

Article 10. Supplemental Standards

Article 10. Supplemental Standards address city-wide policies that span multiple zoning districts or special topics and issues that require more specific, or "stand-alone" regulations.

10.01 Oil & Gas Facilities

- A. **Intent.** State law recognizes that surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Further, the City's primary source of water for its municipal and domestic use comes from numerous wells located throughout the City. This section has the following intent with regard to the rights of surface and mineral estates:
1. Ensure and monitor compliance with all State and Federal laws and rules;
 2. Enable the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests;
 3. Minimize or mitigate adverse land use impacts on mineral estates, and provide mutual accommodation of the surface and mineral owners.
 4. Protect the City's groundwater resources and require mineral estate developers to minimize and mitigate any adverse impacts to groundwater resources.
- B. **Applicability.** The standards and procedures in this section apply to all apply to oil and gas exploration, drilling and production operations, including infrastructure and accessory equipment or structures within all zoning districts, including a planned unit development district.
1. *New Facilities and Expansions.* All new oil and gas locations, oil and gas facility expansion that requires a new or modified permit from COGCC, and construction of pipelines, shall require a conditional use permit approved by the City Council or a memorandum of understanding approved by the City Manager.
 2. *Existing Facilities.* Well and production sites that are in existence on the effective date of this Section or located within territory annexed to the City, may continue operating without the issuance of a conditional use permit or a memorandum of understanding until the production site is expanded or new wells are drilled on the well site requiring a new COGCC permit. The reentering of a well in existence prior to the date of adoption of this Section, for purposes of deepening, recompleting or reworking, shall not require approval of a conditional use permit as required by this Section, unless such work requires a new COGCC Form 2 or Form 2A.
 3. *Accessory Equipment.* Accessory equipment and pumping systems that are in existence on the effective date of this Section or located within territory annexed to the City may continue operating without the issuance of a conditional use permit or a memorandum of understanding. Any renovation or repair of nonconforming accessory equipment or pumping systems shall be permitted without a conditional use permit, provided the work does not increase the degree of nonconformity. Any replacement of existing accessory equipment or any addition of accessory equipment shall conform to this Section and require a site improvement permit subject Section 2.06, Site improvement permits. The replacement or addition of individual tanks, treaters, or separators shall not require the remaining accessory

equipment in a production site, an access road, or a well site, to conform to the standards and requirements of this Section.

4. *Infrastructure.* Construction or reconstruction of access roads shall conform to the requirements of this Section and shall require a site improvement permit subject to Section 2.06.

C. **Application Forms.** All applications for a conditional use permit and memorandum of understanding shall be on form provided by the Director according to Article 2, and for oil and gas facilities shall specifically include the following information:

1. The operator's and surface owner's names and addresses, and designation of agent, if applicable;
2. A list of all permits or approvals obtained or to be obtained from local, state, or federal agencies other than COGCC;
3. A list of COGCC permits that shall be submitted in conjunction with the COGCC Form 2A, Application for Permit to Drill (Form 2) and any exceptions or variances proposed to be requested;
4. A vicinity map or satellite photo at a scale of 1 inch equals 250 feet, extending at least one-quarter-mile beyond the oil and gas location. The map or satellite photo shall denote:
 - a. The outline of the oil and gas location to be developed;
 - b. Streets and highways;
 - c. All existing oil and gas wells, injection wells, production facilities and pipelines;
 - d. Natural drainage courses, water bodies, and similar major natural or man-made features of the area;
 - e. Existing uses for residential, commercial, industrial and public purposes;
 - f. Any parcels proposed as school locations; and
 - g. Proposed access (ingress/egress) locations and haul routes.
5. A detailed site plan for all well sites that includes submittal to the City of all documents required to be submitted with COGCC Form 2A, a depiction of all visible improvements within one thousand three hundred twenty (1,320) feet of the proposed location, including buildings/residences, public roads and trails, major above-ground utilities, railroads, pipelines, mines, oil/gas/injection/water/plugged wells, etc., as required by COGCC Rule 303.d(3)C, and the site plan requirements of the Municipal Code,;
6. An operating plan including identified access points and estimated operational timeline for posting to the City's community information web-page;
7. A site plan for site preparation, mobilization and demobilization;
8. A stormwater management plan;
9. A plan for interim reclamation and re-vegetation of the well pad and final reclamation of the well pad;
10. A utilities report if applicable;
11. A plan for noise, light, odor and dust mitigation;
12. A traffic management plan (described in greater detail in Section 10.01.G, Transportation and access roads below);
13. Proposed form and issuer of a reasonable bond to cover any damage to public infrastructure during active drilling and completion;

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14. A preliminary visual mitigation plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening;
 15. An air emissions mitigation plan;
 16. An emergency response plan for each specific facility site, which is in compliance with the applicable fire code. The plan shall be filed with the City and the Greater Brighton Fire Protection District and updated on an annual basis in January of each year or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency response plan will address all potential emergencies that may be associated with an oil and gas facility. The emergency response plan shall consist of at least the following information to be submitted to the City for review and approval:
 - a. Name, address and phone number, including 24-hour emergency numbers for at least two persons responsible for emergency field operations; and
 - b. A diagram depicting the planned site design. Following construction of the facilities, the operator shall submit as-built drawings in AutoCAD format, or another format acceptable to the City, that is compatible with the City's current adopted coordinate system. The as-built drawings shall depict the locations and type of above and below ground facilities including sizes, and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites, and dry and wet utility infrastructure and/or surface water bodies, for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the City and shall only be disclosed in the event of an emergency or to emergency responders. The City shall deny the right of inspection of the as-built drawings to the public or for the training of emergency responders pursuant to C.R.S. § 24-72-204; and
 - c. Detailed information addressing each reasonably potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. A provision that any spill outside of the containment area, that has the potential to leave the facility or to threaten waters of the state, or City water supplies, or as required by the City-approved emergency response plan shall be reported to the local emergency dispatch and the COGCC Director in accordance with COGCC regulations; and
 - d. Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used; and
 - e. A project specific emergency response plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas; and
 - f. A fire protection plan that is mutually acceptable to the operator and the Greater Brighton Fire Protection District that includes planned actions for possible emergency events and other pertinent information; and
 - g. Detailed information showing that the operator has adequate personnel, supplies, and training to implement the emergency response plan immediately at all times during construction and operations; and
 - h. A program to ensure that the operator maintains on site all current material safety data sheets (MSDS) for all chemicals used or stored on a site. The MSDS sheets shall be provided immediately upon request to City officials, employees or agents; a public safety officer; or a health professional as required by COGCC Rule 205; and

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- i. A process by which the operator notifies the surrounding neighbors to inform them about the on-site operations and provide sufficient information for surrounding neighbors to communicate with the operator as required by the COGCC; and
 - j. Any additional training and emergency equipment needs prompted by the emergency response plan shall be coordinated with the Greater Brighton Fire Protection District; and
 - k. A provision obligating the operator to reimburse the appropriate emergency agencies for expenses and damages resulting from the operator's operations, to the extent required by Colorado State Statutes.
17. A weed control plan;
 18. Required fees including the oil and gas application review fee or the MOU fee together with such other impact fees or other fees that may be adopted by City Council in the annual fee resolution.
 19. If a well or production facility is proposed to be located less than 1,000 feet from a high occupancy building unit, a building unit, or public water supply well(s), the applicant shall submit the following "alternative location analysis" as part of the application:
 - a. On a map, denote surface locations that could feasibly access the targeted minerals that are a greater distance from building units and public water supply wells than the location proposed.
 - b. A brief explanation of why each alternative location was not chosen.
 20. Any information or documentation agreed to be provided to the City by the applicant at the pre-application conference.
 21. A biological resource report identifying the following, including any mitigation or protection that needs to take place:
 - a. An evaluation of wetlands in the vicinity.
 - b. An evaluation of endangered species in the vicinity, including plants and animals.

D. Procedures, Generally.

1. *Approval Required.* Development of an oil and gas facility shall not commence until and unless any required permits from COGCC, and a conditional use permit or administrative approval by memorandum of understanding from the City, have been approved.
2. *Transfer.* Conditional use permits or memorandums of understanding may be assigned to another operator provided that the new operator provides the City Manager written assurance that operator can and will comply with all conditions of the transferred conditional use permit or memorandum of understanding and with all of the applicable provisions of this Section. The existing operator shall assign the conditional use permit or memorandum of understanding to the new operator on a form provided by the City and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this Chapter. These forms will be supplied to the City Manager within 30 days of the assignment.
3. *Fees.* When an application is submitted to the City for a conditional use permit or administrative approval by memorandum of understanding under this Section, the applicant shall pay to the City an oil and gas application review fee or an MOU fee for each oil and gas facility shown on the site plan as established in the City's annual fee resolution. The City may require a third-party consultant to participate on behalf of the City in pre-application meetings, to review any submittals or applications to the City, and to advise on an MOU or other processes deemed by the City to be appropriate and necessary to complete the review. Reasonable costs associated with such reviews, including third-party consultant fees, shall be paid by the Operator.

4. *Pre-application Conference.*

- a. *Timing.* The timing provision for the pre-application conference is intended to allow the City of Brighton to carry out its regulatory procedures in harmony with those of the COGCC.
- (1) A pre-application conference shall be held at least 30 days prior to the applicant applying for a conditional use permit.
 - (2) The applicant will make best efforts to conduct a pre-application conference prior to submitting a COGCC Form 2A, otherwise the City shall request from the COGCC additional time for review and, depending on the selected location, may also request a hearing before the COGCC pursuant to COGCC Rule 305.
 - (3) At latest, the operator shall contact the City on or before the day of the pre-application notice required by COGCC Rule 305.a.(1) and schedule the pre-application conference to a date certain.
 - (4) The operator shall use its best efforts to conduct the pre-application conference with the City prior to completing well siting decisions, to the extent reasonably feasible.
 - (5) Following the pre-application conference and applicant has six months to submit a formal application, otherwise a new conference will be required.
- b. *Topics.* In addition to the general pre-application conference topics in Article 2, a pre-application conference for oil and gas facilities shall consider the following:
- (1) Discuss the provisions set forth in Article 2 of the Code;
 - (2) Review the City's conditional use review process so that the applicant can plan its proposed oil and gas operation in a manner that ensures compliance with the Code;
 - (3) Review the applicant's objectives and land use proposal;
 - (4) Review the preferred oil and gas location, site-specific matters, and, if necessary, possible alternatives;
 - (5) Discuss project impacts (particularly as related to the City's domestic water supply) and possible mitigation methods, including field design and infrastructure construction, to minimize impacts;
 - (6) Discuss the submittal requirements for the transportation plan described in Section 10.01.G;
 - (7) Discuss coordination of field design with other existing or potential development and oil and gas operations; and
 - (8) Inform the applicant about the benefits of the expedited administrative approval by MOU process as more particularly set forth in Section 10.01.E.
- c. *Site Visit.* At the discretion of the Director, after obtaining surface owner consent, the Director may require a site visit as part of the pre-application conference with the applicant to evaluate well locations, compliance with this Section, and/or mitigation measures and best management practices that may be required to adequately ensure compliance with this Section.
5. *Approval Process and Criteria.* In addition to the general approval process and criteria for conditional use permits in Article 2, oil and gas facility conditional use permits shall be reviewed according to the following criteria:
- a. The site plans for an oil and gas facility application to comply with all requirements this Section.

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- b. Compliance with the all provisions for special mitigation applicable from this Section.
 - c. The application complies with all other site specific requirements as determined necessary by City Council and are otherwise consistent with applicable law.
 - d. The proposal will be compatible with adjacent land uses.
 - (1) Compatibility with the surrounding area;
 - (2) Harmony with the character of the neighborhood;
 - (3) Need for the proposed use;
 - (4) Effect of the use on the immediate area;
 - (5) Effect of the use on future development of the area;
 - (6) Conformance with the City Comprehensive Plan; and
 - (7) If the property is in an urban renewal area at the time of the application, consistency with any adopted Urban Renewal Plan.
 - e. The proposed use will not significantly degrade the environment or public health, safety, and welfare.
6. *Final Plans.* Following approval by the City Council, final plans shall be approved by the City Manager. The City Manager may refer any revised plans that substantially deviate from plans approved in the conditional use permit back to the City Council for a review and decision. If the City did not require modification of the draft plans reviewed with the application, and the operator has not otherwise updated or changed plans associated with the application, final plans need not be resubmitted to the City Manager. The final plans shall include the following, which may be modified by an MOU under 10.01.E:
- a. A response letter that outlines how the permit requirements have been met;
 - b. A summary of planned operations, including identified access points and operational timeline for posting to the City's information web-page;
 - c. A site plan for site preparation, mobilization and demobilization;
 - d. A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;
 - e. A stormwater management plan;
 - f. A utilities report if applicable;
 - g. Copies of all permits requested, including any exceptions;
 - h. A final air emissions mitigation plan;
 - i. A final emergency response plan;
 - j. A final plan for noise, light, odor and dust mitigation;
 - k. A final traffic management plan and a reasonable bond to cover any damage to public infrastructure during active drilling and completion;
 - l. A final visual mitigation plan;
 - m. A final weed control plan; and
 - n. A water quality monitoring plan if required by an MOU.

