

ORDINANCE NO: 2298

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO,
AMENDING CERTAIN SECTIONS OF ARTICLE 12 AND ARTICLE 17 OF THE BRIGHTON
MUNICIPAL CODE RELATED TO TELECOMMUNICATIONS FACILITIES AND
COMMERCIAL MOBILE RADIO SERVICE FACILITIES

INTRODUCED BY: Johnston

WHEREAS, the Brighton Municipal Code (“Code”) contains certain provisions related to telecommunications facilities and commercial mobile radio service facilities, including, but not limited to, a definition thereof and the process for applications; and

WHEREAS, communication technologies continue to change as Brighton continues to grow; and

WHEREAS, upon review of the existing regulations, it was determined multiple sections of the Code needed to be revised to modernize the regulations; and

WHEREAS, City staff has proposed a code amendment that would modernize the Code and create more certainty in the development process while renaming these facilities as Wireless Communications Facilities; and

WHEREAS, the City Council finds that the amendment, in its entirety, is in the best interests of the public health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Sections 12-16-200, 12-16-210, 12-16-220, 12-16-230, 12-16-240, 12-16-250, 12-16-260, and 12-16-270 of the Brighton Municipal Code are repealed in their entirety.

Section 2. Section 17-20-140 of the Brighton Municipal Code is repealed in its entirety and reenacted as follows:

Section 17-20-140 – Wireless Communications Facilities (WCFs).

(a) Purpose and Intent.

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

- (1) Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of

functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;

- (2) Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to camouflage design techniques and undergrounding of the equipment associated with WCFs where technically feasible;
 - (3) Encourage the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs;
 - (4) Encourage the use of wall-mounted panel antennas;
 - (5) Encourage roof-mounted antennas only when wall-mounted antennas will not provide adequate service or are not otherwise feasible;
 - (6) Encourage the location of Towers in non-residential areas in a manner that minimizes the total number of Towers needed throughout the community;
 - (7) Encourage, strongly, the Collocation of WCFs on new and Existing Sites;
 - (8) Encourage owners and users of Antennas and Towers to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;
 - (9) Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, and efficiently;
 - (10) Effectively manage WCFs in the Public Right of Way (ROW); and
 - (11) Manage amateur radio facilities and over-the-air devices in the City.
- (b) Permit Required. No person, firm or corporation shall construct, establish or build or cause to be constructed, established or built a WCF without first having obtained use-by-right or conditional land use approval, a lease (as applicable), pole attachment agreement or license (as applicable), and a building permit for this purpose.
- (c) Definitions:

ACCESSORY EQUIPMENT. Any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures including fences.

ALTERNATIVE TOWER STRUCTURE. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are compatible with the natural setting and/or surrounding structures, and camouflage or conceals the presence of antennas or towers so as to make them architecturally compatible with the surrounding

area pursuant to this Article. This term also includes any antenna or antenna array attached to an Alternative Tower Structure. A stand-alone Monopole (including a Replacement Pole) in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Article

ANTENNA. Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

APPLICANT. Any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a WCF.

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. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower including the defined Accessory Equipment. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

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

CAMOUFLAGE, CONCEALMENT, OR CAMOUFLAGE DESIGN TECHNIQUES. A WCF is camouflaged or utilizes Camouflage Design Techniques when any measures are used in the design and siting of WCF with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is

integrated in an outdoor fixture such as a flagpole, or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

COLLOCATION shall mean (1) mounting or installing 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 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.

DIRECTOR. The City of Brighton Director of Community Development, or their designee.

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 involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement of Transmission Equipment.

ELIGIBLE SUPPORT STRUCTURE. Any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

EXISTING TOWER. A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition..

MONOPOLE. A single, freestanding pole-type structure supporting one or more Antennas.

POLE-MOUNTED SMALL CELL WIRELESS FACILITY. A Small Cell Facility with antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

PUBLIC PROPERTY. Real property owned or controlled by the City, excluding the Public Right-of-Way.

