

ORDINANCE NO. 012, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS TO UPDATE STANDARDS
FOR WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC HIGHWAYS
CONSISTENT WITH THE WIRELESS TELECOMMUNICATIONS MASTER PLAN

WHEREAS, the City of Fort Collins, as a home-rule municipality, is authorized by Article XX, Section 6 of the Colorado Constitution, the provisions of state statutes, and its City Charter to develop and implement policies and ordinances regulating the development of land within the City; and

WHEREAS, the City Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes; and

WHEREAS, in December 2017, the City Council adopted Ordinance No. 144, 2017, which conformed the City's review of applications for small cell telecommunications facilities located in public rights-of-way with statutory changes adopted by the Colorado General Assembly under HB17-1193; and

WHEREAS, in 2017, in response to Federal Communication Commission (FCC) rulemaking and state statutory revisions affecting local control over wireless communication facilities, the City Council adopted Ordinance No. 143, 2017, adding Chapter 23, Article VII of the City Code to create a permitting process for small cell telecommunication facilities located in public highways; and

WHEREAS, in 2018, the City Council also appropriated \$50,000 in the 2019-2020 budget to fund the completion of a Wireless Telecommunications Master Plan to establish a framework for City wireless communication land use regulations and permitting practices; and

WHEREAS, between 2018 and 2020, federal court decisions interpreting the Telecommunications Act of 1996 and the Middle-Class Tax Relief and Job Creation Act of 2012, imposed further requirements on local government review of land use applications for wireless communications facilities; and

WHEREAS, in 2020, City Planning staff began a formal process to develop a Wireless Telecommunications Master Plan, including engaging consultants and a technical advisory committee, and conducting a series of neighborhood meetings; and

WHEREAS, on October 19, 2021, the City Council adopted Ordinance No. 130, 2021, approving the Wireless Telecommunications Master Plan (the "Plan") as an element of the City Plan to guide City land use and public highway access regulations for wireless communication facilities; and

WHEREAS, on January 25, 2022, City Council directed staff to develop recommended ways to revise existing wireless communication facility design standards to further the Plan; and

WHEREAS, thereafter, staff reviewed existing FCC regulations, consulted with industry and community stakeholders, and identified revisions to the City Code and Fort Collins Land Use Code to further align City regulations with Council's direction; and

WHEREAS, the City Manager and staff recommend to the City Council additions and revisions to Chapter 23 of the City Code set forth in this Ordinance to align the right-of-way encroachment permit application and review process for locating small cell telecommunication facilities in public rights-of-way with separately proposed changes to the Fort Collins Land Use Code; and

WHEREAS, in conjunction with the City Code amendments proposed herein, Council is concurrently considering Fort Collins Land Use Code amendments regarding the review of wireless communications facilities proposed on private property located outside public rights-of-way; and

WHEREAS, based on the foregoing, it is the desire of the City Council to amend Chapter 23 of the City Code to align wireless communication facility application review and public highway encroachment permitting with the Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 23, Article VII of the Code of the City of Fort Collins is hereby amended to read as follows:

**ARTICLE VII
COMMUNICATION FACILITY
ENCROACHMENT PERMITS**

Sec. 23-171. - Purpose and intent.

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

- (1) Establish a local policy concerning installation of wireless communications facilities (WCFs) in public highways, minimizing the visual impact of such installations on the community, particularly in and near residences;
- (2) Promote competition in the provision of wireless communications services;

