside an enclosure of no more than three 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 cubic feet; and
  - (b) primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located

outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

“Small cell facility” includes a micro wireless facility.

**SMALL CELL NETWORK:**

A network consisting of one or more nodes connected, directly or indirectly, by fiber to a carrier’s mobile switching center or other point of interconnection.

**SPECTRUM ACT AND SPECTRUM REGULATIONS:**

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. §1455(a), as amended from time to time. The FCC’s rules under the Spectrum Act are contained in the FCC Report and Order adopted October 17, 2014, as amended from time to time, and codified at 47 C.F.R. §1.6100.

**SUBSTANTIAL CHANGE:**

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one 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. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act in February 2012;

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of 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 other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

(c) 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 (4) cabinets; or, for towers in the public rights-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;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections (a) – (d) of this definition.

SUPPORT EQUIPMENT:

The physical, electrical, and/or electronic equipment included within a WCF used to house, power, and/or process signals from or to the WCFs antenna or antennas, but specifically excluding the base station.

SUPPORT STRUCTURE:

A structure, outdoor fixture, tower, or utility pole capable of safely supporting a WCF, but does not include a wireless tower.

TEMPORARY WCF:

A WCF that is designed and intended to be used for a limited period of time as described in subsections D1b or D2d of this policy.

TOWER:

Any structure built for the sole or primary purpose of supporting antennas licensed or authorized by the Federal Communications Commission and the antennas' 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 backhaul; and the associated site.

TOWN PROPERTY:

Property owned or under the control of the Town, but specifically excludes the Town's right-of-way. By way of example and not limitation, public property includes structures and outdoor fixtures owned by the Town.

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 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.
UNIPOLE:	A uniform width pole with one or more antennas and associated equipment and cables contained within the interior of the pole, and with a Radome at the top of the pole being the same width as the pole.
UTILITY POLE:	A metal or wood pole or structure located in the right-of-way and dedicated to use by multiple utilities and providers of communications authorized by the Town, or otherwise authorized to use the pole by applicable law.
WIRELESS COMMUNICATIONS FACILITY (WCF):	A facility for the transmission or reception of low power radio signals used for two-way communications provided by a FCC licensee. WCFs shall not include facilities for broadcasting or receiving commercial or public radio or television programming, or facilities for transmitting or receiving signals by governmental agencies or amateur radio, citizens band, or similar users. WCFs are composed of two or more of the following components: (a) antenna; (b) support structure; (c) equipment enclosure; or (d) security barrier.
WIRELESS SERVICE FACILITY:	A facility for the provision of wireless services; except that "wireless service facility" does not include coaxial or fiber-optic cable that is not immediately adjacent to, or directly associated with, a particular antenna.
WCF ADJUSTMENT:	An authorization to deviate from the requirements of this policy granted by the reviewing authority pursuant to Section K of this policy.
WCF APPLICATION (OR APPLICATION):	An application for a WCF permit submitted pursuant to this policy.
WCF PERMIT (OR PERMIT):	A WCF permit for the initial placement of a WCF, or the modification, replacement, or removal of a WCF, issued by the Town pursuant to this policy and chapter.

2. Terms not defined in this policy that are defined in applicable federal law or regulation shall have the meaning provided in such law or regulation.



3. Terms not defined in this policy or applicable federal law or regulation are to be given their common meaning.
- D. WCF PERMIT CLASSIFICATIONS: Applications for WCF permits submitted under this policy are classified as follows:
1. Class A WCF Permit.
    - (a) All collocation applications and modifications of an existing WCF permit that are not eligible facilities requests or a small cell facility application.
    - (b) An application for a temporary WCF that will be operational for a period of time more than 30 but less than 180 days. No temporary WCF shall be approved if it will be operational for 180 days or longer unless the use of such temporary WCF is in response to and during a period of a declaration of emergency by the Governor of the State of Colorado. The Director shall not accept an application for a temporary WCF under this policy: (i) that is not filed concurrently with an application for a permanent WCF; or (ii) that will be operational for 180 days or longer unless the use of the Temporary WCF is in response to and during a period of a declaration of emergency by the Governor of the State of Colorado.
    - (c) All other applications to install, modify, or replace a WCF within the Town that are not classified as a Class D - Major application pursuant to subsection D2 or a Class D – Minor application pursuant to subsection D3.
  2. Class D - Major WCF Permit.
    - (a) An application for an eligible facilities request.
    - (b) An application to install a new WCF at one of the preferred locations as set forth in Section I4 of this policy if the application meets the applicable design requirements of this policy.
    - (c) An application to install a new wall-or roof-mounted WCF if such installation is preferred under Section J6 of this policy, and if the application meets the applicable design requirements of this policy.
    - (d) An application for a temporary WCF that will be operational for a period of time not longer than 30 days, whether in response to and during the period a period of a declaration of emergency by the Governor of the State of Colorado, or otherwise.
    - (e) An application to install a WCF that is part of a DAS, and is camouflaged consistent with the design requirements contained in this policy.
  3. Class D- Minor WCF Permit.
    - (a) An application to locate, collocate, replace, or modify any small cell facility or small cell network in the public right-of-way.
  4. Director's Authority to Reclassify an Application. The Director's authority to reclassify a WCF permit application as authorized by the definition of "Classification" in Section 9-1-5 may only be used in connection with an application filed under this policy to reclassify a Class D - Major application to a Class A WCF application. The Director cannot reclassify a Class D – Major application as a Class D – Minor, or Class D – Minor application as a Class D - Major application. filed pursuant to this policy.