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7. *Notice*. Not less than 30 days in advance of commencement of operations with heavy equipment for the drilling of a well (COGCC Rule 305f.), recompletion, or plugging and abandonment of a well, operators shall provide notice to the well site surface owner(s) and Brighton's local governmental designee. Notice to the surface owner may be waived in writing by the surface owner. The notice must contain:
 - a. The operator's name and contact information for the operator or its agent;
 - b. A site diagram or plat of the proposed well location and any associated roads and production facilities; and
 - c. The date operations with heavy equipment are expected to commence and be completed.
- E. **Procedures, Memorandum of Understanding**. The administrative review and approval by memorandum of understanding is an alternative to the conditional use review process in 10.01.D. Applications for administrative review by MOU will be governed by the Code and the terms of the negotiated MOU and Attachment "A". (On file with the City.) For each application for administrative review by MOU, the Attachment "A" (which lists the conditions that will be attached to the COGCC permit) will be modified by agreement of the parties to reflect the location chosen and the specific mitigations and best management practices required by that application.
1. *Model MOU*. The City Manager is authorized and shall prepare a model MOU (the "model MOU") which shall contain best management practices to address issues including surface owner involvement, setbacks for new oil and gas locations, pits, water quality monitoring, noise mitigation measures, floodplain, and visual impacts and aesthetics. The model MOU is intended to be used by all operators who submit an application for a new oil and gas location within the City for administrative review of a memorandum of understanding.
 - a. Operators interested in pursuing an administrative approval by MOU should contact the City to obtain a copy of the model MOU and schedule a meeting with the City to discuss the MOU. This meeting should be held well in advance of the operator submitting any application to the City.
 - b. Operators are encouraged to discuss their immediate and longer range plans for operations within the City. Such information will be held in confidence.
 - c. Attachment "A" to the memorandum of understanding shall set forth the site-specific conditions to be placed on applications that are administratively approved by MOU.
 - (1) The City Manager is authorized to work in good faith with the operator to finalize and execute Attachment "A".
 - (2) Attachment "A" may address, by means of illustration only, such best management practices as pits, containment berms, water supply and quality, setbacks for new oil and gas locations, discharge valves, burning, chemical storage, water quality and monitoring, floodplain, visual impacts and aesthetics, electric equipment, air quality mitigation, fugitive dust suppression, flammable material, flow lines, and removal of debris and equipment.
 - (3) The operator shall include as conditions of approval the best management practices requirements set forth in Attachment "A" on all applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, submitted to the Commission for new wells after the effective date of this Section, except to the extent the City Manager in his/her sole discretion determines that such requirements do not need to be so included.
 - d. A memorandum of understanding (MOU), in a form approved by the City shall be executed by the applicant and the City Manager and thereafter be in full force and effect, and the oil and gas facility as proposed shall be in compliance with the provisions of the MOU.

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2. *Pre-application Conference.* A pre-application conference is required and shall follow all of the standards and procedures for pre-application conferences required for conditional use permits in 10.01.D.
 3. *Application, Fees and Review for Completeness.* Applications for a memorandum of understanding shall submit all fees and application materials required for a conditional use permit under 10.01.C and D. The Director shall review the application for completeness within 3 days.
 4. *Neighborhood Meeting.* A neighborhood meeting shall be required for any oil and gas facilities that require an application for administrative approval by memorandum of understanding. The operator shall schedule, attend, and conduct the neighborhood meeting. The City shall attend to facilitate the discussion. A written summary of the neighborhood meeting shall be prepared by the operator and provided to the City. The meeting shall have the following notice requirements:
 - a. *Mailed Notice.* The City shall mail notice of the application for an administrative approval by memorandum of understanding, no more than 14 days after a complete application has been submitted to the City. Owners of record shall be determined according to Assessor's office records in the county in which the well is located or within the area around the well for which notice is required. Notice of the application shall include reference to the neighborhood meeting, and be made as follows:
 - (1) To the surface owners of the parcels of land on which the oil and gas operation is proposed to be located;
 - (2) To the surface owners of the parcels of land in the City or adjacent unincorporated Weld or Adams County within 1,000 feet of the parcel on which the oil and gas operation is proposed to be located.
 - (3) Mailing notice shall be provided at least 14 days prior to the neighborhood meeting.
 - b. *Posted notice.* A sign shall also be posted on the real property on which the oil and gas operation is proposed to be located, providing notice to the general public of the proposed operation. Such signs shall be provided by the City and shall be posted on the subject property by the applicant in a manner and at a location or locations reasonably calculated by the City to afford the best notice to the public, which posting shall occur a minimum of 14 days prior to the neighborhood meeting.
 5. *Review Process.* A complete application shall be reviewed by the Development Review Committee within 21 days. An application may require review by outside agencies such as the U.S. Army Corps of Engineers, if the project impacts a floodplain, and may also be referred to any life-safety providers, adjacent jurisdictions, local public health department, and others as may be deemed appropriate by the City Manager, and any agency comments shall be returned to the City within a reasonable time. The applicant will be notified of any outstanding issues in connection with application materials upon completion of this review and will be required to address any issues or deficiencies in connection with the application materials. If necessary, a meeting will be held to discuss any issues that need to be resolved. The applicant may then submit an amended application, plan or other submittals, as appropriate, to the City for verification that deficiencies have been addressed by the applicant. If the outstanding issues cannot be resolved, the City Manager may refer the application for consideration as an application for conditional use by the City Council.
 6. *Revisions.* If substantive revisions are submitted, the City shall be provided no more than 14 days to review the revised application. Upon determination by the City that all issues have been resolved, the revised application shall be considered the final copy of the application and exhibits. The Director shall forward the final copy of the application materials for final review by the City Manager.

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7. *Decision.* Unless there are any issues that have not been resolved by agreement with the applicant, the City will exercise its best efforts to process the administrative approval by memorandum of understanding for an oil and gas facility in 21 days or less from the date of the neighborhood meeting. The City manager may approve, approve with conditions, or deny the application. Written notice of the decision shall promptly be provided to the applicant, and, if denied, the notice shall include a statement of the reason(s) for denial. The 21-day timeframe applies only to the City's processing time and does not include the applicant's response time. Approval with conditions or denial of the administrative approval by memorandum of understanding shall in no way prevent, delay or restrict the ability of the applicant to resubmit the application through the standard conditional use review, described in Section 10.01.D.
 8. *Term.* An approval of the application for administrative approval by memorandum of understanding shall be valid for 5 years from the date of the MOU unless the MOU states otherwise, or unless the oil and gas facility is substantially commenced prior to the expiration of such timeframe. If the MOU is terminated for any reason, the conditions of the MOU that were applied to an administrative approval of an oil and gas location shall continue to be enforced through this Section and other applicable provisions in this Chapter.
 9. *Appeal.* An applicant may appeal the City Manager's denial of an application for an administrative approval by memorandum of understanding, or any conditions of approval, to the City Council for a de novo hearing. The applicant must file the appeal within 14 days of the date of the City Manager's decision by submitting a letter of appeal to the City Manager. The matter will be scheduled on the next available agenda of the City Council. The City Council may affirm, reverse or modify the decision of the City Manager, based upon the provisions of this Section.
 10. *Conditions.* The approval of an application for administrative approval by memorandum of understanding shall automatically include as conditions of approval all provisions of the MOU executed by the applicant and the City.
 11. *Amendment.* If the applicant or operator proposes changes to the plans approved and agreed to by the memorandum of understanding, the applicant or operator shall submit a proposed amendment to the MOU showing the changes together with payment of the applicable fee. The proposed amendment will be reviewed by the City and, if applicable, the City may require additional information.
 12. *Notice.* At least 14 days prior to the commencement of any new drilling operations, the operator shall provide a notice to the City for posting on the website setting forth the information required by the City, including the operator and surface owner's names and addresses, designation of the operator's agent, identification of the City's designee and the approximate commencement of operations, which the operator may revise from time to time during operations.
- F. **Coordination with COGCC Rules.** In addition to any other standards that are part of a conditional use permit or memorandum of understanding, all oil and gas facilities shall comply with the following COGCC rules.
1. *Abandonment and Plugging.* The operator shall provide the City with the COGCC approved Form 6 (well abandonment report). The well abandonment report must be accurately and completely filled out and the location recorded with the Clerk and Recorder of the applicable county. Operators shall also comply with all applicable requirements set forth in the subdivision regulations of the City, as more specifically set forth in Article 3.
 2. *Seismic Operations.* All notices which an operator is required to file with the Commission with respect to seismic operations shall be simultaneously filed with the City. The City shall comply with the same confidentiality requirements which bind the COGCC.
 3. *Signs.* the owner or operator shall maintain all signs required by COGCC in good, readable condition.

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4. *Fencing.* All pumps, pits, and producing facilities shall be adequately fenced to prevent access by unauthorized persons when the producing site or equipment is easily accessible to the public and poses a physical or health hazard (COGCC Rule 605c.(3)). Fencing materials will be determined by City, taking into consideration aesthetics, cost, and functionality.
 5. *Reclamation.* All facilities shall comply with all Commission rules with respect to site reclamation. As part of site reclamation, Operator is required to remove all unused pipelines, gathering lines, and flowlines within the City limits unless this requirement is waived by the City Manager in writing.
 6. *Location Restrictions.* All facilities shall comply with all Commission rules with respect to equipment at drilling and production sites in geological hazard and floodplain and, to the maximum extent practicable, all equipment should be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act and 10.02, FC-Flood Control Overlay.
 - a. *Setbacks.* Oil and Gas Facilities shall be at least 1,000 feet from the property line of any existing or platted residences, schools, Future School Facilities, state licensed daycares, or occupied buildings.
 - b. *Water protection.* There shall be no Oil and Gas Facilities permitted within a floodway or within 500 feet of a public water system well subsection F.8.
 7. *Recordation of Pipelines.* All new pipelines that leave the well pad, including transmission and gathering systems, shall have the legal description of the location recorded with the Clerk and Recorder of the applicable county within 30 days of completion of construction. Abandonment of any recorded pipelines, including transmission and gathering systems, shall be recorded with the Clerk and Recorder within 30 days after abandonment. The owner of the pipeline, transmission line, or gathering system shall be responsible for the recording requirements under this Section.
 8. *Well Water Protection.* On July 28, 2014, the COGCC passed Order 1-189 to give additional protections to the Brighton public water system (PWS) consisting of certain wells in Beebe Draw and on the South Platte River (collectively "wells"), Ken Mitchell Lakes and Barr Lake (collectively "lakes"), and specified segments of the South Platte River, including but not limited to Second Creek, Third Creek, Fulton Ditch and Lateral, Brighton Ditch and Lateral, and Brian Canal (collectively "ditch segments"). Exhibit A attached to and made a part of Order 1-189 entitled "Brighton PWS Management Map, Commission Order No. 1-189" includes the relevant river, stream, and ditch segments which are integral to Brighton's PWS and the exact boundaries of the exception zone, groundwater monitoring zone and BMP buffer zone. The COGCC Order 1-189, including all maps, exhibits and attachments are attached to this ordinance as Exhibit 1. (On file with the City). The following shall be required for all drilling, completion, production and storage (DCPS) operations at new oil and gas locations within the one-half-mile buffer zone.
 - a. If a new oil and gas location is proposed within one-half mile of the Brighton PWS, the operator will consult with Brighton and the COGCC regarding site-specific BMPs and operating practices in addition to those required for the BMP buffer zone that may be required to avoid potential significant adverse impacts to the ditches or South Platte River. Where a discrepancy between the zones as described above and the attached Brighton PWS Management Map exists, the operator shall request a consultation with Brighton and staff to determine the applicability of this order.
 - b. Operator shall notify the Brighton Department of Utilities prior to commencement of new surface disturbing activities at the site; and
 - c. An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for Brighton. The emergency response plan shall

specify when notifications to Brighton shall be made and must be prepared in consultation with Brighton.

- d. In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program. If a spill or release results in significant adverse impacts or threatens such impacts to a portion of the Brighton PWS, the operator shall notify Brighton immediately following discovery of the release in addition to reporting in accordance with Rule 906.b.

G. Transportation and Access Roads.

1. *Transportation Management Plan.* In each application for a conditional use permit, the applicant shall include detailed descriptions of all proposed access and haul routes for equipment, water, sand, waste fluids, waste solids, mixed waste, and all other material to be hauled on the public streets and roads of the City. The disposal of water used on site shall also be documented in detail by the operator, including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water and the final destination for water used in operation.

In order for the Director of the Department of Streets and Fleet to assess the impact of the oil and gas operation on the City's roadways, the submittal may include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, trips per day and any other information required by the City traffic engineer. The operator shall comply with all transportation requirements as contained in the Model Traffic Code as adopted by the City, Article 10-13 of the Municipal Code.