- (3) Facilitate the provision of wireless communications services to the residents and businesses of the City;
- (4) Minimize adverse visual effects of WCFs in public highways, through careful design and siting standards, including but not limited to concealment or camouflage design techniques, screening, and undergrounding of associated equipment to the extent feasible;
- (5) Encourage collocation of antennas and maximizing the use of existing structures in public highways to accommodate WCFs, reduce the number of support structures needed to serve the community and minimize impacts in or near residences;
- (6) Encourage deployment of smaller, less intrusive WCFs, including distributed antenna systems (DAS) and small cell networks with components that are a fraction of the size of macro WCFs, and which are installed with little or no impact on utility support structures;
- (7) Ensure vertical structures in or near residential zones are approved with consideration for preserving neighborhood harmony, scenic view sheds and corridors, and the quality of living in residential areas near WCFs;
- (8) Effectively manage WCFs, in public highways and dedicated utility easements of the City;
- (9) Establish clear guidelines and standards and an orderly process for expedited permit application review to facilitate deployment of small cell networks and personal wireless services to the City, its residents, businesses, and community at large;
- (10) Provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission; and
- (11) Ensure that all WCFs deployed in public highways in the City comply with federal requirements governing radio frequency emissions.

Sec. 23-172. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings below:

AASHTO shall mean the American Association of State Highway and Transportation Officials.

ANSI/SCTE 77 shall mean the standards for underground enclosures published by the American National Standards Institute and Society of Cable Telecommunications Engineers.

Alternative tower structure shall mean any artificial trees, clock towers, bell steeples, light poles, water towers, farm silos, or similar alternative design mounting structures that (1) meet the size standards for the definition of small cell facility and (2) conceal to the extent feasible the presence of WCFs to make them architecturally compatible with the surrounding area pursuant to this

Article. A stand-alone pole in the public highway that accommodates small cell facilities is considered an alternative tower structure provided it meets the concealment standards of this Chapter and the size standards for a small cell facility. Alternative tower structures are not considered towers, for the purposes of this Article.

Antenna(s) shall have the meaning set forth in § 29-27-402, Colorado Revised Statutes.

Applicant shall mean a natural person or persons, partnership, company, corporation, or other legal entity who files an application for and/or receives a CF permit under this Article.

Base Station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, except that a *base station* does not include or encompass a Tower or any equipment associated with a tower, as defined herein. *Base station* does include:

(1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Article, 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.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration that, at the time the relevant application is filed with the City under this Article, has been reviewed and approved under the applicable state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Base station does not include any structure that, at the time the relevant application is filed with the City under this Article, does not support or house equipment described in sub-paragraphs (1) and (2) above.

Broadband facility shall mean any infrastructure used to deliver broadband service or for the provision of broadband service.

Broadband service shall have the same meaning as set forth in 7 U.S.C. Sec. 950bb (b)(1).

Camouflage design techniques shall mean measures used in the design and siting of wireless communications facilities 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 as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include the use of Concealment design elements.

Collocation shall mean:

(1) For the purposes of eligible facilities requests, 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.

(2) For the purposes of other WCFs subject to presumptively reasonable time frames set by the FCC, accounting for any tolling or extension, within which the City generally must act pursuant to 47 U.S.C. Section 332, i.e. “shot clocks” attachment of facilities to

existing structures, regardless of whether the structure or location has previously been zoned or otherwise approved for wireless facilities.

Concealment shall mean utilization of elements of stealth design in a facility so that the facility looks like something other than a wireless tower or base station. Language such as “stealth,” “camouflage,” or similar in any existing permit or other document required by the City Code is included in this definition to the extent such permit or other document reflects an intent at the time of approval to condition the site’s approval on a design that looks like something else. *Concealment* can further include 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 facility and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not apparent. This definition does not include conditions that merely minimize visual impact but do not incorporate *concealment* design elements so that the facility looks like something other than a wireless Tower or Base Station.

Distributed antenna system, or *DAS*, shall mean a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Eligible facilities request or *EFR* shall mean any request for modification of an *existing tower or base station* that does not substantially change the physical dimensions of such *tower or base station* involving: (i) collocation of new *transmission equipment*, (ii) removal of *transmission equipment*, or (iii) replacement of *transmission equipment*. A request for modification of an *existing tower or base station* that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, or does not comply with any relevant federal requirements, is not an *eligible facilities request*.

Eligible support structure shall mean any *tower or base station* as defined in this Section, provided it exists at the time the relevant application is filed with the City under this Article.

Engineer shall mean the City Engineer, who shall have those duties and powers as set forth in § 24-39 of this Code.