E. WCF PERMIT REQUIRED:

1. A WCF may not be installed, modified, or replaced without a WCF permit, except as provided in this policy.
2. An applicant must obtain all other WCF permits, authorizations, and approvals that are required for the installation, modification, replacement, or removal of the WCF, or for the installation, modification, replacement, or removal of the support structure or wireless tower under federal, state, or local law, including, but not limited to, right-of-way permits, building permits or FCC approvals. A WCF permit is not in lieu of any other permit required under this code or other applicable law, except as specifically provided in this policy, nor is it a franchise, license, or other authorization to occupy the right-of-way, or a license, lease, or agreement authorizing occupancy of any other private or public property.
3. An application for a Temporary WCF related to a special event for which a special events permit is required under chapter 13 of title 4 of this code may be approved in such special events permit without a separate WCF permit being issued pursuant to this policy.
4. A WCF permit issued in error, based on incomplete, false, or misleading information submitted by an applicant, or that conflicts with the provisions of this policy, is void and of no effect.

F. APPLICATION REQUIRED; DIRECTOR TO PREPARE APPLICATION FORMS; ESTIMATED DEPOSITS:

1. An applicant for a WCF permit must utilize the form of application required by the Town. The Director is authorized to prepare forms of application, and may develop application forms that distinguish between different types of installations and modifications, and shot clocks, in order to streamline the processing of applications, and to comply with legal requirements. Without limiting the generality of the preceding sentence, the Director shall prepare and make publicly available an application form that requires the applicant for an eligible facilities request to provide documentation or information only to the extent reasonably related to determining whether the application is in fact an eligible facilities request. An application for an eligible facilities request shall not require the applicant to submit any other documentation, including, but not limited to, documentation intended to illustrate the need for the WCFs that are the subject of the application or to justify the business need to modify such WCFs.
2. If required by the Director the applicant shall deposit with the Town funds sufficient to reimburse the Town for the cost of having a third-party review the application, and provide analysis and testimony before the Town regarding the application. In determining whether to require third-party review under this subsection, the Director shall consider the complexity and legal issues involved in reviewing the application. The Director may defer the requirement for the payment of the deposit described in this subsection F2 until after the application is received and the complexity and legal issues involved in reviewing the application have been identified. Upon the approval, conditional approval, denial, or withdrawal of the WCF application, any unexpended portion of the deposit shall be returned to the applicant without interest. If the deposit did not cover the Town's costs, the Town will charge the applicant therefore, and in the event of an approval or conditional approval of the WCF, the Town shall not issue the WCF permit until such charge is fully paid.
3. When a WCF is part of a network of WCFs that will be installed contemporaneously or sequentially, such as a DAS, the applications for each of the facilities in the proposed network shall be submitted simultaneously.
4. If an applicant for a small cell network so elects, the Director shall allow the applicant to file a consolidated application and receive a single WCF permit

for the small cell network instead of filing separate applications for each small cell facility. No more than five (5) applications may be filed within a single consolidated application.

5. If an applicant for the collocation of several WCFs so elects, the Director shall allow the applicant to file a single set of documents that will apply to all of the collocated WCFs to be sited.
6. Applications for new support structures with proposed WCFs shall be considered as one application requiring only a single application fee.

G. PROCEDURE FOR REVIEW OF WCF PERMIT APPLICATIONS:

1. Pre-Application Meetings Required; Exception for Small Cell Facility Application; Submission of Application By Appointment Only.
  - (a) Except for eligible facilities requests and small cell facilities applications, one pre-application meeting with Town staff is normally required for an application for a WCF permit. At the meeting the prospective applicant should be prepared to present to staff a service area map, description of the type of WCF sought, preliminary site plan, and visual impact drawings. This meeting is not a public hearing and is not subject to any public notification requirements. The Director may require a second pre-application meeting if the first meeting did not adequately address all relevant issues. The provisions of this subsection G1 control over the pre-application meeting requirements for a Class D-Major permit application set forth in Section 9-1-18-4-1A.
  - (b) Prior to submitting an eligible facilities request or a small cell facility application the applicant is encouraged to initiate and schedule a pre-submittal meeting by contacting the Town's Department of Community Development. However, a pre-submittal meeting is not required for these applications, and will only be held if the applicant requests one. By participating in the pre-submittal meeting, the applicant agrees that the mandatory review time stated in Section G5d, below, does not start until the application is submitted, subject to the tolling provisions of Section below G5e.
  - (c) All WCF applications may be submitted to the Director only by appointment. The Director shall schedule appointments within a reasonable time after a request for an appointment has been made. Applications shall be submitted in hard copy; e-mailed applications shall not be accepted.
2. Procedure for Class A WCF Permit Application.
  - (a) The provisions of this subsection G2 control in the event of any conflict between this subsection and the rules for processing a Class A WCF permit application set forth in Section 9-1-18-1.
  - (b) The presumptively reasonable time period for the Town to review and act upon a Class A WCF permit application to collocate on or modify an existing WCF that does not qualify as an eligible facilities request is 90 days.
  - (c) The presumptively reasonable time period for the Town to review and act upon all other Class A WCF permit applications is 150 days.
  - (d) The 90 or 150-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is incomplete.