PUBLIC RIGHT-OF-WAY (ROW). Any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

RADIO FREQUENCY EMISSIONS LETTER A letter from the applicant certifying, all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

REPLACEMENT POLE. A newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light poles or other similar structure of proportions

and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or to accommodate collocation and remove the pre-existing pole or structure.

SITE. The area comprising the base of the structure and other related Accessory Equipment deployed on the ground.

SMALL CELL WIRELESS FACILITY. A WCF where 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 primary equipment enclosures are not 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 enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

For the avoidance of doubt, small cells may be attached to Alternate Tower Structures, Monopoles, and Pole Support Structures.

SIGNAL INTERFERENCE LETTER. A letter from the applicant certifying, all WCFs that are the subject of the application shall be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

SUBSTANTIAL CHANGE. A modification that Substantially Changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:

1. For Towers, other than Alternative Tower Structures in the Right of-Way or other Towers in the Right-of-Way, it increases the height of the Tower by more than ten percent or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;
2. For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
3. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for Towers in the Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more

than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;

4. For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;

5. For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection (5), a change which undermines the concealment elements of an Eligible Support Structure will be considered to defeat the concealment elements; or

6. For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), and (3) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

SUPPORT STRUCTURE. A structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.

TOWER. Any structure that is built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for 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, and the associated site. The term includes self-supporting lattice towers, guyed towers or monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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.

WIRELESS COMMUNICATIONS FACILITY OR WCF. A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does

not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, including without limitation, direction, omni-directional and parabolic antennas, support equipment, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this Division.

(d) Applicability.

- (1) The requirements set forth in this Section shall apply to all WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cells as defined above.
- (2) This Section shall not preempt underlying zoning regulations unless explicitly stated in this Section or as explicitly stated in federal and/or state law.
- (3) The requirements set forth in this Section shall not apply to:
 - a. Amateur radio antenna, OTARD, and residential television reception/antenna towers except as provided in Section 17-20-140(e) below.
 - b. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to December 4, 2018, shall not be required to meet the requirements of this Chapter, other than the requirements of Section 17-20-140(d) Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of Section 17-20-140(d). Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Request shall be evaluated under subsection (f)(6) of this Section.
 - c. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and radio such as Over-the-Air Receiving Device (OTARD) antennas, television broadcast band antennas, and broadcast radio antennas, provided that any requirements related to Accessory uses contained in Chapter 17 of this Code and the requirement that the height be no more than the distance from the base of the structure where it meets the ground to the property line are met. The Director has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.
 - d. A WCF 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.

- e. A temporary WCF installed for providing coverage of a special event such as a news coverage or sporting event, subject to a Temporary Use Permit.

(e) Operational Standards.

- (1) Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency.
- (2) Permission to Use ROW or Public Property. For WCFs in the ROW, the Applicant shall execute a license agreement with the City. In this, the City is able to grant a non-exclusive license to the applicant to use the Public Right-of-Way. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner. The City Licensor shall not control WCFs owned by Applicant placed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on Public Property, the Applicant shall execute a lease agreement with the City.
- (3) Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes in effect at the time of original installation or modification. If upon inspection at any time, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.
- (4) Abandonment and Removal. If a WCF has not been in use for a period of three (3) months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within sixty (60) days of receipt of

written notice from the City. If such WCF is not removed within said sixty (60) days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the City, in its sole discretion, shall not approve any new WCF application until the Applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the City. Notwithstanding the foregoing, nothing in this subsection shall limit an applicant for applying for an Eligible Facilities Request on an existing Eligible Support Structure.

(f) Design Standards.

- (1) The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Article provided, however, that the Director may waive any of these requirements if they determines that the goals of this Division are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code.
- (2) Camouflage/Concealment.
 - a. All WCFs and any Transmission Equipment shall, to the extent technically feasible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the WCF to the surrounding natural setting and/or built environment. Design, materials and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located in the Public Right-of-Way and on adjacent parcels.
 1. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, the Downtown Historic District, views, and/or community features). Should the Director determine that WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., camouflaged, placed underground, depressed, or located behind earth berms) to minimize their profile at the request of the Director.
 - b. The camouflage design may include the use of Alternative Tower Structures should the Director determine that such design meets the intent of this Code and the community is better served thereby.
 - c. All WCFs, shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only).

