

**TOWN OF NEW CASTLE, COLORADO  
ORDINANCE NO. TC 2020-07**

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL AMENDING  
THE TOWN MUNICIPAL CODE TO ADD CHAPTER 17.74, WIRELESS  
COMMUNICATIONS FACILITIES AND EQUIPMENT.

WHEREAS, the Town of New Castle (“Town”) is a home-rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Home Rule Charter for the Town of New Castle, Colorado; and

WHEREAS, by HB 17-1193 and amendments to C.R.S. §§ 29-27-401 *et seq.* and §§ 38-5.5-101 *et seq.*, the Colorado General Assembly declared the siting of certain classifications of telecommunication facilities to be matters of state-wide concern; and

WHEREAS, the Town desires to accommodate the needs of residents and businesses to locate telecommunication facilities within the Town, including within public rights-of-way, while protecting the public health, safety, and welfare; and

WHEREAS, the Planning Commission (“Commission”) held a public hearing regarding the changes on October 28, 2020 and approved Resolution PZ 2020-10 recommending approval to add Chapter 17.74 to the Municipal Code (“Code”); and

WHEREAS, the New Castle Town Council finds and declares that it is necessary and proper to add Chapter 17.74 to the Code to provide for the reasonable regulation of telecommunication facilities located in the Town pursuant to state and federal law;

NOW, THEREFORE, BE IT ORDAINED BY THE NEW CASTLE TOWN COUNCIL AS FOLLOWS:

**Section 1. Recitals.** The foregoing recitals are incorporated by reference herein as findings and determinations of the Council.

**Section 2. Code Amendment.** Chapter 17.74 is hereby adopted and added to the Town of New Castle Municipal Code as follows:

**17.74.010 Purpose.**

The purpose of this Chapter is to regulate the placement, construction, and modification of towers and wireless communications facilities (WCFs) to protect the health, safety and welfare of the public, provide for managed development, installation, maintenance, modification, and removal of wireless communications infrastructure that is consistent with New Castle's small mountain town character, while at the same time not unreasonably interfering with the development of a competitive wireless communications marketplace in the Town.

### **17.74.020 Wireless Communications Facilities Design Standards.**

The Design Standards provided in Section 17.74.060 set forth the design parameters to ensure safe and secure installation and minimize negative aesthetic impacts of Wireless Communications Facilities (WCF) installed on private property or in the public right-of-way. The Design standards may be amended, supplemented, or expanded from time to time based on recommendations from Town Staff or the Planning and Zoning Commission.

### **17.74.030 Applicability.**

All applications for the installation or development of WCFs and/or equipment must receive land use approval, building permits, and/or right-of-way permits, as applicable, prior to installation. Concurrent with the issuance of appropriate building and right-of-way permits, WCFs and/or equipment shall be reviewed for approval by the Town Planner (and when applicable, the Town Engineer) in conformance with the provisions and criteria of this Chapter. WCFs and equipment subject to the provisions and criteria of this Chapter include without limitation, WCFs within the Public Rights of Way, cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. These provisions and criteria do not apply to noncommercial satellite dish antennae, radio and television transmitters and antennae incidental to residential use. All references made throughout this Chapter, to any of the devices to which this Chapter is applicable, shall be construed to include all other devices to which this Chapter is applicable

### **17.74.040 Wireless Definitions.**

All words used in this Chapter, except where specifically defined herein, shall carry their customary meanings when not inconsistent with the context. Definitions contained elsewhere in this Code shall apply to this Chapter unless modified herein.

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

*Alternative Tower Structure.* Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are intended to be compatible with the natural setting and surrounding structures, and camouflage or concealment design techniques so as to make the presence of antennas or towers compatible with the surrounding area pursuant to this Chapter. This term also includes any antenna or antenna array attached to an Alternative Tower Structure and a Replacement Pole. A stand-alone Monopole 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 Chapter.

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

*Base Station.* A structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town pursuant to this chapter has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the Town pursuant to title 16 of the Code has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the application is filed with the Town under this chapter, does not support or house equipment described herein in sub-paragraphs 1 and 2 of this definition.