- (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
  - (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant 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 this subsection G2d. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) A complete application submitted under this subsection G2 shall be scheduled for a hearing before the Planning Commission as required for Class A development permit applications by Section 9-1-18-1.
  - (f) Notice of the public hearing on an application submitted under this subsection G2 shall be given in the same manner required for any Class A development permit application under this chapter.
  - (g) Subject to the tolling provision described above, the Planning Commission must issue a written decision approving, conditionally approving, or denying an application submitted under this subsection G2 within the 90 or 150-day period described above, whichever time period is applicable to the application.
  - (h) Should the Planning Commission deny an application submitted under this subsection G2, the Planning Commission shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
  - (i) A decision of the Planning Commission under this policy is subject to call up by the Town Council as provided in Section 9-1-18-1E6 of this chapter. Any decision by the Town Council shall be made within the 90 or 150-day period described above, whichever time period is applicable to the application.
3. Procedure for Class D - Major WCF Permit Application That Is Not An Eligible Facilities Request.
- (a) The provisions of this subsection G3 control in the event of any conflict between this subsection and the rules for processing a Class D - Major development permit application set forth in Section 9-1-18-4-1.
  - (b) The presumptively reasonable time period for the Director to review a Class D - Major WCF permit application that is not an eligible facilities request is 90 days.
  - (c) The 90-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is materially incomplete.
    - (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information that the applicant must submit to

render the application complete and the specific rule or regulation creating this obligation.

- (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
  - (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant 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 this subsection (c). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
  - (d) Subject to the tolling provisions described above, the Director must issue a written decision approving, conditionally approving, or denying an application submitted under this subsection within 90 days of the submission of the initial application
  - (e) Should the Director deny an application submitted under this subsection G3, the Director shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
  - (f) The Director's decision approving, conditionally approving, or denying an application submitted under this subsection G3 may be appealed by the applicant to the Planning Commission and Town Council. Such appeal shall be filed and processed in accordance with the requirements of Section 9-1-18-4-1D. Any decision by the Planning Commission or Town Council shall be made within the 90 or 150-day period described above, whichever time period is applicable to the application.
4. Procedure for Eligible Facilities Request.
- (a) The provisions of this subsection G4 control in the event of any conflict between this subsection and the rules for processing a Class D - Major development permit application set forth in Section 9-1-18-4-1.
  - (b) Upon receipt of an application for an eligible facilities request the Director shall review such application to determine whether the application qualifies as an eligible facilities request under the Spectrum Act, the Spectrum Act rules, and this policy.
  - (c) Within 60 days of the date on which an applicant submits a request seeking approval under this subsection G4, the Director shall approve the application unless the Director determines that the application is not covered by this subsection.
  - (d) The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is incomplete.
    - (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information necessary for the Director to determine if the application qualifies as an eligible facilities request under the Spectrum Act, the Spectrum Act rules, and this policy.

- (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
- (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant 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 this subsection G4d. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) The Director shall not approve an eligible facilities request that does not comply with the Spectrum Act, the Spectrum Act rules, or the applicable requirements of this policy. Without limiting the generality of the preceding sentence, the Director shall not approve an application for an eligible facilities request that substantially changes the dimensions of the eligible support structure that is the subject of the application.
- (f) Should the Director deny the application, the Director shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
- (g) An application for an eligible facilities request that has been denied by the Director may be refiled at the applicant's discretion as a Class A WCF permit application.
- (h) If the Director fails to approve, conditionally approve, or deny an application for an eligible facilities request within the applicable timeframe (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- (i) The Director's decision on an application submitted under this subsection G4 may be appealed by the applicant to the Planning Commission and Town Council. Such appeal shall be filed and processed in accordance with the requirements of Section 9-1-18-4-1D.

5. Procedure for a Small Cell Facility Application.

- (a) The provisions of this subsection G5 control in the event of any conflict between this subsection and the rules for processing a Class D - Minor development permit application set forth in Section 9-1-18-4.
- (b) Small cell facilities in the right-of-way shall be considered a permitted use, subject to administrative review by the Director as set forth in this provision.
- (c) The Town shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the Town to consider whether a project is eligible as a small cell facilities in the right-of-way, meeting certain criteria. The application shall not require the applicant to demonstrate a need or business case for any proposed modification or collocation.
- (d) The presumptively reasonable time period for the Director to review a small cell facility application that is not an eligible facilities request is 90 days.

- (e) The Director shall review a small cell facility application for completeness and respond to the applicant within 10 days of the date of submission of the application with a report identifying any items missing from the application. If an application is materially incomplete, the Director shall specifically identify the missing documents or information, and the specific rule or regulation creating the obligation to submit such documents or information. The shot clock set forth in subsection (G)(5)(f) below shall restart at zero on the date which the applicant submits all the documents and information identified by the Town to make the application complete. If the applicant's supplemental submission fails to make the application complete, and the Director notifies the applicant within 10 days of the supplemental submission and clearly and specifically identifies the missing documents or information, the shot clock set forth in subsection G5d shall be tolled until the applicant provides the missing documents and information. The shot clock resumes (the date calculation does not restart) to run on the date when the applicant submits all the documents and information identified by the Town to render the application complete. If the applicant fails to submit all of the missing items identified in the Director's completeness report within such reasonable time as the Director shall require in the report, the application shall be denied without prejudice.
  - (f) The Director will complete his or her review of a small cell facility application and either approve, conditionally approve, or deny the application within 90 days from the date of submission of the application, or from the date of submission of the completed application if tolled due to an incomplete submission as provided above, whichever is the later date.
  - (g) Should the Director deny an application submitted under this subsection G5, the Director shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
  - (h) The Director's decision on a small cell facility application may be appealed by the applicant to the Planning Commission and Town Council. Such appeal shall be filed and processed in accordance with the requirements of Section 9-1-18-4-C.
  - (i) If the Director approves a small cell facility application all other permits required by the Town to authorize the installation of a small cell facility in the Town ROW shall also be approved within the same ninety (90) day period described in subsection G5d.
6. Appeal to Court. The 30 day period to appeal the Town's decision on an application for a WCF permit provided in 47 U.S.C. §332(c)(7)(B)(v) shall commence as follows:
- (a) With respect to a Class D – Minor application or a Class D - Major application, upon the final decision made by the Director if the Director's decision is not appealed, or upon the final decision of Planning Commission or the Town Council, whichever last rules on the application; or
  - (b) With respect to a Class A WCF permit application, upon the Town Council's affirmation of the Planning Commission's written decision on the application, or the Town Council's own written decision on the application if the Planning Commission decision is called up by the Town Council.