- (3) Hazardous Materials. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
- (4) Collocation. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF to the extent technically feasible. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.
- (5) Lighting. WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar 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 properties or environs. Lighting shall be shielded or directed to the maximum extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- (6) Noise. Noise generated on the site must not exceed the levels permitted in the City of Brighton Municipal Code, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the City.
- (7) Landscaping and fencing requirements.
 - a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the property, below Code standards.
 - b. Excluding Small Cell Facilities deployed in the Right-of-Way, WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential properties. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the Site. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by the Director. Where the City has requested landscaping, the City may require irrigation.
 - c. Where fencing for screening is required by the Director the fencing or screening material shall meet the standard of the zone district in which the WCF will be located. In no case may fencing material primarily be wire or metal except as allowed by the applicable zone district.

- d. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large lots with an abundance of vegetation, including trees, natural growth around the site perimeter may be sufficient to buffer.
 - e. No trees larger than 4 inches in diameter measured at 4 ½ feet high on the tree may be removed, unless authorized by the Director. To obtain such authorization the Applicant shall show that tree removal is necessary, the Applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1. The City shall designate a tree caliper requirement for all replacement trees. Additional landscaping required by the City will be maintained at the expense of the owner of the WCF.
- (8) Adjacent to residential uses. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries. When placed near residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimized visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF 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 Director requesting the WCF be exempt from these requirements. All setback requirements are still required to be met and cannot be exempted by this section.
- (9) Additional design requirements shall be applicable to the various types of WCFs as specified below:
- a. Wall-mounted WCF.
 - 1. Such facilities shall be architecturally compatible with and textured and colored to match the building or structure to which they are attached.
 - 2. The antenna shall be mounted as flush to the wall as technically feasible. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet.
 - 3. Panel antenna shall not extend above the building wall or parapet to which they are attached.

4. Wall-mounted antenna are not subject to a maximum mounting height above grade, provided they meet the standards above.
 5. Wall-mounted facilities meeting the standards above meet the camouflage and concealment design requirement.
- b. Roof-mounted WCF.
1. All roof-mounted WCFs and accessory equipment shall be fully screened from view with existing parapets or with the addition of architecturally compatible screening walls or other structures as viewed at ground level.
 2. Any screen walls shall be set back from the parapet or roof edge so that visibility from the street or adjacent residential properties is minimized to the greatest extent technically feasible.
 3. Roof-mounted communication facilities and accessory equipment shall not be permitted on a sloped roof, unless it can be demonstrated that it is not visible from the street or adjacent residential areas.
 4. Roof-mounted communication facilities are subject to the following height regulations:
 1. Roof-mounted antenna and equipment are not subject to a maximum height when proposed on an existing structure, provided that the applicant can demonstrate that all roof-mounted antenna and accessory equipment can be located behind an existing parapet or existing screen wall that is at least as tall as the antenna and accessory equipment. Expansions to existing screen walls may be authorized by the City Manager, if the applicant can demonstrate that any expansion does not result in any additional height and is in compliance with the design standards above or that the requested modification is an Eligible Facilities Request subject to Section 17-20-140(g)(6).
 2. Roof-mounted antenna and accessory equipment not meeting the standard above are subject to the maximum building height for the zoning district or applicable design standards, whichever is stricter.
 3. Roof-mounted panel antenna shall not extend more than eight (8) feet above the roof parapet.