*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 WCFs with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated in an outdoor fixture such as a flagpole, or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or is integral within, incorporated on or replaces existing permitted facilities or vertical infrastructure located in the right-of-way (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

*Collocation.* (1) Mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for

purposes of Eligible Facilities Requests, "Collocation" means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

*Eligible Facilities Request.* Any request for modification of an Eligible Support Structure that does not Substantially Change the physical dimensions of such Eligible Support Structure involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement and/or addition of Transmission Equipment.

*Eligible Support Structure.* Any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the Town under this Chapter.

*Existing Tower or Base Station.* A constructed Tower or Base Station is existing for purposes of this Chapter 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.

*Micro Cell Facility.* A small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than eleven inches in length.

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

*Public right-of way.* Any public way or public thoroughfare dedicated or devoted to public use, including street, highway, road, alley, lane, court, boulevard, sidewalk, public square, mall or like designation.

*Replacement Pole.* An Alternative Tower structure that is 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 to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or to accommodate collocation and remove the pre-existing pole or structure.

*Small Cell 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 no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Pole, and Base Stations.

*Substantial Change to a WCF.* A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:

- (1) For Towers, other than Alternative Tower Structures or Towers in the Right-of- Way, it increases the height of the Tower by more than ten percent (10%) or by the height of one (1) 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 (10%) or more than ten (10) feet, whichever is greater;
- (2) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) 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 (6) feet;
- (3) For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or
- (4) 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 (10%) larger in height or overall volume than any other existing, individual ground cabinets associated with the structure;
- (5) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (6) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or
- (7) For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), (3) and (4) 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.

*Tower.* Any structure that is designed and constructed for the sole or primary purpose of supporting one or more any FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

*Transmission Equipment.* Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Wireless Communications Facility or WCF.* A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or Smart City, Internet of Things, wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, including without limitation, direction, omni-directional and parabolic antennas, support equipment, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this Chapter.

#### **17.74.050      Operational Standards.**

- A. *Federal Requirements.* All WCFs shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate WCFs, including, without limitation, the requirement that WCFs shall not present a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the WCF owner's expense.
  
- B. *Radio Frequency Standards.* All WCFs shall comply with federal standards for radio frequency emissions. Applicants for WCFs shall submit a letter certifying that all WCFs that are the subject of the application shall comply with federal standards for radio

frequency emissions. The owner or operator of an approved WCF shall also provide the Town with the FCC license for the WCF at the time the license is issued for the facility.

- C. *Signal Interference.* All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. The Applicant shall provide a written statement from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems and shall allow the Town to monitor interference levels with public safety communications during this process. Additionally, the Applicant shall notify the Town at least ten calendar days prior to the introduction of new service or changes in existing service and shall allow the Town to monitor interference levels with public safety communications during the testing process.
- D. *License to Use.* The Applicant may request a license from the Town, granting a non-exclusive license to use the Public Right-of-Way for a WCF. Any such request shall be submitted to and approved by Town Council in its discretion. Attachment of WCFs on an existing traffic signal, streetlight pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.
- E. *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, safety, and engineering codes. If upon inspection, the Town concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town's Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the Town may remove such WCF at the owner's expense.
- F. *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 Town of the non-use and shall indicate whether re-use is expected within the ensuing three months. Alternatively, if the Town becomes aware other than by notice from the owner that a WCF has not been in use for a period of three months or more, the Town may notify the owner of a WCF of such non-use, in which event the owner must respond to such notice to confirm or deny the non-use and to indicate whether re-use of the WCF is expected within the next three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall commence removal of the same within 30 days of receipt of written notice of abandonment from the Town. If such WCF is not removed within said 30 days, the Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the Town, in its sole discretion, shall not approve any new WCF application until the Applicant who is also the owner or operator of any such

abandoned WCF has removed such WCF or payment for such removal has been made to the Town.

- G. *Hazardous Materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
- H. *Collocation.* No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Town Planner, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.
- I. *Compliance with Applicable Law.* Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, engineering, electrical, and safety requirements as set forth in the New Castle Municipal Code, any codes adopted by reference by the Town, and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:
  - (1) Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
  - (2) Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
  - (3) Be maintained in good working condition and to the standards established at the time of application approval; and
  - (4) 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 ten calendar days from the time of notification by the Town or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the Town at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the Town.

**17.74.060 Design Standards.**

The requirements set forth in this section shall apply to the location and design of all WCFs governed by this section as specified below; provided, however, that the Town may waive these requirements if it determines that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding area and to maintain the character and appearance of the Town, consistent with other provisions of the Code.