H. RULES FOR APPROVAL OR DENIAL OF APPLICATION:

1. Pursuant to Section 9-17-6, it is the applicant's burden to show by a preponderance of the evidence that a WCF permit submitted under this policy should be granted.
2. In evaluating an application for a WCF permit, except an application for a small cell facility or an eligible facilities request, all relevant absolute and relative development policies of this chapter shall be considered by the reviewing authority; provided, however:
  - (a) Policies 9-1-19-6A "Policy 6 (Absolute) Building Height" and 9-1-19-6R "Policy 6 (Relative) Building Height" shall not apply to an application to install a WCF; and
  - (b) Although density must be provided for a WCF to be installed pursuant to this policy, no negative points shall be assessed against a WCF permit application under Policy 9-1-19-3R "Policy 3 (Relative) Compliance With Density/Intensity Guidelines."
  - (c) Notwithstanding subsection 2b of this Section, no density shall be required for:
    - (i) an underground mechanical room installation;
    - (ii) an installation in an existing interior space; or
    - (iii) an outdoor equipment cabinet.
3. Except as otherwise provided in this policy, this chapter, or other applicable law, an application submitted under this policy, except an application for a small cell facility or an eligible facilities request, may be lawfully denied for any of the following reasons:
  - (a) The application does not implement all affected absolute policies of this chapter (subject to variance);
  - (b) The applicant has not shown that the application conforms to the applicable requirements of this policy; or
  - (c) The applicant has not provided to the Town all of the information required by this policy to WCF permit the reviewing authority to approve, conditionally approve, or deny the application taking into account legal deadlines affecting the Town's consideration of the application.
4. Except as to an eligible facilities request, or an application for a small cell facility, and when the Town is prohibited from considering a matter by applicable law, in determining whether to approve, conditionally approve, or deny an application, the reviewing authority may consider the following and such other matters as the reviewing authority may be entitled or required to consider as a matter of law:
  - (a) Whether the applicant is authorized to file the application;
  - (b) Whether the WCF and support structure additions and modifications proposed will adversely affect or alter the unique aesthetic character, beauty, and historic charm of the Town. If the application is for a location in the Conservation District, the reviewing authority shall also consider Section 9-1-19-5A, "Policy 5 (Absolute)(Architectural Compatibility)"; Section 9-1-19-5R, "Policy 5 (Relative)(Architectural Compatibility)"; and the "Handbook of Design Standards/Handbook of Design Standards For the Historic and Conservation Districts;"



- (c) Whether the WCF and support structure modifications and additions proposed comply with the design standards of this policy, and other applicable provisions of this policy or chapter;
  - (d) Whether the WCF and support structure modifications and additions proposed comply with generally applicable building, structural, electrical and other safety codes and laws, interfere with the public's use of right-of-way, or create undue risks to persons or property;
  - (e) Whether the applicant has or will have necessary local, state, or federal regulatory approvals required in connection with the WCF; and
  - (f) Whether alternative designs or locations would minimize the impact of the WCF and support structure modifications and additions required.
5. The rules for the approval or denial of a small cell facility application shall be as set forth in the Director's administrative rules and regulations promulgated pursuant to Section 9-1-28 of this chapter.
  6. Notwithstanding any other provision of this policy or chapter to the contrary, the reviewing authority may approve an application for a WCF permit under this policy, notwithstanding that the evidence supported denial of the application, if the reviewing authority makes a finding that the applicant has demonstrated that the refusal to approve the application would prohibit or have the effect of prohibiting or effectively prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. Section 332(c)(7)(B)(i)(II), or finds that the Town authority to deny the application is otherwise preempted or prohibited by state or federal law.
- I. LOCATION CRITERIA FOR WCFs: The purpose of this Section I is to provide guidance to prospective applicants as they seek appropriate WCF locations within the Town. This Section I does not express a preference for any category of technology. This Section I does not apply to the location of a small cell facility which shall be located in accordance with the location criteria contained in the Director's administrative rules and regulations promulgated pursuant to Section 9-1-28 of this chapter.
1. WCFs are encouraged to be located on existing buildings and structures because of aesthetics and land use compatibility.
  2. WCFs shall be collocated with existing WCFs, if within 1,500 feet of an existing WCF, unless the Town determines that doing so would create excessive visual clutter.
  3. No WCF permit to install a new freestanding WCF shall be granted unless the applicant first demonstrates that no existing wireless tower or structure can accommodate the applicant's needs.
  4. Unless subsection 15 applies, WCFs shall be located outside of the Conservation District. The preferred locations for WCFs outside of the Conservation District are listed below in order of preference:
    - (a) Collocation to existing WCF facilities located in non-residential land use districts;
    - (b) Town property;
    - (c) Other publicly owned property and facilities;
    - (d) Rights-of-way;
    - (e) Public and private utility installations;
    - (f) Land use districts where commercial uses are recommended; and

(g) Community facilities (such as places of worship, community centers, etc.).

