

RESOLUTION NO. 26-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRIGHTON, COLORADO, RECOMMENDING THAT THE CITY COUNCIL AMEND CERTAIN ARTICLES OF THE LAND USE AND DEVELOPMENT CODE RELATING TO WIRELESS COMMUNICATION FACILITIES

WHEREAS, the state legislature enacted House Bill 25-1056, titled Local Government Permitting Wireless Telecommunications Facilities, which limits the ability of local governments to regulate minor modifications to existing wireless communication facilities; and

WHEREAS, the City of Brighton (the "City") Land Use & Development Code (the "LUDC") contains certain provisions related to wireless communication facilities that must be amended to comply with the requirements of HB 25-1056; and

WHEREAS, in accordance with the public notice requirements of the LUDC, a notice of public hearing was published on the City's website for no less than fifteen (15) days prior to the Planning Commission public hearing; and

WHEREAS, at the public hearing, the Planning Commission received and considered all relevant evidence and testimony from City staff and other interested parties, including the public at large; and

WHEREAS, the Planning Commission has reviewed the proposed amendments to the LUDC and has found that the amendments, as provided herein, are in the best interest of the public health, safety, and welfare of the residents of the City.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Brighton, Colorado, as follows:

**Section 1.** The Planning Commission hereby recommends that Section 10.04(B) of the LUDC be amended as follows:

B. **Applicability.** No person, firm or corporation shall construct, establish or build or cause to be constructed, established or built a WCF without first having received approval for a Site Plan or Conditional Use Permit, obtained a lease (as applicable), and pole attachment agreement or license (as applicable).

1. The requirements in this Section shall apply to all WCF applications for base stations, alternative tower structures, towers, micro cells, and small cells.

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 in this Section shall not apply to:
  - a. Amateur radio antenna, OTARD, and residential television reception/antenna towers except as provided in Section 10.04.C.
  - b. 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 Section. Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of 10.04.B Any modifications qualifying as an eligible facilities request shall be evaluated under Section 10.04.E.6.
  - c. 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 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, which requires only a Temporary Use Permit.

**Section 2.** The Planning Commission hereby recommends that Section 10.04(D)(10)(d)(i) of the LUDC be amended as follows:

(i) 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 10.04.E.6.

**Section 3.** The Planning Commission hereby recommends that Section 10.04(E) of the LUDC be amended as follows:

**Review Procedures and Requirements.**

1. *Generally.* No new WCF shall be constructed and no collocation or modification to any WCF may occur except after an application has been reviewed and approved by the City in accordance with this Section. WCFs that qualify as eligible facilities requests, however, shall be reviewed according to Section 10.04.E.6. Small 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 zoning districts where a WCF is a permitted use, applications for WCFs shall be reviewed by the Director for conformance to this Section and other regulations using the Site Plan review procedures in Section 2.06. Except for WCFs in the right-of-way that otherwise meet all requirements of this Section, if the Director considers the proposed WCF to have a significant visual impact, (e.g., proximity to historical sites) or otherwise be incompatible with the structure or surrounding area, or that the proposed WCF does not meet the intent of these provisions, the Director may refer the application to Planning Commission for approval.
  - a. The Director shall review the application for conformance with the provisions in this Section and may approve, approve with conditions, or deny an application.
  
5. *Conditional Uses.* In some zoning districts, WCFs may be permitted only as a conditional use. WCFs shall be reviewed for conformance to this Section and other applicable regulations using the conditional use permit review procedures set forth in Section 2.07. 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 code to the contrary, no towers located in the right-of-way shall exceed 40 feet in height.
  
6. *Verification Procedures for Eligible Facilities Requests (EFRs).*
  - a. *Applicability.* In all zoning districts, WCF changes that meet the definition of an eligible facilities request and would not result in a substantial change, as defined by 10.04(G), shall be considered a permitted use. The City shall prepare and make publicly available a verification form, which shall be limited to the information necessary for the City to consider whether a request is an eligible facilities request. This information shall include whether the project:
    - i. Would result in a substantial change;
    - ii. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety. The project may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.
  
7. *Review Procedures for WCFs (excluding EFRs).*

- a. Within 30 days of receipt of the application (within 10 days for Small Wireless Facilities), the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Section.
  - i. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days (within 10 days for Small Wireless Facilities) of receipt of the application, specifically delineating all missing documents or information required in the application;
  - ii. 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
  - iii. Following a supplemental submission, the City will notify the applicant within 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.(i). 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.
  - iv. A local government may also toll the applicable period if it determines based on its available resources that it cannot reasonably and adequately review the collocation application or siting application as well as a previously submitted land use application related to housing intended to provide affordable or attainable housing, renewable energy, projects of governmental entities, or any other project, provided that a federal, state, or local law establishes a timeline for review. The period of tolling shall occur only once and shall not be longer than 45 days to review all other such pending land use applications. The City shall notify the applicant in writing within 30 days after submission of the collocation application or siting application of the duration of the period of tolling and the reason for its determination.
- b. WCF applications, including both Administrative and Conditional Use reviews, shall be approved or denied within the following time

periods. A longer review period is allowed if it is mutually agreed upon in writing by the applicant and the Director.

- i. An application to collocate a Small Wireless Facility on an existing structure: 60 days.
    - ii. An application to collocate a facility other than a Small Wireless facility using an existing structure: 90 days.
    - iii. An application to deploy a Small Wireless Facility using a new structure: 90 days.
    - iv. An application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.
  - 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 30 days from the time of notification by the City or after discovery by the owner or operator of the site. 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 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 removal within 30 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.

**Section 4.** The Planning Commission hereby recommends that the definition of "Substantial Change" contained in Section 10.04(G) of the LUDC be amended as follows:

*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:

- i. For towers other than towers in the public rights-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;
  - (A) 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.
- ii. 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;

- iii. 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;
- iv. For any eligible support structure, it entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;
- v. For any eligible support structure, it would defeat the concealment elements of the eligible support structure; or
- vi. 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 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 (i), (ii), (iii), and (iv) 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.

**Section 5.** The Planning Commission finds and determines that the proposed amendments set forth herein: (i) further the purpose of the LUDC; (ii) are in accordance with the Comprehensive Plan and have been considered for both their long-range effects and immediate impacts; (iii) promote the public safety, health, and general welfare of the community of the City of Brighton; and (iv) improve the effectiveness and efficiency of administering the LUDC.

**Section 6.** This Resolution is effective as of the date of its adoption.

RESOLVED this 14<sup>th</sup> day of May 2026.


CITY OF BRIGHTON, COLORADO  
PLANNING COMMISSION

  
\_\_\_\_\_  
Blaine Nickeson, Vice Chairperson

ATTEST:

  
\_\_\_\_\_  
Jon Waines, Secretary

APPROVED AS TO FORM:

  
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Yasmira Gibbons, Deputy City Attorney