- A. *Camouflage/concealment.* All WCFs and any transmission equipment shall, to the greatest extent possible, use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options



that will blend the WCF to the surrounding natural setting and built environment. Design, materials and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.

- (1) Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., placed underground, depressed, or located behind earth berms) to minimize their profile.
- (2) The camouflage design may include the use of alternative tower structures should the Town Planner determine that such design meets the intent of the Code and the community is better served thereby.
- (3) All WCFs, such as antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

*B.* Wall-mounted WCFs shall not extend above the roofline unless mounted to a penthouse.

*C.* Roof-mounted WCFs shall be approved only where an applicant demonstrates a wall-mounted WCF is inadequate to provide service and shall be evaluated for approval based upon the following criteria:

- (1) Roof mounted whip antennas shall extend no more than 12 feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;
- (2) Roof mounted panel antennas shall extend no more than seven feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and
- (3) Other roof mounted related accessory equipment shall extend no more than seven feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.

*D. Hazardous materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

*E. Siting.*

- (1) No portion of any WCF may extend beyond the property line of the lot upon which it is located.
- (2) *Collocation.* WCFs may be required to be designed and constructed to permit the facility to accommodate WCFs from at least two wireless service providers on the

same WCF unless the City approves an alternative design. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or location.

- (3) WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel less than Code standards.

*F. 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 Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Approved lighting shall be shielded and directed downward to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

*G. Landscaping and fencing requirements.*

- (1) WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below Code standards.
- (2) WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
- (3) In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by the Town Planner.
- (4) 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, wooded lots, natural growth around the site perimeter may be a sufficient buffer.
- (5) No trees larger than four inches in diameter measured at four and one-half feet high on the tree may be removed, unless authorized by the Town Planner. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1.

*H. Noise.* Noise generated on the site must not exceed the standards permitted in the 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 Town.

*I.* Additional design requirements shall be applicable to the various types of WCFs as specified below:

(1) *Base stations.* If an antenna is installed on a structure other than a tower, such as a base station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

(2) *Alternative tower structures and small cell facilities.*

- a. Shall be designed and constructed to look like a building, a component of a building, a facility, or structure typically found in the area;
- b. Height or size of the proposed alternative tower structure or small cell facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, with a maximum height limit of 45 feet;
- c. Shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
- d. Shall take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
- e. Shall be compatible with the surrounding topography, tree coverage, and foliage;
- f. Shall be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- g. Visual impacts of the proposed ingress and egress shall be minimized.

(3) *Alternative tower structures and small cell facilities located in the right-of-way, (requirements in addition to those set forth herein sub-section I.2).*

- a. Shall be no higher than 35 feet.
- b. Shall be no more than 10 feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 500 feet of the pole or structure.
- c. Any new pole for an alternative tower structure or small cell facility shall be separated from any other existing WCF facility by a distance of at least 600 feet, unless the new pole replaces an existing traffic signal, street light pole, or similar structure as determined by the Town Planner. These separation requirements do not apply to attachments made to existing

alternative tower structures. The Town Planner may exempt an applicant from these separation requirements if:

- i. The applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or
  - ii. The Town Planner 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 WCF at a distance less than 600 feet from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities to the greatest extent possible.
- d. Pole-mounted components shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives; and
  - e. Shall be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the alternative tower structure will be located.
  - f. Shall to the greatest extent possible, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the alternative tower structure; and
  - g. Shall when located near a residential property, be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two intersecting streets.
  - h. Shall be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered.
  - i. Facility antennas, mast arms, equipment, and other facilities shall be sized to minimize visual clutter.
  - j. Any ground mounted equipment shall be installed in an underground or partially underground equipment vault (projecting not more than 36 inches above grade), or co-located within a traffic cabinet of a design approved by the Town Planner.