Equipment cabinets shall mean a structure used to house equipment used by service providers at a wireless communications facility. This definition does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted behind antennas, if they are not used as physical containers for smaller, distinct devices.

Existing shall mean a constructed *tower or base station* that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time of an *eligible facilities request*, provided that a *tower* that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

FAA shall mean the United States Federal Aviation Administration.

FCC shall mean the United States Federal Communications Commission.

Master license agreement or *MLA* shall mean a written agreement between the City and an applicant in which is set forth specific negotiated terms and conditions applicable to *applicant's* use of public highways and specific instances of City-owned infrastructure.

Over the air reception device or *OTARD* shall mean:

- (1) An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or
- (2) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or
- (3) An antenna that is designed to receive television broadcast signals.

Public highway shall have the meaning set forth in § 38-5.5-102, Colorado Revised Statutes.

Rights-of-way shall mean any portion of a public highway dedicated to the City. *Rights-of-way* shall not include (i) trails and (ii) specific-purpose utility easements, when the specific purpose of the utility easement dedication does not include communication facilities or public access.

Screen shall mean an opaque structure, typically located on top of, but integrated with the design of, a building that conceals mechanical, communications or other equipment from view from the surrounding rights-of-ways and properties.

Site shall mean that area comprising the base of a City-owned structure on which is mounted wireless communication equipment subject to this Article and to other related transmission equipment already deployed on the ground surrounding such vertical structure; regarding private property structures, the site shall include the current boundaries of the leased or owned property and any access or utility easements currently related thereto.

Small cell facility or *SCF* shall mean a WCF where each antenna is located inside an enclosure of no more than three (3) 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 (3) cubic feet, and primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside 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. All associated equipment, even if located outside the primary equipment enclosure, shall be included within the definition of *small cell facility*.

Substantial change shall mean a modification which, after the modification of an eligible support structure, the structure meets any of the following criteria:

- (1) For towers, it increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;

- (2) For towers, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the eligible support structure but not to exceed four cabinets per application; or for base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) It entails any excavation or deployment outside of 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 thirty (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;
- (5) For any eligible support structure, it would defeat the concealment elements of the eligible support structure by causing a reasonable person to view the structure's intended stealth design as no longer effective; or
- (6) For any eligible support structure, it does not comply with record evidence of conditions associated with the siting approval of the construction or modification of the eligible support structure or base station 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 Subsections (1)-(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 building rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of approved appurtenances and any modifications approved on or before February 22, 2012.

Tower shall mean any structure built for the sole or primary purpose of supporting any 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, unlicensed wireless services, fixed wireless services such as microwave backhaul, and the associated site. The term includes radio and television transmission towers, self-supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers and other similar structures, though not including utility or light poles that are less than thirty-five (35) feet in height. Alternative tower structures in the rights-of-way are not *towers*.

Transmission equipment shall mean 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.

Unreasonable interference shall mean any use of a public highway that disrupts or interferes with its use by the City, the public, or other person authorized to use or be present upon the highway, when there exists an alternative that would result in less disruption or interference. *Unreasonable interference* includes any use of a public highway that alters or disrupts vehicular, bicycle, or pedestrian traffic or visibility, any interference with public utilities, and any other activity that presents a hazard to public health, safety, or welfare.

Wireless communications facility or *WCF* shall mean a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A *WCF* does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A *WCF* includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, support equipment, small cell facilities, 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 handheld radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Section.

Sec. 23-173. - Applicability.

The provisions of this Article shall apply to any SCF located principally within a public highway in the city and it shall be unlawful for a SCF to be placed in any public highway except in compliance with this Article.

Sec. 23-174. – Location standards.