5. Notwithstanding subsection I4, and except for a wall-mounted WCF, an application to locate a new WCF in the following areas of Town: (i) in the Town's Conservation District; (ii) in Land Use Districts where single-family residential uses are a recommended use; (iii) in any land use district that contains a legally established single family residential use; (iv) on vacant land; (v) on an environmentally sensitive habitat; (vi) on a ridgeline; or (vii) any other area of the Town not specifically described as a preferred location for the placement of a WCF in subsection I4, may be granted if the applicant demonstrates that all of the following factors exist:

- (i) a significant gap in the provider's service exists;
- (ii) the proposed WCF is the least visually intrusive means to close the significant gap;
- (iii) no feasible alternative exists to close the significant gap; and
- (iv) the provider's existing WCFs lacks the capacity to service the wireless users except by the installation of one or more WCF sites in the otherwise restricted locations described in this subsection I5.

When considering an application for a WCF to be located in the Conservation District, the reviewing authority shall also consider those policies listed in Section H4b.

J. DESIGN STANDARDS: The design standards set forth in this Section J shall apply to the location of all WCFs that are subject to this policy; provided, however, that this Section J shall not apply to a small cell facility which shall be subject to the design standards contained in the Director's administrative rules and regulations promulgated pursuant to Section 9-1-28 of this chapter. The reviewing authority may waive any design standard if it determines the overall intent of this policy will not be served by the implementation of the particular design standard with respect to a particular WCF or application.

- 1. All WCFs shall be designed to comply with current standards and regulations of the Federal Aviation Administration, the FCC, the National Environmental Policy Act, and any other agency of the state or federal government with the authority to regulate WCFs.
- 2. All WCFs shall be designed to comply with all applicable laws, rules, and regulations, including, but not limited to, the FCC's RF emission safety rules.
- 3. A WCF shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the unique aesthetic character, beauty, and historic charm of the Town, consistent with other provisions of this chapter. To that end, WCFs should:
  - (a) Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the WCF is visible, and, if located within the Conservation District, be located on a structure that is non-historic and non-contributing as defined by Town policy or ordinance; and
  - (b) Accommodate collocation consistent with the other design requirements of this policy; and
  - (c) Be consistent with the Town's Master Plan.
- 4. Unless an adjustment is granted pursuant to Section K, no WCF, or tower or other structure designed or intended to be used for the placement of one or

more antennas, may be approved outside the Conservation District at a height that is taller than the maximum height for nonresidential structures and multifamily structures provided in Section D (Exceptions) in the definition of "Building Height Measurement" in Section 9-1-5 of this Chapter. Unless an adjustment is granted pursuant to Section K, no WCF, or tower or other structure designed or intended to be used for the placement of one or more antenna may be placed on the roof of any structure within the Conservation District.

5. DAS networks are encouraged WCF facilities under this policy.
6. Wall- or roof-mounted WCFs and DASs are preferred over freestanding WCFs and DASs outside the Conservation District. Within the Conservation District wall-mounted WCFs and DASs are preferred. An applicant proposing to install a freestanding WCF that is not a DAS must first demonstrate that a wall- or roof-mounted WCF is not feasible or is inadequate to provide service. The Town may require that an alternative WCF that reflects the character of the surrounding property (developed or undeveloped) be employed.
7. No new lattice tower may be approved under this policy.
8. All WCFs shall be concealed or camouflaged. The installation of an uncamouflaged WCF is prohibited. Without limiting the foregoing, all portions of a WCF affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color, and materials, when viewed from any part of the Town. WCFs shall be painted and textured or otherwise camouflaged to match the color and finish of the support structure on which they are mounted. Where the support structure is a building, the WCF support equipment, including, without limitation, base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the Director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the Director.
9. A WCF located in the right-of-way shall comply with the administrative rules and regulations promulgated pursuant to Section 9-1-28 of this chapter.
10. The pole-mounted components of a WCF on a utility pole shall, whether in or outside of the right-of-way, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the WCF.
11. To the extent a WCF is permitted aboveground, a WCF shall otherwise be appropriately screened, landscaped, and camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
12. Unless it is determined by the reviewing authority that there is no less intrusive alternative available to close a significant gap in the service provided by a WCF, or it is determined that the Town is legally required to approve an application, the height of the WCF may not exceed the minimum height that is necessary from an engineering perspective to allow the WCF to function properly.
13. If an application proposes the construction of improvements to the surface of the roof of a building for the purpose of locating the utility box or cabinet that will hold the mechanical equipment required to operate the WCF, such improvements must:
  - (a) be made of the same materials that exist on the building;
  - (b) be of a height no taller than is necessary from an engineering perspective in order for the WCF to function properly; and

(c) must have density, subject to the provisions of Section H2b.

14. Unless it is determined by the Town that there is no less intrusive alternative available to close a significant gap in the service provided by a WCF, or it is determined that the Town is legally required to approve an application, the Town shall not approve an application for a WCF where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise WCF permitted under this policy.
15. WCFs shall not be lighted except with the authorization of the reviewing authority. The reviewing authority may permit lighting at the lowest intensity necessary:
  - (a) For proximity-triggered and/or timer-controlled security lighting;
  - (b) To comply with regulations for the illumination of any flag attached to a WCF; or
  - (c) Where such lighting is required to protect public health or welfare, or as part of the camouflage for a particular design or to comply with the federal aviation administration.

Any approved lighting shall comply with Section 9-1-19-46A, "Policy 46 (Absolute)(Exterior Lighting)."