- d. Roof-mounted whip antenna shall not extend more than ten (10) feet above the building to which they are mounted.
- c. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as technically feasible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground-mounted equipment shall be located in a flush-to-grade underground equipment vault, unless otherwise authorized by the Director.
- d. Alternative Tower Structures not in the Public Right-of-Way.
 - 1. Alternative Tower Structures shall be designed and constructed to look like a building, facility, or structure typically found in the area.
 - 2. Shall be camouflaged/concealed consistent with other existing natural or manmade features in the near location where the Alternative Tower Structure will be located;
 - 3. Such structures shall be architecturally compatible with the surrounding area;
 - 4. Height or size of the proposed Alternative Tower Structure should be minimized as much technically feasible;
 - 5. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries for aesthetic purposes;
 - 6. WCFs should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses for aesthetic purposes;
 - 7. Compatibility with the surrounding topography;
 - 8. Compatibility with the surrounding tree coverage and foliage;
 - 9. Compatibility of the design of the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

10. Impact on the surrounding area of the proposed ingress and egress, if any.
- e. Alternative Tower Structures in the Public Right-of-Way. Alternative Tower Structures and associated Small Cells, or Micro Cells may be deployed in the Public Right-of-Way through the utilization of a street light pole, distribution lines, utility poles, traffic signal or similar structure. Such facilities shall remain subject to the applicable Alternative Tower Structures standards of approval noted above, and subject to the following additional design criteria below:
1. Alternative Tower Structures and associated Small Cells, or Micro Cells may be deployed in the Public Right-of-Way through the utilization of a street light pole, electric or communication distribution lines, utility poles, traffic signal, or similar structure;
 2. To the extent that an Alternative Tower Structure is a stand-alone vertical structure located in the Public Right-of-Way (such as a street light pole), pole-mounted equipment should be mounted on or within the pole;
 3. Where the Alternative Tower Structure is a vertical structure located in the Public Right-of-Way fed by aerial Distribution Lines, and there are no reasonable alternatives for deployment on a stand-alone underground fed structure, and the Applicant is authorized to construct new utility poles;
 4. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the Alternative Tower Structure;
 5. Be sized to minimize the negative aesthetic impacts to the Public Right-of-Way;
 6. Be designed such that antenna installations on traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered;
 7. Ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the Director, and may, where appropriate and to the extent it is technically feasible based upon construction, engineering and design standards, require a flush-to-grade underground equipment vault;
 8. Not alter vehicular circulation or parking within the Right-of-Way

or impede vehicular, bicycle, or pedestrian access or visibility along the Right-of-Way. The Alternative Tower Structure must comply with the Americans With Disabilities Act and every other local, state, and federal law and regulations. No Alternative Tower Structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the City, the general public, or other person authorized to use or be present upon the Right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the Right-of-Way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare;

9. The pole or structure height (as measured from the ground to the top of the pole or structure) may not exceed the lesser of (i) forty (40) feet or (ii) eight (8) feet taller than any existing utility or traffic signal pole within a radius of 600 feet of the pole or structure;
10. Unless the WCF is deployed on an existing structure in the Public Right-of-Way, new WCFs placed on poles in the Right-of-Way shall be separated from any other pole, accessory equipment or WCF in the Right-of-Way by a distance of at least 600 feet. The Director may exempt an applicant from this requirement if: (i) the applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or (ii) the Director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and the height of existing structures in the vicinity, that placement of a wireless facility at a distance less than 600 feet from another wireless facility in the public right of way will meet the intent of reducing visibility and visual clutter of WCFs;
11. To the extent technically feasible, Collocations are strongly encouraged to limit the number of poles within the Right-of-Way; and
12. Equipment enclosures shall be located out of view as much as reasonably feasible and shall comply with City criteria (e.g. sight line criteria).

f. Towers.

1. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to

reduce visual obtrusiveness as determined by the City;

2. Tower structures should use existing land forms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment;
3. Monopole support structures shall taper from the base to the tip;
4. No tower shall extend above fifteen (15) feet in height above the maximum structure height within the applicable zoning district; and
5. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall at least 6 feet in height and shall also be equipped with an appropriate anti-climbing device.