- (a) *Preferred locations.* To the extent feasible, in all zoning districts, the preference of this Article shall be that SCFs be located on main corridors and arterials, and not on residential streets, unless necessary for network operations.
- (b) *SCF equipment.* To the extent any transmission equipment is approved to be located above ground, it shall be placed as close as feasible to the vertical support structure to reduce the overall visual profile, and shall comply with all design standards set forth in § 23-176.
- (c) *Separation.* No freestanding SCF shall be placed within six hundred (600) feet of another freestanding SCF in a public highway, unless otherwise set forth in a master license agreement. This separation requirement does not apply to attachments made to existing SCFs. The Engineer may modify this requirement if the applicant demonstrates the need for the SCF and cannot otherwise reasonably satisfy this requirement, or as may otherwise be as set forth in a master license agreement.
- (d) *Residential areas.* When placed in a single family residential area, the SCF shall be sited in a manner that evaluates the proximity of the facility to single family residential

structures. When placed near single family residential property, the SCF shall be placed adjacent to the common side yard property line between adjoining residential properties, so the SCF minimized visual impacts equitably among adjacent properties. In the case of a corner lot, the SCF 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 feasible from a construction, engineering or design perspective, the applicant may submit a written statement to the Engineer requesting the SCF be exempt from these requirements.

- (e) *Above-ground equipment.* Transmission equipment shall be located out of view to the extent feasible. The Engineer may where appropriate and feasible based upon technical, construction and engineering requirements, require a flush-to-grade underground equipment vault.
- (f) *Towers.* No towers shall be permitted in the public highway.

Sec. 23-175. - Operational standards.

- (a) *Federal requirements.* All SCFs 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 SCFs. If such standards and regulations are changed, the SCF owners shall bring such facility into compliance with such revised standards and regulations within the time mandated by the controlling federal agency.
- (b) *Radio frequency standards.* All SCFs shall comply with federal standards for radio frequency emissions.
- (c) *Signal interference.* All SCFs shall be designed and sited so as not to cause interference with the normal operation of licensed radio, television, telephone and other communication services on adjacent properties; nor shall any such facilities interfere with any public safety communications.
- (d) *Legal access.* The applicant shall warrant and represent for all SCF permit applications that the applicant has a master license agreement for any public highway affected by the application providing legal access to/from the SCF and the utilities necessary to operate and maintain the facility, and, where applicable, permission to attach the SCF from the owner of the pole.
- (e) *Operation and maintenance.*
 - (1) To ensure structural integrity of SCFs, the SCF owner shall ensure the SCF and all associated support infrastructure is maintained in compliance with local building and safety codes, and applicable state and federal government agency wireless communication facility standards. If upon inspection, the City reasonably concludes a SCF fails to comply with such codes and constitutes a danger to persons or property, upon written notice provided to the SCF owner, the owner shall have thirty (30) days from the date on the notice to bring the SCF into compliance. Upon good cause shown by the SCF owner, the Engineer may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the SCF owner fails to bring the SCF into compliance within said period, the City may remove such facility at the applicant's and/or owner's expense.

- (2) The site and the SCF including all landscaping and related transmission equipment shall be maintained at all times in a neat and clean manner and in accordance with all approved plans.
 - (3) If any FCC, state or other governmental license or approval to provide personal wireless services is revoked as to any SCF permitted or authorized under this Article, the applicant must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.
 - (4) No trees may be removed or pruned in maintaining or operating a SCF, except upon satisfying the necessity standards in § 23-176(c)(5)d. and all requirements in Chapter 27 of this Code.
 - (5) To ensure proper identification of underground elements of SCFs, upon request by the City, the applicant shall provide as-built drawings and a statement of compliance with all permit location conditions for SCFs permitted under this Article. The failure of an applicant to submit completed as-built drawings shall be interpreted as a waiver of all claims for damages or injuries arising from inaccurate locates by the City or third parties as to the location of applicant's underground SCF elements.
 - (6) The SCF will remain free from graffiti and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in all instances upon the earlier of ten (10) calendar days from the date of notification by the City and/or discovery by the applicant or SCF operator.
 - (7) In the event of conflict between the requirements of this subsection (e) and a master license agreement, the master license agreement shall have priority.
- (f) *Abandonment and removal.* If a SCF has not been in use for a period of three (3) months, the applicant shall notify the City of the non-use and indicate whether re-use is expected within the ensuing three (3) months. Any SCF that is not operated for a continuous period of six (6) months shall be considered abandoned without regard to whether the applicant has provided notice, and any SCF permit issued in connection therewith shall be deemed to have expired.
- (1) The City, in its sole discretion, may require an abandoned SCF to be removed. The applicant shall remove the same within thirty (30) days of the date on a written notice from the City. Upon removal, the land shall be restored and re-landscaped, at the applicant's expense, to the level of finish of the adjacent landscaped area.
 - (2) If such SCF is not removed within said period, the City may remove it at the applicant's expense and any approved permits for the SCF shall thereupon expire. Reimbursement for all such removal costs shall be paid by applicant to the City prior to applicant's receipt of any additional permit under this Article.
 - (3) In addition, a SCF shall be removed within one hundred twenty (120) days after notification by the City that the public highway is needed for expansion, construction, or reconstruction, or other use by the City for any city project. Such removal shall be at the sole expense of the applicant and if the applicant fails to remove the SCF within the said one hundred twenty (120) days, or such longer period as may be established in a master license agreement, the City may remove the SCF and charge the costs to the