16. No advertising signage shall be displayed on any WCF, except for government-required signs shown in the WCF permit application. Additional site identification, address, warning, and similar information plates may be WCF permitted where approved by the Director.
17. The WCF shall be designed so that it does not operate by a generator except when the permanent power to the WCF is temporarily interrupted.
18. The WCF shall not inconvenience the public (including without limitation, persons with disabilities) in its use of any structure, or any portion of the right-of-way.

#### K. ADJUSTMENTS TO STANDARDS:

1. **Applicability.** Except as otherwise provided in this policy, no WCF shall be used or developed contrary to any applicable development standard of this policy unless an adjustment has been granted pursuant to this Section K. The provisions of this Section apply exclusively to WCFs, and shall control over the variance criteria set forth in Section 9-1-11 of this title. Provided, however, that this Section K shall not apply to a small cell facility application which shall be subject to the administrative waiver provisions of the Director's administrative rules and regulations promulgated pursuant to Section 9-1-28 of this chapter.
2. **Application Classification.** An application for a WCF adjustment is classified as a Class A WCF application.
3. **Submittal Requirements.** In addition to the general submittal requirements for a Class A WCF application, an application for a WCF adjustment shall include:
  - (a) a written statement demonstrating how the requested adjustment would meet the criteria;
  - (b) a site plan that includes:
    - (i) a description of the proposed facility's design and dimensions, as it would appear with and without the adjustment;

- (ii) elevations showing all components of the WCF as it would appear with and without the adjustment;
- (iii) color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the adjustment; and
- (iv) such other information as is required by the Director;

4. Criteria. An application for a WCF adjustment shall be granted if applicant demonstrates that:

- (a) the adjustment is consistent with the purpose of the development standard for which the adjustment is sought;
- (b) based on a visual analysis, the design significantly minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping; and
- (c) the applicant demonstrates the existence of either of the following:

(i) Gap in Service.

(A) A gap in the coverage, capacity, frequency, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

(B) The gap can only be filled through an adjustment to one or more of the standards in this policy; and

(C) The adjustment is narrowly tailored to fill the service gap such that the WCF conforms to this policy's standards to the greatest extent possible.

(ii) Minimization of Impacts.

The adjustment would significantly minimize or eliminate negative impacts to surrounding properties and their uses, through a utilization of existing site characteristics, including, but not limited to, the site's size, shape, location, topography, improvements, and natural features. Negative impacts are minimized or eliminated if there is:

(A) a substantial decrease in negative visual impacts, including, but not limited to, visual clutter;

(B) better preservation of views or view corridors; or

(C) a substantial decrease in any other identifiable negative impacts to the surrounding area's primary uses.

L. STANDARD WCF PERMIT CONDITIONS: Except as provided in Section I2, below, the following conditions shall be included in each WCF permit issued by the Town, unless otherwise approved by the Town Attorney for good cause:

- 1. The term of a Class A WCF permit granted pursuant to this policy shall be 10 years from the date of issuance, unless sooner revoked or terminated as provided in this policy. The term of a Class D-Major WCF permit granted pursuant to this policy shall be as provided in Section 9-1-17-8, unless sooner revoked or terminated as provided in this policy.
- 2. As a condition of every WCF permit issued pursuant to this policy, the Director may establish a reasonable installation build-out period for a WCF.

3. The WCF shall be operated in compliance with: (i) the terms of the permit; (ii) all other applicable requirements of this chapter and policy; and (iii) all applicable laws, rules, and regulations, including, but not limited to, the FCC's RF emission safety rules.
4. The permittee shall obtain and maintain all other applicable WCF permits, approvals, and agreements necessary to install and operate the WCF in conformance with federal, state, and local laws, rules, and regulations.
5. Within 30 days after installation of a WCF, the permittee shall demonstrate to the Director that its WCF as installed and normally-operating fully complies with all of the conditions of the WCF permit, including, but not limited to, height and size restrictions, and applicable building and safety codes. The demonstration shall be provided in writing to the Director containing all technical details to demonstrate such compliance, and certified as true and accurate by a qualified professional engineer or, in the case of height or size restrictions, by a qualified surveyor. This report shall be prepared by the permittee and reviewed by the Town at the sole expense of the permittee. The Director may require additional proofs of RF emission compliance on an ongoing basis to the extent the Town may do so consistent with federal law.
6. The Town may inspect WCF permitted facilities and property and may enter onto a site to inspect WCF facilities upon reasonable notice to the permittee. In case of a bona fide emergency or risk of imminent harm to persons or property within the vicinity of WCF permitted facilities, the Town has the right, but not the duty, to enter upon the site of the facilities and to support, disable, or remove those elements of the facilities posing an immediate threat to public health and safety. Prior to taking any action pursuant to this subsection, the Town shall make a reasonable effort to locate the permittee and advise it of the existence and nature of the emergency. The reasonableness of Town's efforts to locate the permittee shall be determined based upon the nature of the emergency and the Town's efforts to locate and notify the permittee. If, after reasonable efforts, the permittee cannot be located, the Town shall have the right to enter the property and perform any needed emergency repairs as herein provided and, upon demand, the permittee shall reimburse Town for the reasonable and necessary costs of such emergency repairs. Failure of the permittee to pay to the Town upon demand the costs of such emergency repairs shall constitute a default event under the WCF permit.
7. The permittee shall maintain on file with the Town's Department of Community Development and onsite at the WCF current and updated contact information of all parties responsible for maintenance of the WCF.
8. The permittee shall defend, indemnify, and hold harmless the Town, its agents, officers, officials, and employees: (i) from any and all damages, liabilities, injuries, losses, costs and expenses, and from any and all claims, demands, lawsuits, and other actions or proceedings brought against the Town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void, or annul the Town's approval of the WCF permit; and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the permittee's or the permittee's agents, employees, licensees, contractors, subcontractors, or independent contractors, activities, or performance related to the WCF contractors ((i) and (ii) collectively are "Actions"). If the Town becomes aware of any such Actions, the Town shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or permittee (as applicable) shall reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The indemnity obligation described in this subsection L8 shall

survive the expiration or termination of the WCF permit, and shall continue to be enforceable thereafter, subject to any applicable statute of limitation.