- k. Shall 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. Must comply with the federal Americans with Disabilities Act and all applicable local, state, and federal law and regulations. No alternative tower structure nor small cell facility 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 this use by the Town, 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 traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

(4) *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 Town;
- 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. All towers, excluding towers in right-of-way, shall be enclosed by security fencing or wall at least six feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material; and
- e. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of 60 feet. Towers in right-of-ways shall not exceed 35 feet in height and shall meet all of the design requirements of alternative tower structures in the right-of-way;
- f. Towers should be sited in a manner that that is least obtrusive to residential structures and residential district boundaries where feasible;
- g. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the tower to these uses;
- h. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- i. Visual impacts of the proposed ingress and egress shall be minimized;

- j. No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town 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 are of sufficient height and are located within the geographic area required to meet the applicant's engineering requirements;
  - (ii) Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
  - (iii) The applicant's proposed WCFs would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCF would cause interference with the applicant's proposed WCF; and
  - (iv) The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for colocation.
  
- k. A tower, located outside of the right-of-way, shall meet the greater of the following minimum setbacks from all property lines:
  - (i) The setback for a principal building within the applicable zoning;
  - (ii) Twenty-five percent of the facility height, including WCFs and transmission equipment; or
  - (iii) The tower height, including antennas, if the tower is in or adjacent to a residential district or residential zoned property.
  - (iv) Towers over 40 feet in height shall not be located within one-quarter mile from any existing tower that is over 40 feet in height, unless the applicant has shown to the satisfaction of the Town that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

(5) *Related accessory equipment.* Accessory equipment for all WCFs shall meet the following requirements:

- a. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
- b. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet;

- c. No related accessory equipment or accessory structure shall exceed 12 feet in height;
- d. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

**17.74.070 Application Review Procedures.**

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the Town in accordance with this Chapter.

- A. *Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Public Rights-of-Way, but excepting Eligible Facilities Requests, and Small Cell Facilities in the Right-of-Way.*

In all zone districts, applications for these WCF facilities shall be reviewed by the Town Planner for conformance to this Chapter. For WCFs in the rights-of-way, except for Small Cell Facilities in the Right-of-Way, that are found to have a significant visual impact (e.g. proximity to historical sites, obstructing views) or be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Planning Department may refer the application to Planning and Zoning Commission or Historic Preservation Commission, as applicable, for a conditional use review.

- B. *Review Procedures for Towers.*

In all zone districts, Towers, other than those defined or excepted in A above, must apply for conditional use approval. These WCFs shall be reviewed for conformance using the procedures set forth in Chapter 17.84. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the Town.

- C. *Review Procedures for Eligible Facilities Requests.*

- (1) In all zone districts, Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The Town shall prepare, and from time to time revise, and make publicly available, an application form which shall require, among other things, submittal of information necessary for the Town to consider whether an application is an Eligible Facilities Request and payment of the applicable application fee as set forth in the Town's fee schedule. Such required information may include, without limitation, whether the project:
  - a. Constitutes a Substantial Change; or

- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

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

- (2) Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Town Planner shall review such application to determine whether the application so qualifies.
- (3) Timeframe for Review. Subject to the tolling provisions of subparagraph 4 below, within 60 calendar days of the date on which an applicant submits a complete application seeking approval under this Section, the Town shall approve the application unless it determines that the application is not covered by this Subsection, or is otherwise in non-conformance with applicable codes.
- (4) Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the Town and the applicant, or in cases where the Town Staff determines that the application is incomplete:
  - a. To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;
  - b. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
  - c. Following a supplemental submission, the Town will notify the applicant within ten (10) days that if 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 (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the Town fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the Town in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.



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

*D. Review Procedures for Small Cell Facilities in the Public Right-of-Way.*

- (1) Small Cell Facilities in the Public Right-of-Way may be approved pursuant to a Master License Agreement or similar form of authorization or individually in accordance with the provisions of this subsection.
- (2) Within ten (10) days of receipt of an application for Small Cell Facilities in the Public Right-of-Way and payment of the applicable application fee set forth in the Town's fee schedule, the Town Planner 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 Chapter.
  - a. The Town Planner shall review the completed application for conformance with the provisions in this Chapter and may approve or deny an application within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on Town infrastructure.
  - b. To toll the timeframe for incompleteness, the Town must provide written notice to the Applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application;
  - c. The timeframe for review resets to zero (0) when the Applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
  - d. Following a supplemental submission, the Town will notify the Applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.

- (3) Consolidated applications. The Town shall allow a wireless provider to file a consolidated application for multiple small cell facilities and receive a single approval for the consolidated application. The Town'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.