(10) Related Accessory Equipment. Accessory equipment for all WCFs shall meet the following requirements:

- a. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
- b. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet per carrier, unless otherwise approved by the Director, which approval shall not be unreasonably withheld;
- c. No related accessory equipment or accessory structure shall exceed fifteen (15) feet in height; and
- d. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

(g) Review Procedures and Requirements.

- (1) No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with this Chapter. All WCFs except Eligible Facilities Requests which are reviewed under subsection (g)(6) of this Section, shall be reviewed pursuant to the following procedures. Smalls Cell Facilities deployed in the Right-of-Way may satisfy the requirements of this Subsection through a master license agreement or similar form of authorization.
- (2) Submittal Requirements. In addition to an application form, Signal Interference Letter, Radio Emissions Letter, site ownership permission letter, and submittal fees, each applicant shall submit a scaled site plan, photo simulations, scaled elevation

view, line-of-sight drawing/rendering, a letter explaining collocation possibilities on the tower or why the applicant cannot collocate on to another WCF, and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate qualified professionals, showing the location and dimension of all improvements, including information concerning topography, radio frequency coverage, Tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed by the Director to be necessary to assess compliance with this Section. The submittal requirement described herein may be satisfied for Small Cell applications through a master license agreement or similar authorization executed with the City.

- (3) **Inventory of Existing Sites.** For the first WCF application submitted to the City in a calendar year, the applicant shall provide to the Director a narrative and map description of the applicant's existing or then currently proposed WCFs within the City and outside of the City within one mile. If possible, this will include a before and after graphic or map showing coverage changes by the installation of the WCF. This provision is not indented to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City and all applicants for WCFs to share general information, assist in the City's comprehensive planning process, and promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users. Under no circumstance shall an applicant be required to provide the information described in this Section more than one time per calendar year. The requirement of any inventory of existing sites may be satisfied for Small Cell applications through a master license agreement or similar authorization executed with the City.
- (4) **Administrative Review.** In all zoning districts, applications for Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Right-of-Way, shall be reviewed by the Director for conformance to this Section and Code using the Site Plan review procedures set forth in Section. 17-8-100 *et seq.* of this Code. Except for WCFs in the Rights-of-Way that otherwise meet all requirements of this Section, should the Director consider the proposed WCF to have a significant visual impact, (i.e., proximity to historical sites) or otherwise be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Director may refer the application to City Council for approval.
 - a. An applicant shall submit a complete application.
 - b. Applications will be subject to a one-hundred and fifty (150) day for a new WCF and ninety (90) days for Collocations that do not qualify as an Eligible Facilities Request, provided all standards in this Chapter are met.
 - c. Within thirty (30) days of receipt of the application, the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the

application bring the proposal into full compliance with the requirements of this Chapter.

1. 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;
 2. The timeframe for review continues running again when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 3. 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 paragraph (b.)(1.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- d. The Director shall review the application for conformance with the provisions in this Chapter and may approve, approve with conditions, or deny an application.
- (5) In all zoning districts, all other Towers may be permitted only as a conditional use. WCFs shall be reviewed for conformance to this section and Code using the Conditional Use review procedures set forth in Section 17-8-60 of this Code. All applications for Towers shall demonstrate that other alternative design options such as Base Stations or Alternative Tower Structures are not viable options as determined by the City. Notwithstanding anything in this Article to the contrary, no Towers located in the Right-of-Way shall exceed 40 feet in height.
- (6) Review Procedures for Eligible Facilities Requests.
- a. Application. In all zoning districts, Eligible Facilities Requests shall be considered a use by right as set forth in Section 17-8-100. 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 City to consider whether an application is an Eligible Facilities Request. Such information may include, without limitation, whether the project:
 1. Would result in a Substantial Change;
 2. Violates a generally applicable law, regulation, 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.