9. The permittee shall file with the Town, and shall maintain in good standing throughout the term of the WCF permit, proof that the permittee has a policy of commercial general liability insurance with minimum limits of liability of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) aggregate, or such other limits as may be reasonably acceptable to the Director. The Town shall be named as an additional insured under such insurance policy.
10. If determined to be necessary by the Director in order to adequately protect the Town, the permittee shall file with the Town, and maintain in good standing throughout the term of the WCF permit, a performance bond or other surety or another form of security acceptable to the Town Attorney to pay for the removal of the WCF in the event that the use is abandoned; the WCF permit expires, is revoked, or is otherwise terminated; or the permittee is otherwise financially unable to pay for the removal of the WCF. If required, the security shall be in the amount equal to one hundred fifteen percent (115%) of the cost of physically removing the WCF and all related facilities and equipment on the site.
11. The permittee shall make a good faith effort to minimize project-related disruptions to adjacent properties. Without limiting the generality of the preceding sentence, site improvement and installation work, including set-up, loading, or unloading of materials or equipment, performed as part of the installation of the approved this project are subject to the provisions of Section 5-8-6 of this code. Emergency maintenance and repairs are exempt from the restricted hours. Violation of this condition may result in issuance of a Stop Work Order or other appropriate enforcement action by the Town.
12. This Section shall not apply to a small cell facility WCF permit. The standard conditions of such permit shall be addressed in the Master License Agreement between the Town and the permit holder.

#### M. OPERATIONAL REGULATIONS:

1. All WCFs within the Town shall be designed, maintained, and operated at all times to comply with the provisions of this policy, the terms and conditions of the WCF permit, and the following additional requirements:
    - (a) Conditions of any license for the WCF issued by a local, state, or federal agency, which has jurisdiction over the WCF;
    - (b) Rules, regulations, and standards of the state and federal governments, including, but not limited to the FCC, and the Town, including, but not limited to, this chapter and policy;
    - (c) Easements, covenants, conditions, and/or restrictions on or applicable to the underlying real property; and
    - (d) All other laws, codes, and regulations applicable to the WCF.
  2. All WCFs shall be maintained in good working condition and to the visual standards established at the time of approval over the life of the WCF permit. The WCF and surrounding area shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as is practicable, and in no instance more than 30 days from the time of notification by the Town or after discovery by the permittee, weather permitting. If landscaping was required by the WCF permit, the landscaping must be maintained by the permittee.
- N. MODIFICATION OF A WCF PERMIT: The following provisions shall apply to the modification of a WCF permit notwithstanding any other provision of this chapter or

policy to the contrary. In the event of a conflict between the provisions of N and any other provision of this chapter or policy, this Section shall control.

1. The Town may modify a WCF permit before its termination date where necessary to protect public health and safety, or where the WCF permit as issued is no longer enforceable in accordance with its terms.
  2. A permittee may modify a WCF permit by seeking either an eligible facilities request or other modification.
  3. Requests for modifications shall be reviewed in accordance with the provisions of this chapter that are in effect at the time modification is sought, and not the provisions of this chapter and policy that were in effect at the time the WCF permit was initially issued.
- O. RENEWAL OF A CLASS A WCF PERMIT: A Class A WCF permit issued pursuant to this policy may be renewed for additional terms of 10 years each. Any renewal application must be submitted to the Director between 365 days and 180 days prior to the expiration of the current WCF permit, and shall be processed as a Class D Major WCF Permit. A renewal of a Class A WCF permit under this section shall be subject to the WCF's continuing compliance all conditions of approval of the Class A Permit. If a renewal application is submitted less than 180 days prior to expiration of the current WCF permit, the applicant must submit a new Class A WCF permit application, which will be subject to all then-current relevant absolute and relative development policies of this chapter shall be considered by the reviewing authority, except as provided in Section B of this policy. Even if a renewal application for a Class A WCF Permit is submitted 180 days or more prior to expiration of the current WCF permit, the director may reclassify such application as a Class A WCF Permit pursuant to Section D3 of this policy. No renewal is required for a WCF Permit that was issued as a Class D – Minor WCF permit.
- P. ABANDONMENT, REMOVAL, OR RELOCATION OF WCF FACILITY:
1. Any permittee who abandons or discontinues use of a WCF for a continuous period of 180 days shall notify the Director by certified mail within 30 days after the end of the 180 day period. If there are two or more permittees collocated on a single WCF, this Section shall not apply until all permittees cease using the WCF for a continuous period of 180 days.
  2. If the Director believes a WCF has been abandoned or discontinued for a continuous period of 180 days, the Director shall send a notice of proposed abandonment or discontinuation to the permittee stating why the Town believes the WCF to be abandoned or discontinued. Failure of the permittee to reply to the Director in writing within 30 days after receiving, rejecting, or returning the Town's certified letter shall entitle the Director to make a determination that the WCF is, in fact, abandoned or discontinued.
  3. Upon declaration of the Director pursuant to Section P2 that the WCF is abandoned or discontinued, the permittee or, if located on private property, the owner of the affected real property, shall have 90 days from the date of the declaration, weather permitting, or a further reasonable time as may be approved by the Director, within which to complete one of the following actions:
    - (a) Reactivate use of the WCF;
    - (b) Transfer the rights to use the WCF to another entity (who shall be subject to all the provisions of this policy and the permit) in the manner provided in Section R of this policy; or
    - (c) Remove the WCF and any supporting structures installed solely in connection with the WCF, and restore the site to be consistent with the then-existing surrounding area.