2. Access roads to oil and gas locations shall be subject to review by the Director of the Department of Streets and Fleet in accordance with the following minimum standards:
 - a. The operator agrees to construct (unless already constructed) and maintain an access road designed to support an imposed load of 75,000 pounds (or the load of the heaviest truck anticipated, whichever is greater), that will accommodate emergency response vehicles such as law enforcement, emergency command vehicles (cars/SUVs), ambulances, hazardous materials response vehicles, water tenders, and fire apparatus during construction and operation of new tank batteries, new drilling activity and reworks or recompletions of existing wells that require a new Form 2 or 2A permit, unless a local fire department or fire district agrees to a different or lesser standard or waived by the City.
 - b. With respect to new roads to new tank batteries, the operator agrees to construct access roads at least 16 feet wide graded gravel roadway with a prepared subgrade and an aggregate base course surface a minimum of 6 inches thick compacted to a minimum density of 95% of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course, as specified for aggregate base course materials in the Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction," latest edition.
 - c. Graded to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (such as roadside swales, gulches, rivers, creeks, and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Director of the Department of Streets and Fleet.
 - d. Maintained to provide a passable roadway reasonably free of ruts at all times.
3. All access roads will be protected through the following methods:

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- a. Water management. Water necessary for drilling and hydraulic fracturing shall be piped to the location if reasonably and commercially practicable. The availability and use of City water shall be at the sole discretion of the City.
 - b. Chains. Traction chains from heavy equipment shall be removed before entering a City street or right-of-way.
 - c. Mud tracking. The operator shall take all practicable measures to ensure that vehicles do not track mud or debris onto City streets and rights-of-way. If mud or debris is nonetheless deposited on City streets, in excess of de minimus levels, the streets shall be cleaned as soon as practicable by the operator. If for some reason this cannot be done, or needs to be postponed, the City shall be notified of the operator's plan for mud removal.
4. Operators, or operators' contractors, as applicable, must obtain permits from the Department of Streets and Fleets for all vehicles that exceed legal vehicle dimensions or weights as specified in Section 10-13-60 of the Municipal Code.
- H. **Exceptions.** An applicant may request exceptions from the standards of this Section through the conditional use process or administrative approval of a memorandum of understanding, only if the owner or operator will employ equivalent mitigation measures for the standards waived or modified.
1. *Criteria.* An exception may be in the form of a waiver or modification, and may be granted based on one or more of the following:
 - a. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting an exception from the operation of the provision will not have an adverse effect on the public health, safety, or welfare or on the environment.
 - b. An alternative approach not contemplated by the provision is demonstrated to provide a level of protection of the public health, safety, and welfare and of the environment that would be at least equivalent to the applicable provision.
 - c. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas facility such as topographical conditions, shape or dimension of the operation site, or inadequate public infrastructure to the site.
- I. **Enforcement and Reporting.**
1. *Inspections.* In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures may be inspected by the City at reasonable times to determine compliance with applicable provisions of this Section, the International Fire Code, the International Building Code, and all other applicable standards adopted by the City of Brighton. For the purpose of implementing and enforcing the provisions of this Section, the personnel and/or agents of the City have the right to enter upon private property after reasonable notification to the operator, and reasonable compliance with any safety requirements of the operator. The operator will be given an opportunity to be present at the inspection. The City may use the information collected by the inspections to enforce the requirements of this Section. These enforcement actions may be either through enforcement of City regulations or, in the case of state statutes or regulations, the City may report the inspection information to appropriate state officials for proper enforcement.
- Operator shall reimburse the City for inspection costs reasonably incurred to inspect the Well Sites to determine compliance with the Code. Such fees shall include estimated costs incurred by the City, including employee time, employee supervision, necessary equipment rental, and overhead. For the

avoidance of doubt, this fee is based on the individual wells and not on the Well Site. Fees for Oil and Gas Facility inspections shall be assessed according to the City's adopted fee schedule.

2. *Civil action, Enforcement.* The City Attorney, in addition to the other remedies provided by law, ordinance, or resolution, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or use. The enforcement provisions of this Section shall apply to all conditional use permits or administrative approval by memorandums of understanding adopted pursuant to this Section and all operator agreements adopted on or after the effective date of this ordinance. Violations may include:
 - a. Constructing, installing or causing to construct or install any facility without a conditional use permit or memorandum of understanding required by this Section.
 - b. Nonconformance with a memorandum of understanding or conditional use permits,
 - c. Nonconformance with plans submitted and approved by the City pursuant to this Section, or
 - d. A building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be used, in violation of any provision of this Section or the conditions and requirements of the oil and gas conditional use permit or memorandum of understanding,
3. *Revocation.* If the City Manager believes the operator has failed to conduct its operations in accordance with the terms and conditions of the conditional use permit or memorandum of understanding, then as a condition precedent to terminating the conditional use permit or memorandum of understanding, the City must provide written notice to operator specifying, in reasonable detail, the failure and the remedy required. Operator shall then have a period of 45 days in which to remedy the failure, or if the failure is of a nature that cannot be remedied within that 45-day period, operator shall have commenced to remedy the failure and will diligently complete the remedy. If operator fails to remedy a material default in the manner set forth above, the City Manager may request a hearing with the City Council. Upon 30 days' written notice sent by certified mail to the operator and otherwise made in accordance with the City's requirements for notification of a City Council meeting, the City Council may hold a public hearing on the alleged violations. At such hearing, the City Council may determine that no such failure occurred, that such failure occurred but was remedied in the manner set forth above, or that such failure occurred and has not been remedied. If the City Council finds that such failure occurred and has not been remedied, the City Council, upon allowing 45 days' notice to operator prior to such action, may act in its discretion to terminate, suspend, or restrict the conditional use permit or memorandum of understanding and revoke any or all approvals for operations of the subject oil and gas facilities, or alternatively, may require such other actions of the operator as it deems appropriate. Upon such revocation, operator shall cease operating such oil and gas facilities until it obtains approval for such wells under the then-applicable City Code.
4. *Coordination with Air Quality Control Commission.* Pursuant to C.R.S. § 25-7-128(4), upon the issuance of any enforcement order or granting of any permit, the City shall transmit to the AQCC a copy of the order or permit. Pursuant to C.R.S. § 25-7-128(6), the City shall confer and coordinate its activities regarding efforts to control or abate air pollution consistent with that provision.
5. *Coordination with the COGCC.* The City's designated local government designee is only given a very short window to review COGCC permits. In recognition of this, the local government designee, in coordination with the City Manager, is hereby authorized to:
 - a. Comment on COGCC applications on behalf of the City,
 - b. Request an additional time to review applications,

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- c. Request onsite inspections,
 - d. Request review from CDPHE, and
 - e. Recommend actions to the City Council regarding COGCC applications or other COGCC processes.

J. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All terms not listed but that are defined in the Act, or in regulations by the COGCC or CDPHE authorized under the Act, shall defer to those definitions, and any conflicts resolved in favor of the state definitions. All other terms shall have their usual customary meaning, the meaning given elsewhere in this code, or any generally accepted oil and gas industry meaning if the term is technical in nature.

Act means the Oil and Gas Conservation Act of the State of Colorado.

Air emissions mitigation plan means a description of the emission controls an operator will utilize on an oil and gas location to meet emission standards, as required by the Colorado Department of Public Health and Environment (CDPHE), Air Quality Control Commission (AQCC), COGCC, and United States Environmental Protection Agency (EPA).

Biological Resources Report means the product and recommendations of a study evaluating wetlands and endangered species in the vicinity of the oil and gas development

Building unit means a residential building unit, and every 5,000 square feet of building floor area in commercial facilities or 15,000 square feet of building floor area in warehouses or other similar storage facilities that are operating and normally occupied during working hours.

COGCC rules means the rules of the Oil and Gas Conservation Commission of the State of Colorado.

Commission or COGCC means the Oil and Gas Conservation Commission of the State of Colorado.

Department or CDPHE means the Department of Public Health and Environment of the State of Colorado.

DOGCC Director means Director of the Oil and Gas Conservation Commission of the State of Colorado.

High occupancy building unit means:

- (1) A public school as defined in C.R.S. § 22-7-703(4);
- (2) Nonpublic school as defined in C.R.S. § 22-30.5-103(6.5);
- (3) Nursing facility as defined in C.R.S. § 25.5-4-103(14);
- (4) Hospital;
- (5) Life care institution;
- (6) A jail which includes those structures where the personal liberties of occupants are restrained, including but not limited to prisons, detention facilities, and reformatories; or
- (7) An child care center as defined in C.R.S. § 26-6-102(1.5).

Inspector, City means the Manager's designee, who shall have the authority to inspect a well site to determine compliance with this Section and other applicable ordinances of the City.

Local government designee means the office designated to receive, on behalf of the City, copies of all documents required to be filed with the local governmental designee pursuant to the rules of the COGCC.

MOU means a "memorandum of understanding" or contractual agreement between the oil and gas operator and the City of Brighton for the purpose of facilitating and ensuring responsible oil and gas development within the City of Brighton, and shall consist of a model MOU and Attachment A.

Multi-well production facilities means all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flow lines and other equipment directly associated with two or more oil wells, gas wells, or injection wells.

MunicipalCode means "Brighton Municipal Code" of the City of Brighton, Colorado.

Oil and gas facility means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas.

Oil and gas location means a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

Operating plan means a general plan which describes an oil and gas exploration and production facility identifying the purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operation, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

Operator means any person or entity who exercises the right to control the conduct of oil and gas operations.

Production facilities means all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flow lines and other equipment directly associated with oil wells, gas wells, or injection wells.

Recompletion operation means any action taken after the initial completion of a well, including the action and techniques of reentering the well and redoing or repairing the original completed well to restore the well's productivity.

Residential building unit means a building or structure designed for use as a place of residency by a person, a family, or multiple families. The term includes manufactured, mobile and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

Setback location means the minimum distances from building units, high occupancy building units, or designated outside activity areas as established in COGCC rules.

Surface owner means any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

Surface use agreement means any agreement in the nature of a contract or other form of document binding on the operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator's activities on the surface in relation to locating a well, multi-well site, production facility, pipeline or any other oil and gas facility that supports oil and gas development located on the surface owner's property.

Utilities report means utility line easements and rights-of-way within one hundred fifty (150) feet of the proposed oil and gas location and access road. For those facilities utilizing the power grid, it will also indicate any new power lines or other infrastructure necessary for the purpose of supplying electric power to oil and gas facilities.

Well means an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

Well site means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well and its associated well pad.

Wellhead means the mouth of the well at which oil or gas is produced.

10.02 FC—Flood Control District

A. Findings of Fact.

1. The flood hazard areas of the City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately elevated or otherwise unprotected from flood damage also contribute to flood loss.

B. Statement of Goals, Purpose and Policy.

1. Floodplain compatible development does not include new residential development. Allow the improvement of existing dwelling units in the floodplain only when federal regulations are followed.
2. Promote and enhance the use of the floodplain for open space, pedestrian, bicycle and equestrian transportation, wildlife habitat and appropriate recreational activities.
3. Limit development within the floodplain by not allowing connection of nonconforming and/or floodplain incompatible uses to municipal water or sewer facilities within the floodplain.
4. Prevent the destruction of the floodplain, stream channels and natural terraces, by regulating filling, grading, dredging and other development which may increase flood damage; and by preventing the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.
5. Allow for the economic return on investment for development which is compatible and designed for the discharge of the one-hundred-year flood without injury or loss of life or property, such as turf farms, gravel mines and golf courses.
6. Minimize expenditures of public and private money for costly flood control, emergency measures and damage by limiting development in floodplains. Costs which are avoided by limiting development in the floodplain include: the need for rescue and relief efforts associated with flooding; the costs associated with prolonged business interruptions; and the costs associated with damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
7. Actively and effectively participate in the National Flood Insurance Program in order to allow property holders within the floodplain to obtain insurance and to minimize the loss of life and property during a one-hundred-year flood event.
8. *Warning and Disclaimer of Liability.* The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Section does not imply that land outside the regulatory flood boundary or uses permitted or approved within such areas will be free from flooding or flood damages. This Section shall not create liability on the part of the City of Brighton or any official or employee for any flood damages that result from reliance on this Section or any administrative decision lawfully made under this Section.

C. Regulatory Floodplain Boundary.

1. The provisions of this Section apply to the areas of special floodplain area identified by the Federal Emergency Management Agency in the scientific and engineering report entitled, "The Flood Insurance Study for Adams County, Colorado and Incorporated Areas," dated March 5, 2007, with accompanying flood insurance rate maps and flood boundary-floodway maps (FIRM and FBFM), as may be amended from time to time. Additional flood boundaries that shall apply are identified in the current Flood Hazard Area Delineation Studies for Todd Creek, the South Platte River, Adams County, Second Creek and Third Creek, as published and amended by the Urban Drainage and Flood Control District (UDFCD), and any that may be established in the future. If these studies conflict, the most restrictive shall apply. The flood insurance study, the flood insurance rate maps and the UDFCD Flood Hazard Area Delineation Studies shall be available for public review at the offices of the Utilities Department, City of Brighton.
2. An applicant that disputes the location of a regulatory floodplain boundary may file with the City Engineer a written request for a hearing before the City Council, which will be held within 30 days after the City Engineer receives the request. The written request shall specify the nature of the dispute, and shall include a statement from a registered Colorado professional engineer as to projected flood profiles, elevation and projected velocity, and the basis for the claim that the location of the boundary is incorrect. The City Council recognizes that only formal letters of map and study amendments issued by the Federal Emergency Management Agency are effective to change the boundary line for federal regulatory purposes.
3. If a lot or parcel of land lies partly within the regulatory floodplain, the part of such lot or parcel within that area shall meet all the standards and requirements prescribed by this Section. If land outside the City is included within a regulatory floodplain area, the requirements of this Section apply to the land upon annexation without any requirements that the City Council further approve a flood boundary map covering such area.

D. Administration.

1. *Designation and duties of Floodplain Administrator.* The City Engineer or the Floodplain Administrator as designated by the City Manager shall administer the requirements of this Section, and shall:
 - a. Determine that the requirements of this Section have been met before issuing any permit for development in the floodplain;
 - b. Review applications for structures located in the regulatory floodplain to assure that all necessary conditional use permits, certificates of appropriateness or exemptions for historic structures, and other required permits have been received from those governmental agencies from which approval is required by City, federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334;
 - c. Notify adjacent communities, Adams County, the Colorado Water Conservation District Board and the Federal Emergency Management Agency before permitting any change in a watercourse;
 - d. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;
 - e. Maintain, for public inspection, all records pertaining to the provisions of this Section, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures; and
 - f. Where interpretation is needed as to the exact location of the boundaries of a regulatory floodplain (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretations.