- b. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies.
- c. Timeframe for Review. Subject to the tolling provisions of subparagraph d. below, within sixty (60) days of the date on which an applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection.
- d. 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 mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:
 - 1. 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;
 - 2. The timeframe for review continues running again when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - 3. 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 paragraph (d.)(1.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- e. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed 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.

- f. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

(7) Small Cells in the Public Right-of-Way review procedures.

- a. Within thirty (30) days of receipt of the application, the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application bring the proposal into full compliance with the requirements of this Chapter.
- b. The Director shall review the completed application for conformance with the provisions in this Chapter may approve or deny an application within 90 days of the date the application is submitted.
 - 1. 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;
 - 2. The timeframe for review continues running again when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - 3. 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 paragraph (b.)(1.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- c. Consolidated applications. The City shall allow a wireless provider to file a consolidated application for up to twenty small cell facilities and receive a single permit for the small cell network. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated

application.

- (8) Abandonment and Removal. Prior to approval, affidavits shall be required from the owner of the property and from the Applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six months.
 - (9) Decision. Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence related to regulations and restriction, as detailed herein, in a written record. The Applicant shall receive a copy of the decision.
 - (10) Compliance with Applicable Law. Upon approval, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in City Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:
 - a. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
 - b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
 - c. Be maintained in good working condition and to the standards established at the time of application approval; and
 - d. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the rights-of-way or on other City-owned property may be removed by the City at its discretion and without liability to the City upon fourteen (14) days' notice to the owner/and or operator of the WCF. The owner and/or operator of the WCF shall pay all costs of such removal within thirty (30) days after receipt of an invoice from the City.
 - e. Compliance Report. Upon request by the City, the Applicant shall provide a compliance report within 45 days after installation of a WCF, demonstrating that as installed and in operation, the WCF complies with all conditions of approval, applicable Code requirements and standard regulations.
- (h) Approval Criteria.
- (1) Notwithstanding the approval of an application for collocation as described herein,

all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in City Code and any other applicable regulations. WCFs, which are not Eligible Facilities Requests, shall be evaluated for approval under the processes described in subject to compliance with the Design Standards of Sub-Section (E) and the following criteria as applicable:

a. Roof-mounted WCFs, Wall-Mounted WCFs, and Base Stations:

1. Such facilities shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;
2. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be six (6) feet;
3. Wall mounted WCFs shall not extend above the roofline;
4. Roof mounted WCFs shall be approved only where an Applicant demonstrates a wall mounted WCF is inadequate to provide service and evaluated for approval based upon the following criteria: By filing an application for a roof-mounted WCF an applicant is certifying agreement to the City's determination that the height extensions described in subsections 5 and 6 below are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site;
5. Roof mounted antennas shall extend no more than eight (8) feet above the parapet of any flat roof or ridge of a sloped roof to which they are attached; and
6. Other roof mounted Transmission Equipment shall extend no more than ten (10) feet above any parapet of a flat roof upon which they may be placed and shall not be permitted on a sloped roof.

b. Alternative Tower Structures:

1. Such structures shall be architecturally compatible with the surrounding area;
2. Height and size of the proposed alternative tower structure should be minimized as much as reasonably feasible;
3. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries; and

4. WCFs should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses including compatibility with the surrounding topography, compatibility with the surrounding tree coverage and foliage, compatibility of the design of the site (with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness), and impact on the surrounding area of the proposed ingress and egress, if any.
- c. WCFs within Right-of-Way. An Alternative Tower Structure or Small Cell Facility may be deployed in the right-of-way, including the utilization of a traffic signal, street light pole, or similar structure within a public Right-of-Way or freestanding structure. Such facilities shall remain subject to the Alternative Tower Structures standards of approval noted above and subject to the following criteria below:
1. The pole or structure height (as measured from the ground to the top of the pole or structure) may not exceed the lesser of (i) forty (40) feet or (ii) is not more than eight (8) feet higher than any existing utility or traffic signal within 600 feet of the pole or structure;
 2. Any new pole for WCFs shall be separated from any other similar pole, accessory equipment or wireless communication facility in the Right-of-Way by a distance of at least 600 feet. The Director may exempt an applicant from this requirement if: (i) the applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or (ii) the Director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and the height of existing structures in the vicinity, that placement of a wireless facility at a distance less than 600 feet from another wireless facility in the public right of way will meet the intent of reducing visibility and visual clutter of WCFs;
 3. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on the corner formed by two intersecting streets;
 4. Collocations are strongly encouraged to the extent technically feasible and the number of poles within the Right-of-Way should be limited as much as possible; and