*E. General.*

Except for applications under subsections C and D above, the applicant shall conduct a pre-application conference with the Town Planner. The Planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

*F. Administrative review.*

Except for applications under subsections C and D above or as otherwise provided in this Chapter, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by the Town Planner and any necessary Town consultants, including the Town Engineer. In order to proceed with additional land use reviews or obtain a development order, the Town Planner shall find the submitted development application consistent with the provisions, requirements and standards of this Chapter.

*G. Decision.*

Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.

*H. Appeal of Planner's determination.*

The Town Planner may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria. If the Town Planner determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Town Planner, the applicant may apply for conditional use review (Chapter 17.84) by the Planning and Zoning Commission and such application must be made within fifteen (15) calendar days of the day on which the Town Planner's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Section 16.08.050 of this Code.

*I. Historic Preservation Commission review.*

With the exception of Eligible Facilities Requests and Small Cell Facilities in the ROW, proposals for the location of WCFs or equipment on any historic site or structure, shall be reviewed by the Historic Preservation Commission (HPC). Review of applications for WCFs and/or equipment by the HPC shall replace the need for review by the Town Planner but shall not replace the need for any conditional use review required under this Chapter. In the event HPC review is required under this Subsection I for an application subject to conditional use review, the HPC will review the application and provide a recommendation regarding the same to the Planning and Zoning Commission. Likewise, if the HPC determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Historic Preservation Commission, the applicant may appeal the decision to the Town Council, and such appeal must be filed within fifteen (15) calendar days of the day on which the Historic Preservation Commission's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Section 16.08.050 of this Code.

*J. Building Permit.*

A Building Permit, shall be submitted concurrently with the Land Use Application. Depending on the nature of project, a full Building Permit may be necessary, or, as would be the case for most Eligible Facilities Requests, an Electrical Permit. A contractor for the proposed work must be identified with the submitted application. A Building or Electrical Permit without an identified contractor will be deemed incomplete - and the application will be tolled until the contractor is identified.

*K. Right of Way License.*

For all facilities located or to be located in the public right-of-way, a evidence of a licenses agreement or other permit from the for use of such right-of-way shall be submitted with the application. If the applicant has not previously been granted a right-of-way license or permit, a request for a license from the Town to locate such facilities in the public right-of-way shall be submitted concurrently with the Land Use Application. Any such request shall be reviewed and approved by Town Council in its discretion. A contractor for the proposed work must be identified with the submitted application. Any such application submitted without an identified contractor will be deemed incomplete - and the application will be tolled until the contractor is identified. Additionally, an Electrical Permit shall be required for any installation that involves line voltage.

*L. Conditional Use Review.*

An application requesting a variance from the review standards as set forth in this Chapter or an appeal of a determination made by the Planner, shall be processed as a conditional use review in accordance with the procedures set forth in Chapter 17.84 of the Code. A

request for a variance from the design standards set forth in this Chapter shall be submitted to the Board of Zoning Adjustment and processed according to Chapter 17.12. The conditional use review or design standard variance request shall be considered at a public hearing for which notice has been posted and mailed, pursuant to Section 16.08.050.

**17.74.080 Application Contents.**

An application for approval of new WCFs and modified or additional WCFs, Eligible Facilities Requests, and Small Cell Facilities Requests shall include the required submittal materials specified in the Town of New Castle Wireless Development Application Packet and payment of the applicable application fee as set forth in the Town’s fee schedule. Additionally, depending on their nature, required Building, Electrical, and/or license agreement request shall be submitted concurrent to the Land Use Application.

**17.74.090 Conditions and limitations.**

The Town shall reserve the right to add, modify or delete conditions after the approval of a request in order to advance a legitimate Town interest related to health, safety or welfare. Prior to exercising this right, the Town shall notify the owner and operator in advance and shall not impose a substantial expense or deprive the affected party of a substantial revenue source in the exercising of such right.

**Section 3:** Any scrivener’s errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

**Section 4: Effect upon Existing Litigation.**

This Ordinance shall not affect any existing litigation and shall not operate as an abatement of any action proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall not be conducted and concluded under such prior ordinances.

**Section 5: Severability**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

**Section 6: Effective Date.** This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on November 3, 2020, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on November 17, 2020, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By:



Art Riddle, Mayor

ATTEST:



Melody Harrison, Town Clerk