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2. *Flood regulations in relation to other regulations.* The requirements of this Section supplement those imposed on the same lands by any underlying zoning provisions of this code, Chapter 14, Storm drainage of the Brighton Municipal Code, any ordinance of the City or annexation agreement. If there is a conflict between these requirements or agreements, the more restrictive controls. If a use not conforming to the requirements of this Section is discontinued for 6 consecutive months, no person shall use the structure or premises unless the use and structure conform to the requirements of this Section.
 3. *Existing structures.* Any activity for which a floodplain permit was issued by the City Engineer or a CLOMR was issued by FEMA prior to the adoption of this Section may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this code if it meets the standards. The use of any structure on land within the regulatory floodplain that was lawful before the application Section may continue subject to the provisions of Section 1.05 and the following conditions:
 - a. If any person makes repairs to or replaces a portion of any such structure but the cost of repair or replacement does not exceed 50% of its market value, such person shall elevate the repaired or replaced portion as required by this Section.
 - b. If any person makes substantial improvement to any structure in the floodplain, such person shall permanently modify the entire structure and the use of the structure to conform to the requirements of this Section.
 - c. No person shall change a use unless the structure and the use of the structure are modified permanently to conform to the requirement of this Section.
 - d. If a conflict arises between the requirements of this Section and the provisions for nonconforming uses, structures and lots contained in this code, the requirements of this Section control.
 - e. When this Section requires calculation of a percentage of market value of a structure for the purposes of cost of repair or replacement, extent of damage or increases in value, the market value and the required calculation shall be determined pursuant to written appraisal detailing the methodology used by a person qualified to evaluate the particular situation. The methodology and the appraiser shall be acceptable to the City Manager.
 4. *Issuance of a floodplain permit.*
 - a. *Floodplain permit required.* Any development within the floodplain, except which is specifically exempted in Subparagraph b. below requires the application, review and approval of a valid floodplain permit issued by the City Engineer in accordance this section and the requirements outlined in this subsection.
 - b. Development exempted from floodplain permit:
 - (1) The normal repair and maintenance of existing utilities, including but not limited to sewer, water, telephone, cable, power, bridges and streets;
 - (2) Water monitoring devices;
 - (3) Flood control facilities approved by the applicable urban drainage control district, the Army Corps of Engineers, the Federal Emergency Management Agency and the City Utilities Department;
 - (4) Irrigation structures; and

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- (5) Compliance. No structure or land shall be located, altered, or have its use changed within the regulatory floodplain without full compliance with the terms of this Section, and other applicable ordinances and regulations.
5. *Application materials.* Application for a floodplain permit shall be presented on forms furnished by Floodplain Administrator and may include plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location in relation to the regulatory floodplain area. Additionally, the following information is required:
- a. Cross-sections illustrating the floodplain in the area to be occupied by the development and the base flood elevation;
 - b. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - c. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
 - d. A certificate from a registered Colorado professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Section 10.02.E., Flood Plain Regulations.
 - e. A floodplain analysis by a Colorado registered professional engineer of the flood profile, elevation and velocity, using methodology acceptable to the Federal Emergency Management Agency, including existing and anticipated uses and making a determination that the proposed construction will not cause a rise in the elevation of the water surface of the base flood.
 - f. An analysis by a registered Colorado professional engineer or licensed architect of the structural design, specifications, and plans for the construction certifying that the design and methods of construction are in compliance with the regulations and requirements of this Section;
 - g. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed development; and
 - h. In addition to the application materials required to obtain a permit, the City Engineer may require the applicant to furnish additional information and details deemed necessary to evaluate the effects of the proposed development upon the floodplain and the safety of inhabitants and visitors.
6. *Application review.* Approval, denial or approval with conditions of a floodplain permit by the Floodplain Administrator shall be based on all of the provisions of this Section. When reviewing an application for a floodplain permit, the Floodplain Administrator may approve, disapprove or approve with conditions the application after reviewing the following relevant factors:
- a. The danger to life and property due to flooding or erosion damage;
 - b. The effects upon the efficiency or capacity of the floodway;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of damage on the individual owner;
 - d. The danger that materials may be swept onto other lands to the injury or damage to another;
 - e. The compatibility of the proposed use with existing developments;
 - f. The safety of access to the property in times of flood for ordinary and emergency vehicles;

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- g. The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water services;
 - h. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - i. The necessity to the facility of a water front location, where applicable;
 - j. The availability of alternative locations, not subject to flooding or erosion damages, for the proposed use;
 - k. Whether or not the proposed development constitutes a critical facility as designated in Section 10.02.I., Critical Facilities, or designated by other action of the City Council, and if it is, the required freeboard elevation above the base flood elevation shall be no less than 2 feet; and
 - l. The application of the provisions and regulations of the City of Brighton Land Use Development Code and Comprehensive Plan.
- E. **Floodplain Regulations.** When reviewing an application for a permit, the City Engineer shall determine whether it meets the purposes of this Section and approve or disapprove a complete permit application after reviewing the following regulations:
- 1. No new residential dwelling units or uses shall be established in the floodplain. Existing dwelling unit uses may be improved if they meet the requirements of this Section.
 - 2. Permitted and conditional uses allowed in the floodplain are listed in Article 4.
 - 3. No development, use, fill, excavation, construction or alteration within a regulatory floodplain shall be permitted, which acting alone or in combination with existing or future uses, would cause or result in any of the following:
 - a. The disposal of garbage, sludge, waste materials or other potentially injurious substances;
 - b. An obstruction or depositing of any material which would impair the flow capacity of a regulatory floodplain or increase floodwater depths or velocities so as to cause probable damage to others wherever located;
 - c. A substantial increase in sedimentation and/or erosion
 - 4. With the exception of critical facilities outlined in Section 10.02.I. Critical Facilities, the freeboard of the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork) of new construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall be either elevated to at least 1 foot above the base flood elevation, or together with attendant utility and sanitary facilities, be designed so that at 1 foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered Colorado professional engineer or architect shall develop and review structural designs, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with this Section 10.02.E.4. and accepted standards of practice.
 - 5. Structures shall be placed on and anchored to permanent foundations which shall have structural components capable of resisting hydrostatic and hydrodynamic loads, and shall be anchored to resist flotation, collapse or lateral movement during a base flood, as designed by a registered, professional engineer.

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6. The enclosure of accessible areas below the base flood elevation is prohibited, except for crawl spaces with headroom less than 4 feet in height. No enclosure shall be permitted which has the potential of becoming habitable space.
 7. No lot shall be created which will violate the provisions of this Article. In particular, no lot shall be created which is intended for the establishment of a dwelling unit or other disallowed use.
 8. Subdivisions for allowed uses within floodplains. The development or redevelopment of subdivisions for commercial and/or industrial uses which are allowed as a permitted or conditional use, in part or in whole, within the boundaries of the one-hundred-year floodplain shall meet the following requirements:
 - a. Designs shall minimize flood damage;
 - b. All utilities, including but not limited to sewer, water, power and telephone systems, shall be located and constructed to minimize or eliminate flood damage, and must meet the provisions of Paragraph 10. below;
 - c. Adequate drainage shall be provided to reduce exposure to flooding; and
 - d. Base flood elevation data shall be provided for each lot. Base flood elevations shall be provided by the applicant.
 9. Manufactured home parks and subdivisions.
 - a. Development, in whole or in part, of a manufactured home park or subdivision within the boundaries of the floodplain is not permitted.
 - b. Nonconforming manufactured home parks or subdivisions shall not be improved or expanded in such a way as to add additional space and/or lots for manufactured homes within the boundaries of the floodplain.
 - c. When a manufactured home is moved onto an existing lot within the floodplain, a permanent foundation and/or compacted fill must be provided so that the lowest floor of the manufactured home shall be at least 1 foot above the base flood elevation.
 10. Construction materials and methods for utilities.
 - a. Sanitary sewer and potable water utilities may pass through the floodplain to serve and connect to points out of the floodplain; in no case shall new sewer or water taps be given to uses which do not conform to the provisions of this code.
 - b. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage and shall be constructed using methods and practices that minimize flood damage.
 - c. All new and replacement water supply and sewer systems shall be designed to minimize or eliminate infiltration of flood waters into that system and to minimize or eliminate discharge of the systems into flood waters.
 - d. All wastewater systems shall be located to avoid impairment to them or contamination from them during flooding.
 - e. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered Colorado professional engineer or architect or meet or exceed the following minimum criteria:

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- (1) A minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided; and
 - (2) The bottom of all openings shall be no higher than 1 foot above grade; and
 - (3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
11. No person shall store or process materials that are hazardous, flammable, poisonous or explosive, that in times of flooding could in any way be harmful to human, animal or plant life, or that are buoyant and not adequately anchored or contained, except at or above the regulatory floodplain elevation for the area in which they are located.
 12. No development shall require additional public or private expenditures beyond the costs of the development proposed by the applicant.
 13. No development shall take place in which it would be difficult or impossible to obtain safe access by ordinary and emergency vehicles.
 14. No development shall adversely affect surrounding or downstream development.
 15. The carrying capacity of a relocated or altered watercourse shall be maintained.
 16. Recreational vehicles. All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the City's FIRM must either:
 - a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - c. Recreational vehicles must be placed in an elevated or a permanent foundation such that the lowest floor is elevated to 1 foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- F. **Floodway Regulations.** Where otherwise permitted, any development, obstruction or activity that will result in an encroachment in or modification to the floodway shall be permitted only if the following requirements are met, using floodplain modeling and technical analysis consistent with floodplain modeling guidelines and standards established or approved by the Utilities Director. Required demonstrations for floodway encroachments and/or modifications. At least one of the following requirements must be met for any floodway encroachment or modification:
1. *No rise.* The development, obstruction or activity must be shown by appropriate floodplain modeling to result in no increase in base flood elevations, also referred to as *no rise*.
 - a. A certification signed by a registered professional engineer accurately documenting that no increase in base flood elevations will result from the proposed development, obstruction or activity, in a form approved by the Utilities Director, must be submitted prior to issuance of a floodplain permit, and
 - b. A certification signed by a registered professional engineer accurately documenting the as-built base flood elevations after completion of the development, obstruction or activity as resulting in no increase in base flood elevations must be submitted prior to the issuance of a certificate of occupancy, or, in the event no certificate of occupancy is required, upon completion of the improvements; or
 2. *No rise except on applicant land or easement.* The development, obstruction or activity must be shown by appropriate floodplain modeling to result in no increase in base flood elevations or change in

floodway or flood fringe boundaries, except on the applicant's contiguous property or on property for which the applicant has obtained and recorded easements sufficient to allow for the associated changes, and:

- a. A certification signed by a registered professional engineer accurately documenting that no increase in the floodway or base flood elevations on other than the applicant's contiguous property or on property for which the applicant has obtained and recorded easements sufficient to allow for the associated changes will result from the proposed development, obstruction or activity, in a form approved by the Utilities Director, must be submitted prior to issuance of a floodplain permit; and
- b. A certification signed by a registered professional engineer accurately documenting the as-built floodway and base flood elevations after completion of the development, obstruction or activity as resulting in no increase in the floodway or base flood elevations on other than the applicant's contiguous property or other than provided by recorded easements must be submitted prior to the issuance of a certificate of occupancy, or, in the event no certificate of occupancy is required, upon completion of the improvements.

G. Map Revisions.

1. *Conditional map revisions.* A Conditional Letter of Map Revision must be approved by FEMA, or, for a City basin floodplain, a preliminary map revision must be approved by the Utilities Director, prior to issuance of a floodplain permit or initiation of construction or permitted activities for any proposed development or activity in the floodplain or floodway that:
 - a. results in any of the following:
 - (1) an increase in base flood elevation of more than 0.00 feet,
 - (2) a decrease in base flood elevation of more than 0.30 feet,
 - (3) a change in watercourse location,
 - (4) the addition of new area within the floodplain or floodway, or
 - (5) a physical change to the hydrology of the floodplain or floodway or hydraulic conveyance with the floodway; or
 - b. requires any of the following in order to meet the requirements for a floodplain use permit:
 - (1) technical analysis to correct existing map errors,
 - (2) technical analysis that incorporates improved technical data, or
 - (3) technical analysis that applies improved or alternative hydrologic or hydraulic methodologies.
2. *Final map revisions.* Upon completion of development or other activities for any development or activity in the floodplain or floodway that results in a change to base flood elevations, floodway or flood fringe boundaries, regardless of whether a Conditional Letter of Map Revision has been required pursuant to Conditional Map Revisions above, a Letter of Map Revision or Physical Map Revision must be approved by FEMA, or, for a City basin floodplain, a final map revision must be approved by the Utilities Director, prior to issuance of a certificate of occupancy, or, in the event no certificate of occupancy is required, upon completion of the improvements.

- H. Properties Removed from Floodplain by Fill.** A floodplain permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F), unless such new structure or addition complies with the following:

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1. *Residential construction.* The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to 1 foot above the base flood elevation that existed prior to the placement of fill.
 2. *Nonresidential construction.* The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to 1 foot above the base flood elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least 1 foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy.

I. Critical Facilities.

1. *Protection for critical facilities.* All new and substantially improved critical facilities and new additions to critical facilities located within the regulatory floodplain shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this Section protection shall include one of the following:
 - a. Location outside the regulatory floodplain; or
 - b. Elevation of the lowest floor or flood proofing of the structure, together with attendant utility and sanitary facilities, to at least 2 feet above the base flood elevation.
2. *Ingress and egress for new critical facilities.* New critical facilities shall, when practicable as determined by the City Engineer, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.
3. *Classification of critical facilities.* For the purposes of this Section, the following shall be classified as critical facilities:
 - a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and related appurtenances.

Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the City Engineer that the facility is an element of a redundant system for which service will not be interrupted during a flood.
 - b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

Specific exemptions to this category include:

Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.

Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
 - c. At-risk population facilities include medical care, congregate care, and schools.