4. If the permittee disputes that the WCF has been abandoned or discontinued for a continuous period of 180 days, the Town Council shall hold a public hearing to consider such matter and the evidence related thereto. Except where inconsistent with the terms of this policy, any public hearing conducted by the Town Council pursuant to this Section P shall be governed by chapter 19 of title 1 of this code. If the evidence supports such decision by a preponderance of the evidence, the Town Council may declare that the WCF is deemed abandoned. If such a declaration is made, the Director shall provide notice of such finding to the permittee and to the wireless provider last known to use the WCF and, if applicable, to the owner of the affected private real property, requiring such parties to complete one of the following actions within 30 days from the date of the notice:
  - (a) Reactivate use of the WCF, subject to the terms and conditions of the applicable WCF permit;
  - (b) Transfer the rights to use the WCF to another entity (who shall be subject to all the provisions of this policy and the permit) in the manner provided in Section R of this policy; or
  - (c) Remove the WCF and any supporting structures installed solely in connection with the WCF, and restore the site to be consistent with the then-existing surrounding area.
  
5. If there is no reactivation, transfer, or removal as set forth in subsection P4, the Town may thereafter remove the abandoned WCF, repair any and all damages to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes. If the Town removes the WCF, the Town may, but shall not be required to, store the removed WCF or any part thereof, and may use it, sell it, or dispose of it in any manner deemed by the Town to be appropriate. The entity that abandoned the WCF, or its successor in interest, and if on private property, the private property owner, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage and shall remit payment to the Town promptly after demand therefor is made. In addition, the Town Council, at its option, may utilize any financial security required in conjunction with granting the WCF permit to recover such costs.
  
6. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the WCF, and any related personal property and any private real property on which the WCF was located for the full amount of the cost of removal, repair, restoration, and storage. The Town Clerk shall cause a notice of the Town's lien under this subsection P6 to be recorded with the Summit County, Colorado Clerk and Recorder. The Town's lien provided by this subsection may be foreclosed in the manner provided by Colorado law for the foreclosure of a mortgage.
  
7. If an existing utility pole that hosts a WCF must be replaced, the permittee shall, at no cost to the Town and within 30 days after the installation of the replacement pole, either relocate its WCF in the same configuration on the replacement pole, or remove the prior-existing WCF rather than relocate it, notify the Director of the removal, and surrender its WCF permit for cancellation by the Director.
  
8. If the permittee fails to relocate or remove the WCF as required by this Section P, the Town may elect to treat the WCF as a nuisance to be abated as set forth in chapter 1 of title 5 of this code.
  
- Q. **TRANSFER OF INTEREST IN WCF PERMIT:** A permittee shall not assign or transfer any interest in its WCF permit for a WCF without advance written notice to the Town. The notice shall specify the identity of the assignee or transferee of the WCF permit, as well as the assignee's or transferee's address, telephone number, name of primary contact person(s), and other applicable contact information, such as an e-mail address or facsimile number. The new assignee or transferee shall

comply with all of the terms and conditions of the WCF permit, and this policy, and shall submit to the Town a written acceptance of the WCF permit's terms and conditions and a written assumption of the obligations thereafter accruing under such WCF permit prior to the date that such assignment or transfer is intended to take effect.

R. INJUNCTIVE RELIEF: In addition to any other remedies that are available to the Town, if a WCF is installed, modified, replaced, removed, operated, or located anywhere within the Town without a valid WCF permit issued by the Town pursuant to this policy, or is otherwise installed, modified, replaced, removed, operated, or located in violation of this policy, such action may be enjoined by the Town in an action brought in any court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this Section R, the Town may recover its reasonable attorney fees, together with expert witness fee and costs of the proceeding.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); (v) Section 31-15-702, C.R.S. (concerning municipal streets and alleys); (vi) Section 38-5.5-106, C.R.S. (concerning consent necessary to use of streets); (vii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; (viii) the powers contained in the Breckenridge Town Charter; (ix) 47 U.S.C. §332(c)(7); and (x) 47 U.S.C. §1455(a).

Section 6. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
PUBLISHED IN FULL this 8th day of October, 2019.


This ordinance was published in full on the Town of Breckenridge website on October 9, October 10, October 11, October 12 and October 13, 2019.

A public hearing on this ordinance was held on November 12, 2019.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE  
TOWN'S WEBSITE this 12th day of November, 2019. A copy of this Ordinance is available for  
inspection in the office of the Town Clerk.

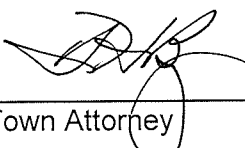
ATTEST:

TOWN OF BRECKENRIDGE

  
\_\_\_\_\_  
Helen Cospolich, CMC, Town Clerk

  
\_\_\_\_\_  
Eric S. Mamula, Mayor

APPROVED IN FORM

  
\_\_\_\_\_  
Town Attorney

11/12/19  
Date

This Ordinance was published on the Town of Breckenridge website on November 15, November 16, November 17, November 18 and November 19, 2019. This ordinance shall become effective on December 19, 2019.