5. Equipment enclosures shall be located out of view as much as technically feasible.

d. All Other Towers:

1. Height or size of the proposed tower;
2. Proximity of the tower to residential structures and residential district boundaries;
3. Nature of uses on adjacent and nearby properties;
4. Compatibility with the surrounding topography;
5. Compatibility with the surrounding tree coverage and foliage;
6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
7. Proposed ingress and egress; and
8. No new towers shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:
 - a. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - b. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF; and
 - c. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.

- (2) Setbacks and Separation. The following minimum setbacks and separation requirements shall apply to all WCFs for which a conditional use approval is required; provided, however, that the City may reduce standard setbacks and separation requirements if the Applicant demonstrates that the goals of this Section can be better met by reduced setback and separation requirements that protect the public health and safety, view corridors, or minimize adverse impact. The

Applicant must demonstrate through technical documentation that the requirement cannot result in a feasible network. The City may require a third-party technical study to be compiled at the applicant's expense to determine network feasibility. A Tower shall meet the greater of the following minimum setbacks from all property lines:

1. The setback for a principal building within the applicable zoning district;
2. Twenty-five percent of the facility height, including WCFs and Related Accessory Equipment; or
3. The Tower height, including antennas, if the Tower is in or adjacent to a residential district or school site.

Section 3. Section 17-32-30 of the Brighton Municipal Code is amended by renaming “Commercial Mobile Radio Service Facility” as “Wireless Communications Facility” and amending that section of the Table of Uses to read as follows:

Use Categories	Specific Uses	Zone Districts																									
		<i>R E 1 A</i>	<i>R 1 B</i>	<i>R 2</i>	<i>R 3</i>	<i>M H</i>	<i>D T</i>	<i>M U N C</i>	<i>M U C C</i>	<i>M U R / E C</i>	<i>P U D</i>	<i>S 4 C R</i>	<i>S 4 G W</i>	<i>C O</i>	<i>C 1</i>	<i>C 2</i>	<i>C 3</i>	<i>B P</i>	<i>I 1</i>	<i>I 2</i>	<i>M E</i>	<i>F C</i>	<i>P L</i>	<i>O P E N</i>	<i>A / R</i>	<i>A / E</i>	
		X = Use by Right					C = Conditional Use				S = Special Use			T = Temporary Use					None = Prohibited								
PUBLIC, INSTITUTIONAL USES																											
Commercial Mobile Radio Service Facility	Freestanding tower								€		€	€	#			€	€	€	€	€	€	€	€	€	€	€	€
	Wall-mounted or building roof						€		€	×	×	×	#		×	×	×	×	×	×	×	×	×	×	×	×	×

Wireless Communications Facility	Roof- and Wall-mounted WCF						C		C	X	X	X	#			X	X	X	X	X	X	X	X	X	X	X	X
	Small Cell WCF and Alternative Tower Structure within the ROW	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
	Alternative Tower Structure not within the ROW						C		C	C	X	X	#			C	C	X	X	X	X	X	X	X	X	X	
	Tower									C	C	#					C	C	C	C	C	C	C	C	C	C	

The rest of Section 17-32-30 of the Brighton Municipal Code shall remain unchanged.

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED THIS
20th DAY OF NOVEMBER, 2018.

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 4th DAY OF DECEMBER, 2018.

CITY OF BRIGHTON, COLORADO

KENNETH J. KREUTZER, Mayor

ATTEST:

NATALIE HOEL, City Clerk

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