J. Floodplain Variance Criteria.

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1. *Variance applications.* A person wishing to develop or use land or structures in such a way that does not conform to the requirements of this Section and cannot be made to conform without unreasonable expense or unreasonable impact on the existing structure may apply to the Board of Adjustment for a variance from the requirements of this Section. No variance shall be accepted, processed or granted which will permit a use which is incompatible with the discharge of the one-hundred-year flood, as determined by the list of permitted and conditional uses within the floodplain. In particular, no variance application shall be accepted, processed or granted which would permit the construction of new dwelling units. Variance applications shall be in compliance with the application requirements outlined above.
 2. *Variance criteria.* Variances to the above standards shall only be issued by the Board of Adjustment upon finding all the following criteria to be true:
 - a. The variance is the result of good and sufficient cause;
 - b. A determination by the Board of Adjustment that failure to grant the variance would result in exceptional hardship to the applicant;
 - c. A determination by the Board of Adjustment that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other standards outlined in this Article;
 - d. The development will not increase the risk that materials may be swept onto other lands or be injurious to others;
 - e. That there is a public necessity of locating the development within the floodplain and the proposed use cannot be located elsewhere;
 - f. That the development will be safely accessible by emergency vehicles during times of flood;
 - g. Variances will not be issued in the regulatory floodway if any increase in the base flood elevation occurs;
 - h. *Historic structures.* Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
 - i. That the cost of providing essential services as maintaining and protecting public utility systems, roads and bridges during and after floods will not rise as a result of the development.
 3. *Increased insurance premiums.* Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the variance.
 4. *Engineering certification.* If a variance is to allow development within a floodway, a certification by a registered professional engineer shall be provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- K. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All other terms shall have their usual customary meaning, or the meaning given elsewhere in this code or other applicable uniform or international code adopted by the City, except where the context clearly indicates a different meaning.

Base flood. The flood having a 1% chance of being equaled or exceeded in any given year.

Flood. The water from a river, stream, watercourse, lake or other body of standing water which temporarily overflows or inundates adjacent lands and which may affect other lands and activities through stage elevation backwater and/or increased ground water level. Also means a general and temporary condition of partial or complete inundation of normally dry land areas due to unusual and rapid accumulation or runoff of surface waters from any source.

Flood, 100-year flood. A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (one-percent-annual-chance flood). The terms "one-hundred-year flood" and "one-percent-chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every 100 years.

Flood, 500-year flood. A flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual flood). The term does not imply that the flood will necessarily happen once every 500 years.

Flood, 500-year flood plain. The area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

Flood insurance rate map. The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Flood plain. The relatively flat or lowland area adjoining a river, stream, watercourse, lake or other body of standing water which has been or may be covered temporarily by flood water. For administrative purposes, the flood plain may be defined as the area that would be inundated by the one-hundred-year flood.

Flood Plain Administrator. The Flood Plain Administrator, also referred to in this Section as the "City Engineer," is the City employee appointed by the City Manager to administer the duties set forth in Section 17-16-200, FC - Flood Plain Control District.

Flood plain district. That portion of the flood plain subject to inundation by the one-hundred-year flood.

Flood profile. A graph or a longitudinal profile showing the relationship of the water surface elevation of a flood event to location along a stream or river.

Flood proofing. A combination of structural provisions, changes or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings in a flood plain area.

Flood protection elevation. An elevation 1 foot above the elevation or *flood profile* of the one-hundred-year flood under existing channel and flood plain conditions.

Flood storage area. The fringe area of the flood plain in which flows are characteristically of shallow depths and low velocities.

Floodway area. That area of the flood plain required for a reasonable passage or conveyance of the *one-hundred-year flood* which is characterized by flows of two (2) feet per second or more, for depths of eighteen (18) inches or more and/or which will convey the flood flows with not more than one-half-foot rise in the water surface profile based on the assumption that there will be equal degree of encroachment extended for a significant reach on both sides of the watercourse.

Floodway district. That area represented by the floodway which has been hydraulically defined and shown on the map in the office of the City Clerk.

Freeboard. The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the

height calculated for a selected size flood, such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

High water mark. The line on the bank of a stream, river, lake or impoundment to which the high water ordinarily rises annually in seasons, as indicated by changes in the characteristics of soil, vegetation or other appropriate means, taking into consideration the characteristics of the surrounding areas. Where the ordinary high water mark cannot be found, it shall be presumed to be the edge of vegetation growing along the channel bank. In braided channels, the ordinary high water mark shall be measured so as to include the entire stream feature.

Letter of map revision (LOMR). FEMA's official revision of an effective flood insurance rate map (FIRM), or flood boundary and floodway map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood plain area (SFHA).

Letter of map revision based on fill (LOMR-F). FEMA's modification of the special flood hazard area (SFHA) shown on the flood insurance rate map (FIRM) based on the placement of fill outside the existing regulatory floodway.

Lowest floor. The inside bottom surface of an enclosed area, including a basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in areas other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Code.

No-rise certification. A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A no-rise certification must be supported by technical data and signed by a registered Colorado professional engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the flood insurance rate map (FIRM) or flood boundary and floodway map (FBFM).

Reach. A hydraulic engineering term to describe longitudinal segments of a stream or river. A reach will generally include the segments of the flood plain where flood heights are primarily controlled by man-made or natural flood plain obstructions or restrictions. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most likely be a reach.

10.03 Historic Preservation

A. Policy & Intent.

1. *Policy.* It is the policy and intent of the City Council to protect and enhance the use of cultural resources having historical, architectural, or geographical significance to the City's heritage. The Historic Preservation Commission, as established in Article 2-66 of the Municipal Code, shall implement these goals and policies. The historic preservation regulations are necessary for the Historic Preservation Commission to fulfill the purposes for which it was established.
2. *Intent.* This Section is intended to promote the public health, safety, and welfare of the citizens of the City while also providing for the orderly and appropriate preservation, protection, development, and redevelopment of cultural resources, including historically, architecturally, or geographically significant properties, and historic landmarks and historic districts in the City. It is also the intent of this Section to create a reasonable balance between private property rights and the public interest in preserving the City's unique historical character.

B. Eligibility for Designation.

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1. *Historic Landmark Eligibility.* A cultural resource may individually be designated as a historic landmark if the cultural resource is at least 50 years old and is of historic, architectural, and/or geographical significance. If the cultural resource is not at least 50 years old, it must have exceptional significance. The finding of significance requires that the cultural resource meets at least one criterion within one of the following categories, or at least one criterion within two of the following categories for a finding of exceptional significance:
 - a. *Architectural category:* In order to be considered significant in the architectural category, at least one of the following criteria must be met. The cultural resource:
 - (1) Exemplifies specific distinguishing characteristics of an architectural period or style;
 - (2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally;
 - (3) Demonstrates superior craftsmanship or high artistic value;
 - (4) Contains elements of architectural design, detail, materials, construction, or craftsmanship which represent a significant innovation; or
 - (5) Evidences a style particularly associated with the Brighton area.
 - b. *Social and historic category:* In order to be considered significant in the social and historic category, at least one of the following criteria must be met. The cultural resource:
 - (1) Is the site of a historic event that had an effect upon society;
 - (2) Exemplifies cultural, political, economic or social heritage of the community;
 - (3) Represents a built environment of a group of people in an era of history;
 - (4) Has significant character, interest or value, as part of the development, heritage or cultural characteristics of the City, State, or Nation; or
 - (5) Has an association with a notable person or the work of a notable person.
 - c. *Geographic and environmental category:* In order to be considered significant in the geographic and environmental category, at least one of the following criteria must be met. The cultural resource:
 - (1) Enhances a sense of identity of the community;
 - (2) By being part of, or related to, a square, park, or other distinctive area which should be developed or preserved according to a plan based on a historic, cultural, or architectural motif;
 - (3) Is unique in its location of singular physical characteristics;
 - (4) Possesses unique and notable historic, cultural, or architectural motifs; or
 - (5) Is an established and familiar mutual setting or visual feature of the community.
 2. *Historic District Eligibility.* An area may be designated as a historic district upon a finding that the district has a definable area containing a number of individual cultural resources having historic, architectural, and/or geographical significance that apply to the patterns and unifying elements of that particular district. Significance is determined by applying criteria to the patterns and unifying elements found within a district.
 - a. The district boundaries shall be defined by visual changes, historic documentation of different associations or patterns of development, or evidence of changes in site type, density, or other characteristics as established through a survey and inventory.

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- b. Each individual cultural resource within a historic district shall be evaluated as to the degree of their significance, and assigned to one of the following categories:
 - (1) *Noncontributing resource*. A resource that does not meet at least one of the categories for significance or is not at least 50 years old shall be considered a noncontributing resource. Noncontributing resources may be included within the boundaries of a designated historic district; however, their presence must not noticeably detract from the overall district's sense of time, place and significance. Noncontributing resources will be evaluated for their magnitude of impact by considering their size, scale, design, location and/or information potential.
 - (2) *Contributing resource*. A resource that contributes to the district's overall sense of time and place, meets at least one of the categories for significance, and is at least 50 years old shall be considered a significant resource. If the resource is not at least 50 years old, it must exhibit exceptional significance, meaning it meets at least two of the categories for significance.
 - c. The establishment of a historic district shall be based on a finding that no more than 25% of the structures within a historic district are noncontributing resources.
3. Inclusion of any cultural resource in the National Register of Historic Places and/or the Colorado Registers of Historic Properties shall be construed as a historic designation under this Section and shall be subject to the same protections as any locally designated historic landmark.

C. Nomination for Designation.

1. *Eligible Applicant*. Designation of a historic landmark or district may be initiated by:
 - a. The City Council;
 - b. The Historic Preservation Commission;
 - c. The City Manager; or
 - d. The owners of at least 51% of the cultural resource to be designated for a landmark, or the owners of at least 51% of the individual properties in a proposed district.
2. *Review With Owner's Consent*. The Historic Preservation Administrator shall make a reasonable effort to secure the owner's consent to a designation before the nomination is accepted as complete for review by the Historic Preservation Commission. If the Historic Preservation Administrator is unable to provide an owner with the notice, a written request for consent to designation shall be sent by certified mail, return receipt requested, to the owner of the property as shown on the most recent records. Once consent is obtained, a public hearing shall be scheduled and held by the Historic Preservation Commission to determine if the proposal complies with
 - a. The Eligibility for Designation criteria;
 - b. The policy and intent of this Section; and
 - c. The City's Comprehensive Plan.
3. *Review Without Owner's Consent*. Once contacted, the owner of an individually nominated cultural resource or a property located in a nominated historic district shall notify the Historic Preservation Administrator, in writing, of any objection to a designation within 30 days from the date of mailing the nomination consent request. The Administrator shall notify the Historic Preservation Commission of all owners' objections received. Failure to provide written objection to the nomination within 30 days of receipt of the nomination consent request shall be considered as the owner's consent to the nomination.

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- a. If consent cannot be obtained, the Historic Preservation Administrator shall inform the property owner of the date and time of the Historic Preservation Commission review of the nomination.
 - b. If consent to the nomination has not been obtained, the Historic Preservation Commission may review the nomination for designation of a historic landmark or historic district at a public hearing.
 - c. In order to refer a nomination for designation to the City Council without the consent of the property owner, the Historic Preservation Commission must find that the cultural resource and/or historic district has exceptional significance.
4. *Procedures.* The procedures for consideration of a nomination for designation shall be as follows:
- a. Nominations for historic landmark or historic district designations shall be filed with the Historic Preservation Administrator on forms prescribed by the Historic Preservation Commission and shall include the following items:
 - (1) The names and addresses of all owners (including owners of undivided interests);
 - (2) Legal description;
 - (3) Vicinity map;
 - (4) Nomination form in a format provided by the City; and
 - (5) Other data required by the Historic Preservation Commission.
 - b. Upon the filing of an application for nomination for designation, the Historic Preservation Administrator shall notify the owner of record of the nominated cultural resource or owners of the properties in the proposed historic district, by regular United States mail. The notice shall include the characteristics of the cultural resource or proposed district that justify its designation as a historic landmark, a description of the character defining features to be preserved and the effects of designation. Failure to send notice by mail to any property owner where the address of an owner is unknown and not a matter of public record shall not invalidate any proceedings in connection with the proposed designation.
 - c. The nomination shall be referred to all relevant agencies for referral, review and comment at least 15 days prior to the public hearing. The Historic Preservation Administrator shall set the dates for the Historic Preservation Commission public hearing.
 - d. Notice of the public hearing shall be given and shall include a description of the location of the cultural resource or proposed district sufficient to advise the public of the location, the purpose of the hearing, date, time, place and the Historic Preservation Administrator's name, address and phone number. The following notices of the public hearing shall be made at least 15 days prior to the public hearing:
 - (1) One publication in a newspaper or on a publicly accessible web page;
 - (2) Notice sent by regular mail to each owner and owners of contiguous properties, including owners of all real property and cultural resources within a nominated historic district; and
 - (3) A sign or signs, as determined by the Historic Preservation Administrator, shall be posted on the premises nominated for designation.

The requirement to post a sign on the property is not required for public hearings related to the designation of a historic district.
 - e. The Historic Preservation Commission shall consider all relevant evidence concerning the proposed designation at the public hearing. Opportunity shall be provided for all interested

parties to express their opinions and provide evidence regarding the proposed designation or designations.

- (1) The Historic Preservation Commission shall hold the public hearing to review a nomination for designation of a historic landmark or historic district at the next available regular Historic Preservation Commission meeting and shall make a determination as to the appropriateness of the nomination, according to the standards and criteria adopted in this Section.
 - (2) The Historic Preservation Commission may continue the public hearing for review of the nomination for no more than two additional 30 day periods if it finds that further investigation is required prior to issuing a recommendation. The Historic Preservation Commission shall make specific findings to justify any continuance.
 - (3) If the Historic Preservation Commission fails to issue a recommendation regarding the nomination within these time frames, the nomination shall be deemed rejected.
- f. If more than one cultural resource is under consideration in the designation procedure, the Historic Preservation Commission may consider each as a separately nominated landmark.
- g. In no event may any cultural resource be added to the nomination without instituting a new designation procedure.
- h. Following the close of the public hearing, the Historic Preservation Commission shall, by written resolution, recommend approval, approval with conditions or deny the nomination for historic designation to the City Council.
- (1) If the nominated cultural resource or district is found to possess significance, as determined by the standards and criteria of this Section, the Historic Preservation Commission shall make a recommendation of approval to designate the cultural resource as a historic landmark or historic district to the City Council.
 - (2) If the Historic Preservation Commission makes a recommendation of denial or approval with conditions, the Commission shall approve a resolution with findings of fact that constitute the basis for its decision.
5. *City Council Review.* The procedures for consideration of a nomination for designation by City Council shall be as follows:
- a. Following action by the Historic Preservation Commission, the Historic Preservation Administrator shall submit a report to the City Council which shall include relevant documentation and information, the Historic Preservation Commission resolution, and further information as may be requested by the City Council.
 - b. The City Manager shall set the date for the City Council public hearing at the next available City Council regular meeting.
 - c. The City Council shall then conduct a public hearing, pursuant to published and mailed notice as required above, and consider all relevant evidence concerning the proposed nomination.
 - d. The City Council may take the following actions:
 - (1) Approve the nomination by ordinance;
 - (2) Approve the nomination with conditions by ordinance;
 - (3) Deny the nomination by motion or resolution, as the City Council deems appropriate; or
 - (4) Continue the nomination to a later, specified date by motion.

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- e. The City Clerk shall record, in the office of the applicable County Clerk and Recorder, a certified copy of the ordinance designating the specified cultural resource as a historic landmark or historic district and include a listing of the individual cultural resources and properties included.
 - f. The Historic Preservation Administrator shall send to the owner of each property a copy of the ordinance and a letter which contains an explanation of the owner's obligations and restrictions created by a designation and specifically advising the owner of the owner's responsibility to apply for a Certificate of Appropriateness (COA) prior to any alteration to a historic landmark.

D. Certificates of Appropriateness.

1. Prior to submitting a land development application or receiving a permit for any alteration to a historic landmark, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.
 - a. Any type of work occurring on a designated historic landmark, or within a historic district shall obtain a COA prior to initiating the work notwithstanding the City's requirement for a land development application or permit for work.
 - b. The Historic Preservation Administrator shall have the authority to review a building permit to determine if a COA would be required. Permits that do not or insignificantly modify the exterior or non-historic elements of a historic landmark or historic district may be considered exempt from this requirement, as determined by the Historic Preservation Administrator.
 - c. Any non-contributing resource within a historic district may be exempt from obtaining a COA as long as the proposed alterations do not detract from the characteristics of the historic district, as determined by the Historic Preservation Administrator.
 - d. The applicant shall submit to the Historic Preservation Administrator an application for a COA. The application for a COA shall include information that the Historic Preservation Administrator determines necessary to consider the application and shall include the following items:
 - (1) The names and addresses of all owners (including owners of undivided interests);
 - (2) A clear description of work, including the work to be performed and the impact of that work to the historic resource, landmark, or district;
 - (3) Other plans applicable to the nature/scope of work and level of review, such as:
 - i. Legal description;
 - ii. Vicinity map;
 - iii. Site development plan;
 - iv. Landscape plan;
 - v. Architectural elevations, including specifications of the textures, materials, colors, architectural details and design; and,
 - vi. Other data as determined by the Historic Preservation Commission.
2. The procedures for consideration of an application for a COA shall be as follows:
 - a. There shall be three levels of review for obtaining a COA: 1) administrative review; 2) COA/Demolition Review Committee review; and/or 3) Historic Preservation Commission public hearing.

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- (1) At any time throughout this process, the applicant may request to be scheduled for a public hearing before the Historic Preservation Commission and omit the administrative and COA/Demolition Review Committee review process.
 - (2) Administrative and COA/Demolition Review Committee reviews may only approve or partially approve a COA application. If, after consideration of the certificate of appropriateness criteria, findings of significant impact are found, the application will be forwarded to the next level of review. Denial of a COA application will only occur through the public hearing review process of the Historic Preservation Commission as further outlined within this Section.
- b. *Administrative review.* The Historic Preservation Administrator shall review a COA application against the certificate of appropriateness criteria and make a determination of impact to the historic resource, landmark, or district. If no significant impact is found, the Historic Preservation Administrator shall issue a COA by approving or partially approving the proposed changes in writing. If significant impact is found, the Historic Preservation Administrator shall refer the COA application to the COA/Demolition Review Committee for review.
- c. *COA/Demolition Review Committee review.* Upon completion of the administrative review, the Historic Preservation Administrator shall refer the COA application and a summary of the administrative review findings to the COA/Demolition Review Committee for review.
- (1) The COA/Demolition Review Committee of the Commission shall consist of the chair, one regular member of the Commission selected by the chair, the Historic Preservation Administrator, and the City Manager or Manager's designee.
 - (2) Each COA/Demolition Review Committee member shall review the application against the certificate of appropriateness criteria, and may seek input from, the applicant, staff and other Committee members as necessary to make their determination. Each Committee member shall prepare a separate written review and provide the same to the Historic Preservation Administrator.
 - (3) Once the Committee members have completed their review, the Historic Preservation Administrator shall gather and combine the written reviews of the COA/Demolition Review Committee members and report on the Committee's determination of impact to the historic resource, landmark, or district.
 - (4) If no significant impact is found, the Historic Preservation Administrator shall issue a COA on behalf of the COA/Demolition Review Committee by approving or partially approving the proposed changes in writing.
 - (5) If significant impact is found, the Historic Preservation Administrator shall schedule a public hearing before the Historic Preservation Commission.
- d. *The Historic Preservation Commission review.* The Historic Preservation Commission shall review a COA application by conducting a public hearing to consider all relevant evidence concerning the proposed COA application. Opportunity shall be provided for all interested parties to express their opinions and provide evidence regarding the proposed application.
- (1) The application shall be referred to all relevant agencies for review and recommendations at least 15 days prior to the public hearing.
 - (2) The Historic Preservation Administrator shall make every effort to schedule the public hearing for the earliest available date before the Historic Preservation Commission.

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- (3) The Historic Preservation Commission shall hold the public hearing to review an application and shall make a determination as to the appropriateness of the proposed work, according to the certificate of appropriateness criteria.
 - (4) Following the close of the public hearing, the Historic Preservation Commission shall make a determination regarding the impact of the COA application on the designated resource, landmark, or district. The Historic Preservation Commission shall, by written resolution, approve, approve with conditions, or deny the application for a COA.
 - i. If the proposed work is found to adequately comply with the standards and criteria of this Section, the Historic Preservation Commission shall issue a COA to the applicant.
 - ii. If the Historic Preservation Commission denies the application for a COA, the Commission shall approve a resolution with findings of fact that constitute the basis for its decision.
 - (5) The Historic Preservation Commission may continue the public hearing for the review of the COA for no more than two additional 30 day periods if it finds that further investigation is required to explore acceptable solutions to the COA application prior to rendering a decision. The Commission shall make specific findings to justify any continuance.
 - (6) If the Historic Preservation Commission fails to issue a decision regarding the COA application within these time frames, the application shall be deemed rejected.
- e. *Certificate of appropriateness (COA) criteria.* A COA shall only be issued if the Historic Preservation Administrator, COA/Demolition Review Committee, or Historic Preservation Commission, as applicable, finds that the proposed alterations will not have significant impact to a historic landmark or historic district. Findings of insignificant impact shall demonstrate that the proposed work will not detrimentally alter, destroy, or adversely affect any architectural or site feature that contributes to the historic landmark or historic district, and that the proposed work is visually compatible with existing historic cultural resources. A finding of insignificant impact must meet all of the following criteria:
- (1) The effect upon the character of the historic landmark, and/or the historic district does not detract from the categories under which the landmark was designated;
 - (2) The architectural style, arrangement, texture, and material used on the historic landmark and their relation to and compatibility with one another is historically appropriate and consistent with the surrounding cultural resources;
 - (3) The size of the proposed structure, if applicable, the setbacks, location, and the appropriateness thereof, when compared to the existing historic landmark and site do not adversely affect the scale of surrounding cultural resources;
 - (4) The proposed work does not significantly change, destroy, or otherwise impact the character defining features of the structure upon which work is proposed;
 - (5) The condition of existing improvements is not a hazard to public health and safety;
 - (6) The proposed work will protect, preserve, enhance, and perpetuate the use of the historic landmark or historic district;
 - (7) The proposed alterations are in compliance with the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines of Rehabilitating Historic Buildings, a section of the Secretary of the Interior's Standards for Historic Preservation Projects, of the

Department of the Interior Regulations (36 C.F.R. Part 67, Historic Preservation Certifications), as may be amended from time to time; and

- (8) The proposed alterations are in compliance with other rules and guidelines as may be recommended by the Historic Preservation Commission and approved by the City Council for alterations to a historic landmark or historic district.
3. All work performed on a historic landmark or a contributing resource within a historic district shall conform to the conditions, restrictions, and limitations in the COA.
4. *Appeals.* The applicant may appeal a decision of the Historic Preservation Commission to the City Council.
 - a. The notice of appeal shall be filed with the Historic Preservation Administrator within 30 days of the date of the decision.
 - b. The City Manager shall set the appeal on the next available City Council regular meeting agenda. Notice shall be provided following the same procedures as described in Section 10.03.C.4.d. The applicant may present evidence relevant to the application and the grounds for the appeal.
 - c. Following the hearing, the City Council may uphold the decision of the Historic Preservation Commission, approve the application, approve the application with conditions, or deny the application.
5. *Relocating Historic Landmarks.* Prior to receiving a permit to relocate or move any historic landmark, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.
 - a. *Relocation and moving criteria.* In addition to the COA criteria above, the Historic Preservation Commission shall use the following criteria while considering an application for a COA for relocating a historic landmark:
 - (1) *Original site criteria.* The following criteria shall be used when determining the appropriateness of relocating a historic landmark from its original site:
 - i. The historic landmark cannot be rehabilitated or reused on its original site to provide for any reasonable beneficial use of the property, which must be documented with appropriate reports, as required by the City;
 - ii. The historic landmark no longer contributes to its present setting;
 - iii. The historic landmark can be moved and relocated without significant damage to its integrity, and the applicant can demonstrate that relocation is a viable alternative to preserve the character and integrity of the historic landmark; and
 - iv. A structural report submitted by a licensed structural engineer adequately demonstrates the soundness of the historic landmark proposed for relocation.
 - (2) *Receiving site criteria.* The following criteria shall be used when determining the appropriateness of relocating a historic landmark to a new proposed site:
 - i. The historic landmark is compatible with its proposed new location and the receiving site is compatible with the historic landmark to be moved;
 - ii. The historic landmark possesses architectural integrity and is consistent with the character of the neighborhood; and
 - iii. The relocation would not diminish the integrity or character of the receiving neighborhood.

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6. *Demolition of Historic Landmarks.* Prior to receiving a permit to demolish any designated historic landmark, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.
- a. *Demolition criteria.* In addition to the COA criteria in this subsection, the Historic Preservation Commission shall use the following criteria in considering an application for a COA for demolition of a historic landmark or a contributing resource in a historic district:
- (1) *Total demolition criteria.* The following criteria shall be used when determining the appropriateness of total demolition of a cultural resource:
- i. The historic landmark proposed for demolition is not structurally sound despite documented evidence of the owner's efforts to properly maintain the structure;
 - ii. The historic landmark cannot be rehabilitated or reused on the site to provide for any reasonable beneficial use of the property;
 - iii. The historic landmark cannot be practically moved to another site in the community; and,
 - iv. The applicant can demonstrate that the proposal mitigates, to the greatest extent possible, the following:
 - (A) Any impacts that occur to the visual character of the neighborhood where the demolition is proposed to occur;
 - (B) Any impact on the historic importance of other cultural resources located on the property and adjacent properties; and
 - (C) Any impact to the architectural integrity of other cultural resources located on the property and adjacent properties.
- (2) *Partial demolition criteria.* The following criteria shall be used when determining the appropriateness of partial demolition of a historic landmark or a contributing resource in a historic district:
- i. The partial demolition is required for alterations to the historic landmark; and,
 - ii. The applicant has mitigated, to the greatest extent possible, the following:
 - (A) Impacts to the historic importance of the cultural resource or other cultural resources on the property; and
 - (B) Impacts to the architectural integrity of the cultural resource or other cultural resources on the property.
7. *Exemptions.* If a COA has been denied, or the application for a COA does not conform to the applicable criteria, an applicant may request demolition pursuant to a Certificate of Exemption from the denial and/or requirements, provided that the intent and purpose of this Section is not significantly compromised, and provided that adequate documentation is submitted to the Historic Preservation Commission, either in writing or by testimony, to establish qualification for one of the exemptions below:
- a. Exemptions:
- (1) *Economic hardship exemption.* An economic hardship exemption may be granted if:

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- a. For investment or income-producing properties, the owner is unable to obtain a reasonable return on investment in the present condition of the historic landmark;
 - b. For non-income-producing properties, the owner is unable to resell the property in its current condition; or,
 - c. The economic hardship claimed is not self-imposed.
 - (2) *Health/safety hardship exemption.* An applicant requesting an exemption based on health/safety hardship must show that the application of the Certificate of Appropriateness criteria creates a situation substantially inadequate to meet the applicant's needs because of specific health and/or safety issues.
 - (3) *Inability to use.* Three years after denial of a demolition permit, if no feasible use or ownership is found for the structure, the owner may request a waiver of all or a part of the restraint of demolition.
 - b. The applicant must provide adequate documentation and/or testimony to establish, to the satisfaction of the Historic Preservation Commission, qualification for one of the listed exemptions:
 - (1) The data provided by the applicant must be substantiated by either professionals in an applicable field or by thorough documentation of how the information was obtained.
 - (2) The Historic Preservation Commission may request additional information from the applicant as necessary to make informed decisions.
 - c. The Historic Preservation Commission shall include the following factors in its consideration of the request:
 - (1) Documented evidence of applications and written correspondence, including written consultations, illustrating efforts made by the property owner to comply with this Section and/or make the necessary repairs;
 - (2) Efforts of the applicant to find an appropriate user or to find a purchaser for the property; and,
 - (3) The adequacy of the applicant's efforts to locate available assistance for complying with this Section and/or making the property functional without demolition.
 - d. The Historic Preservation Commission shall review all the evidence and information required of the applicant for a Certificate of Exemption and approve, approve with conditions, or deny the same. Failure of the Historic Preservation Commission to act within 60 days after the date a completed application for exemption is received, unless an extension is agreed upon in writing by the applicant, shall be deemed to constitute approval, and a Certificate of Exemption shall be issued.
 - e. The applicant may appeal the Historic Preservation Commission's approval with conditions or denial of an application for a Certificate of Exemption to the City Council. The notice of appeal shall be filed with the Historic Preservation Administrator within 30 days of the Historic Preservation Commission's decision. The City Manager shall set the appeal on the next available regular meeting agenda. At the City Council meeting, the applicant and the Historic Preservation Commission may present evidence relevant to the application, the decision of the Historic Preservation Commission, and the basis of the appeal. Following the hearing, the City Council may uphold the decision of the Historic Preservation Commission, approve the application, approve the application with conditions, or deny the application.

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- f. All work performed on the historic landmark or on a contributing resource within a historic district shall conform to the conditions, restrictions, and limitations in the Certificate of Exemption.

E. Demolition and Moving Permit Review.

1. *Purpose.* The purpose of this Section is to prevent the loss or destruction of structures that are 50 years of age or older that may have significance, but which have not been designated historic landmarks, and to provide the time necessary to initiate landmark designation or consider other alternatives for the preservation of the structures.
2. *Application Review.* Prior to issuance of any permit that may require the demolition or relocation of a non-designated structure of at least 50 years of age, the application shall be referred to the Historic Preservation Administrator and/or the City Manager for review. In order to determine the significance of the non-designated structure, the Historic Preservation Administrator and/or the City Manager shall complete the following:
 - a. Review the application and inspect the non-designated structure; and
 - b. Review the application against the Historic Preservation Documents.
3. *Initial Determination.*
 - a. If the Historic Preservation Administrator and/or the City Manager determines that the structure is not listed in the Historic Preservation Documents, has no significance, the demolition or removal of the structure would have no significant impact on the historic resources of the City, and that there is no reasonable basis to believe that the structure may be eligible for designation as a historic landmark, the demolition or relocation permit may be issued by the Chief Building Official, provided that all other requirements for the permit are satisfied.
 - b. If the Historic Preservation Administrator and/or the City Manager determines that the structure is listed in the Historic Preservation Documents, or there is a reasonable belief that the structure may be eligible for designation as a historic landmark, the application shall be referred to the COA/Demolition Review Committee. Upon finding that there exists a reasonable belief of significance, the Historic Preservation Administrator and/or the City Manager shall contact the applicant and the property owner in order to notify the owner of the initial determination and to schedule a meeting with the COA/Demolition Review Committee. The meeting of the COA/Demolition Review Committee shall be held within 45 days of the referral of the permit.
4. *COA/Demolition Review Committee Review.* The process for reviewing an application for a permit is as follows:
 - a. If the owner of the subject property is unable to attend the scheduled COA/Demolition Review Committee meeting, the meeting may be postponed to a later date as agreed to by the owner of the subject property.
 - b. If the property owner is unable to attend the meeting and does not agree to additional time, waives the right to attend the meeting in writing, or is unable to be contacted, the COA/Demolition Review Committee shall hold the meeting as scheduled.
 - c. The COA/Demolition Review Committee shall then meet, with or without the owner, in order to consider all relevant evidence concerning the significance of the structure, the proposed demolition or moving of the structure and any alternatives to demolition or relocation. Opportunity shall be provided for the property owners, if attending, to express their opinions and provide evidence regarding the application.

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- d. If the COA/Demolition Review Committee finds that further investigation and negotiations are required in order to explore acceptable solutions, the Committee may continue the meeting for no more than 30 days from the initial meeting date, unless additional time is agreed to by the property owner.
 - e. If the COA/Demolition Review Committee determines that the structure has no significance, the demolition or removal of the structure would have no significant impact on the historic resources of the City, and there is no reasonable basis to believe that the structure may be eligible for designation as a landmark, the Chief Building Official shall issue the permit, if all other requirements of the permit process have been met.
 - f. If the Committee determines that there is a reasonable belief that the structure may be eligible for designation as a historic landmark, the permit shall be referred to the Historic Preservation Commission. Upon finding that there exists a reasonable belief of significance, the COA/Demolition Committee shall provide the Historic Preservation Commission and the property owner with a written notice of the determination and of the next steps.
5. *Historic Preservation Commission Review.* The Historic Preservation Commission shall review the application at the next available regular meeting. At this meeting, the Historic Preservation Commission may take any action that it deems necessary. Any action shall be taken within 60 days of said meeting.
- a. The Historic Preservation Commission may conduct a Cultural Resource Survey of the property, for the purpose of researching and documenting the property prior to demolition of the structure.
 - b. The Historic Preservation Commission may take action to preserve the structure, including initiating nomination of the structure as a historic landmark in accordance with Section 10.03.C and the issuance of a Certificate of Appropriateness pursuant to Section 10.03.D.
 - (1) If the property has been nominated for historic designation, issuance of the permit shall be postponed while the historic designation, application for a Certificate of Appropriateness or application for a Certificate of Exemption is considered.
 - c. If the property has not been nominated for historic designation and the Historic Preservation Commission and owner have not entered into an agreement for the preservation of the structure, the permit shall be issued by the Chief Building Official, provided that all other requirements for the permit are met.
6. *Alternatives.* At any time during the application review process, the Historic Preservation Administrator and/or the City Manager, the COA/Demolition Review Committee, or the Historic Preservation Commission may seek alternatives to demolition or moving of the structure.
- a. Acceptable alternatives may include, but are not limited to the following:
 - (1) Soliciting cooperation from the owner to find solutions or alternatives to demolition or moving;
 - (2) Consult with the Historic Preservation Commission, civic groups, public or private agencies, interested citizens, City staff, the City Council or any other interested parties, in order to find alternative solutions to demolition or moving of the structure;
 - (3) Recommend and/or facilitate acquisition of the property by another interested party;
 - (4) Explore the potential for moving the structure to another location;
 - (5) Explore the potential for salvaging significant features of the property; and

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- (6) Seek any other acceptable alternative to prevent demolition or removal of the structure.
 - b. If the Historic Preservation Administrator and/or the City Manager, the COA/Demolition Review Committee, or the Historic Preservation Commission and the property owner agree on an alternative solution, with written documentation of the change, the applicant may pursue the appropriate permits to facilitate the alternative solution.

F. Administration and Enforcement.

1. *Interim Control.* No building permit, relocation permit, or demolition permit shall be issued by the Building Division for alteration of a cultural resource under consideration of historic designation as a landmark or within a historic district, from the date of receipt of a nomination for designation, until a final decision related to the designation by the City Council is determined, or unless alteration is authorized by resolution of the City Council as necessary for public health, welfare, or safety. In no event shall the delay in issuance of a building permit due to the provisions of this Section be for more than 90 days.
2. *Cultural Resource Survey.* If any cultural resource 50 years or older exists on a property at the time that a land development application is submitted, the City Council, the Historic Preservation Commission or the City Manager may require the owner or applicant of the property to submit a Cultural Resource Survey, in a form acceptable to the City, during the review of the land development application. The cost of conducting the Cultural Resource Survey may be solely borne by the applicant of the land development application.
3. *City of Brighton Local Register of Historic Places.* The Historic Preservation Administrator shall maintain a current record of all pending designations and a register of designated historic landmarks and historic districts.
4. *Amendment or Revocation of Designation.* A historic landmark or historic district designation may be amended or rescinded in the same manner as the original designation was made. The ordinance therefore shall be recorded in the office of the applicable County Clerk and Recorder.
5. *Application of Standards.* All standards, rules, and regulations adopted by the City Council by resolution or ordinance, the Colorado Cultural Resource Survey Manual: Guidelines for Identification: History and Archaeology and the Standards for Rehabilitation and Guidelines of Rehabilitating Historic Buildings, a section of the Secretary of the Interior's Standards for Historic Preservation Projects, of the Department of the Interior Regulations (36 C.F.R. Part 67, Historic Preservation Certifications), shall be the technical documents utilized by the Historic Preservation Commission for the evaluation of all materials, construction types and all other relevant issues relating to alteration of historic landmarks. These standards shall be on file and available for inspection by the public in the Community Development Department. The standards, rules, and regulations shall be applied to all work in a reasonable manner, taking into consideration economic and technical feasibility.
6. *Property Maintenance Required.* The deliberate or inadvertent neglect of a cultural resource, including neglect to interior portions of those structures for which maintenance is necessary to prevent exterior deterioration, is prohibited and shall be considered by the City a violation of this Section. No owner, lessee, occupant, or person in possession of a cultural resource shall act in a way as to cause deterioration, or act in a way as to fail to prevent the deterioration, of any cultural resource or historic landmark.
7. *Maintenance and Repair.* Nothing in this Section shall be construed to prohibit the accomplishment of any work on any cultural resource, historic landmark, or historic district which will change neither the exterior appearance (including color and materials), nor the character defining features of improvements or structures, nor the character or appearance of the land itself, and which is considered necessary as a part of normal maintenance and repair.

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8. *Remedying of Dangerous Conditions.* Nothing in this Section shall be construed as making it unlawful for any person to comply with any case where the Building Inspector, the Brighton Fire Rescue District, or any other public authority having the power, orders, or directs the alteration of a cultural resource for the purpose of remedying conditions determined by that officer, department, or authority to be imminently dangerous to life, health or property. The officer, department, or authority shall take immediate steps to notify the Historic Preservation Administrator and the Historic Preservation Commission of the proposed issuance of any order or directive.
 9. *Extension of Time Limits.* Any time limit in this Section may be extended by mutual consent of the Historic Preservation Commission or City Council, whichever is applicable, and the applicant.

G. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All other terms shall have their usual customary meaning, or the meaning given elsewhere in this code or other applicable uniform, or international code adopted by the City, except where the context clearly indicates a different meaning.

Alteration. Any act or process that changes any of the character defining features of a cultural resource including, but not limited to, construction, reconstruction, repair, restoration, rehabilitation, relocation, or demolition.

Certificate of Appropriateness. A certificate issued by the Historic Preservation Commission or staff, showing approval of plans for construction, alteration, reconstruction, repair, restoration, demolition, or relocation of structures that would affect a cultural resource designated as a historic landmark, district, or element thereof.

Certificate of Exemption. A certificate issued by the Historic Preservation Commission, authorizing the alteration of a designated historic landmark or an element within a historic district in accordance with the provisions of this Section, even though a Certificate of Appropriateness has previously been denied.

Colorado Register of Historic Properties. The official listing of state-designated historic sites.

Construction. The erection of on-site improvements on a parcel of land, whether the site is presently improved or unimproved, or the erection of a new principal or accessory structure on such property.

Contributing resource. Those cultural resources, structures, landmarks, or character defining features within an officially designated site or historic district that contribute to the significance of the cultural resource, historic site or district.

Cultural resource. Any individual object, structure, site or geographically definable area that possesses distinctive character and historic, architectural or geographic interest or significance.

Demolition. Any act or process that destroys, in whole or in part, a cultural resource. The term includes the removal of any material constituting part of the structure other than for purposes of ordinary maintenance or repair, which removal affects the exterior appearance of the structure, or which reduces the stability or longevity of the structure.

Exterior appearance. The character and general composition of the exterior of a cultural resource, including but not limited to the kind, color, and texture of the building material and the type, design, and character of all windows, doors, light fixtures, and appurtenant elements.

Character defining feature. The architectural design, style, components, and general arrangement of all the outer surfaces of a cultural resource, including but not limited to the color, texture, materials, type, and style of all windows, doors, lights, signs, and other fixtures appurtenant to said cultural resource that contribute to its significance.

Historic district. Any geographically definable area that has been designated as such by the City Council because of its significance and importance to the City. A historic district will include a concentration, linkage,

or continuity of cultural resources and/or character defining features. A district may be related by a pattern of either physical elements or social activities.

Historic landmark. Any cultural resource which has been included in the Local Register of Historic Properties, the National Register of Historic Places, or the Colorado Registers of Historic Properties, whether individually or within a historic district.

Historic Preservation Administrator. The City employee appointed by the City Manager to assist and advise the Historic Preservation Commission and administer the duties in this Section.

Historic Preservation Documents. Any document relating to historic preservation, including completed Architectural Inventory Forms (1403), and other documents approved by the City Council, commissioned by the City or Historic Preservation Commission such as surveys and/or context studies, and the Historic Preservation Watch List.

Improvement. Any structure, place, work of art, or other object constituting a physical betterment of real property or any part of such betterment, including improvement on public property.

Land development application. Any application, form, accompanying documents, exhibits, and/or fees that are required of an applicant by the applicable City department, board, or commission, in order to obtain approval or permitting to establish a use, activity, or development and having the effect of permitting development. A land development application shall include construction permit, demolition permit, tenant finish permit, home occupation permit, sign permit, business license application, certificate of occupancy, conditional use permit, subdivision plan, final plat, annexation petition, zoning and rezoning, conditional use permit and variance, planned development application, site plan, site improvement permit, or other similar plans.

Local Register of Historic Places. The City of Brighton's list of locally designated historic landmarks.

National Register of Historic Places. The national list of districts, sites, structures, and objects significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior under authority of Section 101(a)(1)(A) of the National Historic Preservation Act, as amended.

Nomination. The process of filing an application for designation as a historic landmark or historic district.

Noncontributing resource. Any cultural resource, structure or exterior architectural feature that may be within a site or district but does not contribute to the significance of the district or site.

Non-designated structure. Any structure that has not been designated as a historic landmark which may or may not be considered a cultural resource.

Object. A material item of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable, yet related to a specific setting or environment.

Owner. The person, corporation, or other legal entity, including any public entity, who owns or who has any legal or equitable interest in property and who is so listed as owner in the records of the Assessor's Office of Adams County or Weld County. If title to a cultural resource is held by two or more undivided interest holders, the term *owner* shall refer to all owners of the property and/or their authorized agents.

Preservation. The identification, evaluation, recordation, documentation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction of cultural resources, including the act or process of applying measures to sustain the existing form, integrity, and material of a cultural resource.

Reconstruction. The act or process of reproducing by new construction the exact form and detail of a vanished cultural resource, or part thereof, as it appeared at a specific time.

Rehabilitation. The act or process of returning a cultural resource to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the cultural resource which are significant to its historic, architectural, and cultural values.

Relocation. Moving a cultural resource to a different location, either temporarily or permanently.

Repair. The replacement of deteriorated materials which are impractical to save, and the repair or reclamation of items worn to the point that they can no longer perform their intended function. Material used for repairs on cultural resources should be as close as possible to the original in composition or materials, in method of fabrication and in manner of erection.

Restoration. The act or process of accurately recovering the form and details of a cultural resource and its setting as it appeared at a particular period of time by means of the removal of later work or by replacement of missing earlier work.

Significance. Having historical, architectural, or geographical importance to the City's heritage as determined by Subsection B of this Section.

Site. The location of a significant event, historic occupation, or activity, or a structure, whether standing or vanished, where the location itself maintains historical or architectural value and significance to the community, regardless of the value of any existing structure.

Structure. A work made up of interdependent and interrelated parts in a definite pattern or organization constructed by man without regard to the size thereof. This definition includes any structure which may include a house, barn, agricultural structure, church, public structure, or commercial structure.

(Ord. No. 2442, § 1, 2-20-2024)

10.04 Wireless Communication Facilities

- A. **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 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;

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9. Enhance the ability of wireless communications service providers to provide 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. **Applicability.** No person, firm or corporation shall construct, establish or build or cause to be constructed, established or built a WCF without first having ~~obtained received approval for use by right a Site Plan or Conditional land Use approval Permit, obtained~~ a lease (as applicable), ~~and~~ pole attachment agreement or license (as applicable), ~~and a building permit for this purpose.~~

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, ~~other than the requirements of Section 10.04.B.~~ 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.D.~~ 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 ~~eventevent, which requires only, subject to~~ a Temporary Use Permit.

C. **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 the standards and regulations are changed, then the owners of the WCF shall bring the facility into compliance with the 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 the 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 the 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 the WCF into compliance. Upon good cause shown by the owner, the City's Chief Building Official may extend the compliance period not to exceed 90 days from the date of the notice. If the owner fails to bring the WCF into compliance within this time period, the City may remove the WCF at the owner's expense.
4. *Abandonment and Removal.* If a WCF has not been in use for a period of three 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 the WCF shall remove it within 60 days of receipt of written notice from the City. If the WCF is not removed within 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 abandoned WCF has removed the WCF or payment for removal has been made to the City. Nothing in this subsection shall limit an applicant for applying for an eligible facilities request on an existing eligible support structure.

D. **Design Standards.** The following design requirements shall apply to the location and design of all WCFs governed by this Section, except the Director may waive any of these requirements if it is determined that this action better serves goals of this Section.

1. *Generally.* All 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 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.
 - (i) 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 the 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).

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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 the materials.
 4. *Collocation.* WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two 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 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 4.5 feet high on the tree may be removed, unless authorized by the Director. To obtain 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, so 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. *Wall-mounted WCF.*

- a. Wall-mounted WCF shall be architecturally compatible with and textured and colored to match the building or structure to which they are attached.
- b. The antenna shall be mounted as flush to the wall as technically feasible. The maximum protrusion of facilities from the building or structure face to which they are attached shall be 2 feet.
- c. Panel antenna shall not extend above the building wall or parapet to which they are attached.
- d. Wall-mounted antenna are not subject to a maximum mounting height above grade, provided they meet the standards above.
- e. Wall-mounted facilities meeting the standards above meet the camouflage and concealment design requirement.

10. *Roof-mounted WCF.*

- a. 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.
- b. 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.
- c. 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.
- d. Roof-mounted communication facilities are subject to the following height regulations:
 - (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.DE.6.
 - (ii) 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.
 - (iii) Roof-mounted panel antenna shall not extend more than 8 feet above the roof parapet.
 - (iv) Roof-mounted whip antenna shall not extend more than 10 feet above the building to which they are mounted.

11. *Base Stations.* If an antenna is installed on a structure other than a tower or alternative tower structure, such as a base station (including 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 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.

12. *Alternative Tower Structures Not in the Public Right-of-Way.* Alternative tower structures:
- a. Shall be designed and constructed to look like a building, facility, or structure typically found in the area.
 - b. Shall be camouflaged/concealed consistent with other existing natural or manmade features in the near location where the alternative tower structure will be located;
 - c. Shall be architecturally compatible with the surrounding area;
 - d. Height or size of the proposed alternative tower structure should be minimized as much technically feasible;
 - e. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries for aesthetic purposes;
 - f. WCFs should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses for aesthetic purposes;
 - g. Compatibility with the surrounding topography;
 - h. Compatibility with the surrounding tree coverage and foliage;
 - i. Compatibility of the design of the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - j. Impact on the surrounding area of the proposed ingress and egress, if any.
13. *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. These facilities shall remain subject to the applicable alternative tower structures standards of approval noted above, and subject to the following additional design criteria below:
- a. 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;
 - b. 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;
 - c. 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 standalone underground fed structure, and the applicant is authorized to construct new utility poles;
 - d. 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;
 - e. Be sized to minimize the negative aesthetic impacts to the public right-of-way;
 - f. Be designed so 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;

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- g. 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;
 - h. 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;
 - i. 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) 40 feet or (ii) 8 feet taller than any existing utility or traffic signal pole within a radius of 600 feet of the pole or structure;
 - j. 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;
 - k. To the extent technically feasible, collocations are strongly encouraged to limit the number of poles within the right-of-way; and
 - l. Equipment enclosures shall be located out of view as much as reasonably feasible and shall comply with City criteria (e.g. sightline criteria).
14. *Towers.*
- a. 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;
 - b. 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;
 - c. Monopole support structures shall taper from the base to the tip;
 - d. No tower shall extend above 15 feet in height above the maximum structure height within the applicable zoning district; and
 - e. 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.
15. *Related Accessory Equipment.* Accessory equipment for all WCFs shall meet the following requirements:

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- 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 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 alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

E. Review Procedures and Requirements.

1. *Generally.* No new WCF shall be constructed and no collocation or modification to any WCF may occur except after a ~~an application has been written request from an applicant,~~ reviewed and approved by the City in accordance with this Section. ~~All WCFs except that qualify as eligible facilities requests, however, which shall are be reviewed under according to Section 10.04.E.6, shall be reviewed pursuant to the following procedures.~~ 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 ~~all~~ zoning districts ~~where a WCF is a permitted use,~~ applications for ~~base stations, alternative tower structures, and alternative tower structures within right-of-way,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 ~~rights-~~of-way that otherwise meet all requirements of this Section, ~~should-if~~ the Director considers ~~s~~ the proposed WCF to have a significant visual impact, (e.g.i.e., 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 City Council Planning Commission for approval by means of a Conditional Use Permit.

- ~~a. An applicant shall submit a complete application.~~
- ~~b. Applications will be subject to a 150-day for a new WCF and 90 days for collocations that do not qualify as an eligible facilities request, provided all standards in this Section are met.~~
- ~~c. Within 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 Section.
 - ~~(i) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days 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 sub-paragraph c.(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.~~~~

a.d. 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 ~~all some~~ zoning districts, ~~all other towers~~WCFs may be permitted only as a conditional use. WCFs shall be reviewed for conformance to this Section and other applicable regulations using the ~~c~~Conditional uUse 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. Review-Verification Procedures for Eligible Facilities Requests (EFRs).

a. Application Applicability. In all zoning districts, WCF changes that meet the definition of an eligible facilities requests ~~and would not result in a substantial change, as defined by 10.04(G),~~ shall be considered a ~~use by right and require a Site Improvement Permit in Section 2.05~~permitted use. The City shall prepare, ~~and from time to time revise~~ and make publicly available, an application verification form, which shall be limited to the information necessary for the City to consider whether an application request is an eligible facilities request. This information ~~may 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 application project may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

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- b. ~~Type of Review.~~ Upon receipt of an application for an eligible facilities request, the Director shall review the application to determine whether the application qualifies.
- c. ~~Timeframe for Review.~~ Subject to the tolling provisions of subparagraph d. below, within 60 days of the date on which an applicant submits an application, 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:
- (i) ~~To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days 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 sub paragraph d.(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.~~
- e. ~~Failure to Act.~~ In the event the City fails to act on a request seeking approval for an eligible facilities request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. 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, 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 this 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-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.
 - b. ~~The Director shall review the completed application for conformance with the provisions in this Section, and may approve or deny an application within 90 days of the date the application is submitted.~~
 - (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

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- (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;

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- 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.
- F. **Approval Criteria.** 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 Section 10.04.D and the following criteria as applicable:
- 1. *Roof-mounted WCFs, Wall-Mounted WCFs, and Base Stations:*
 - a. Roof-mounted facilities shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;
 - b. The maximum protrusion of facilities from the building or structure face to which they are attached shall be 6 feet;
 - c. Wall mounted WCFs shall not extend above the roofline;
 - d. 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 sub-paragraphs (e) and (f) 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;
 - e. Roof mounted antennas shall extend no more than 8 feet above the parapet of any flat roof or ridge of a sloped roof to which they are attached; and
 - f. Other roof mounted transmission equipment shall extend no more than 10 feet above any parapet of a flat roof upon which they may be placed and shall not be permitted on a sloped roof.
 - 2. *Alternative Tower Structures:*
 - a. Alternative tower structures shall be architecturally compatible with the surrounding area;
 - b. Height and size of the proposed alternative tower structure should be minimized as much as reasonably feasible;
 - c. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries; and
 - d. 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.

3. *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. These facilities shall remain subject to the alternative tower structures standards of approval noted above and subject to the following criteria below:
 - a. 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) 40 feet or (ii) is not more than 8 feet higher than any existing utility or traffic signal within 600 feet of the pole or structure;
 - b. 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;
 - c. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, so 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;
 - d. 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
 - e. Equipment enclosures shall be located out of view as much as technically feasible.
4. *All Other Towers:*
 - a. Height or size of the proposed tower;
 - b. Proximity of the tower to residential structures and residential district boundaries;
 - c. Nature of uses on adjacent and nearby properties;
 - d. Compatibility with the surrounding topography;
 - e. Compatibility with the surrounding tree coverage and foliage;
 - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - g. Proposed ingress and egress; and
 - h. 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:
 - (i) No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;

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- (ii) Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF; and
 - (iii) The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
5. **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:
- a. The setback for a principal building within the applicable zoning district;
 - b. Twenty-five percent of the facility height, including WCFs and related accessory equipment; or
 - c. The tower height, including antennas, if the tower is in or adjacent to a residential district or school site.
- G. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All other terms shall have their usual customary meaning, or the meaning given elsewhere in this code or other applicable uniform or international code adopted by the City, except where the context clearly indicates a different meaning.

Accessory Equipment. Any equipment serving or being used in conjunction with a WCF, including 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 Section. 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 Section.

Antenna. Any device used to transmit and/or receive radio or electromagnetic waves such as 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. 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 or any equipment associated with a tower including the accessory equipment, and does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described below. Base station does include:

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- (i) 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 Section 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 support; and
 - (ii) 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 support.

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 facilities to surrounding uses. A WCF site utilizes camouflage design techniques when it is (i) 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 being attached to the exterior of facilities and painted to match it) or replaces existing permitted facilities (including stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation. (i) Mounting or installing a WCF on a pre-existing structure, and/or (ii) 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.

Eligible Facilities Request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of the 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, 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 other height

that would not constitute a substantial change to a preexisting 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, backup 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:

- (i) For towers, ~~other than alternative towers~~ ~~structures~~ in the public rights-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;
 - (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. ~~For the purposes of this subsection (v), a change which undermines the concealment elements of an eligible support structure will be considered to defeat the concealment elements;~~ 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 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 (i), (ii), and (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.

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 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 private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility (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 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 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 the 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 Section.