applicant. Reimbursement for all such removal costs shall be paid by the applicant to the City prior to issuance of any additional permit under this Article.

- (g) *Rules and regulations.* The Engineer may promulgate rules and regulations consistent with the provisions of this Article for the administration of SCF installations and extensions, including minor additions, revisions and corrections thereto as may, in the judgment of the Engineer, be necessary to better conform to good engineering and/or construction standards and practice. The Engineer shall approve only those proposed technical revisions that:
- (1) Are consistent with all existing policies relevant to the revisions,
 - (2) Do not result in any significant additional cost to persons affected by the revision, and
 - (3) Do not materially alter the standard or level of service to be accomplished through the specified infrastructure.

Upon adoption of any technical revisions pursuant to this subsection (g), the Engineer shall provide to the City Clerk documentation of such technical revisions specifying the date upon which they shall become effective, and shall maintain said documentation on file in the permanent records of the City Clerk and shall make the same available for public inspection.

Sec. 23-176. - Design standards.

- (a) *Standards.* The requirements set forth in this Section shall apply to the location and design of all SCFs governed by this Article. To that end and to the extent feasible, SCFs shall be designed and located to minimize their visual impacts, consistent with this Article.
- (b) *Site design flexibility.* To the extent feasible, individual SCFs shall be installed to best conceal, and where not feasible camouflage, the SCF. The Engineer may nevertheless grant a modification of the standards in this Section, provided he or she finds the modification would not be detrimental to the public good, and that:
- (1) The plan in the application as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or
 - (2) The granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Article, substantially alleviate an existing, defined and described problem of city-wide concern or result in a substantial benefit to the City by reason of the fact that the proposed SCF would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the SCF practically infeasible; or
 - (3) By reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to the site, including, but not limited to, physical conditions, including shallowness or topography, or physical conditions which hinder the applicant's ability to overcome existing physical signal obstructions, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the applicant,

provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

- (4) The plan in the application as submitted will not diverge from the standards of this Article that are authorized by this Section to be modified except in a nominal, inconsequential way when considered from the perspective of the affected public highway, and will continue to advance the purposes of this Article.

(c) *Conditions.*

- (1) Camouflage/concealment. All SCFs shall to the extent feasible, use concealment design techniques, and where not feasible utilize camouflage design techniques.

- a. *Vault standards.* No vault shall be larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and, if so located, is not included in the calculation of vault volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch. All vaults shall at a minimum meet ANSI/SCTE 77, Tier 15 standards for non-deliberate traffic applications.
- b. *Pole standards.* A small cell facility may be deployed in the public highway using vertical components of a street light pole or similar structure. Such facilities shall be subject to the following:
 1. All utility poles approved under this Article to host SCFs shall be electrically and structurally sound, meeting all applicable structural requirements and permanent installation criteria of Chapter 5 of this Code and otherwise satisfy AASHTO and National Electric Code standards adopted under § 5-80 of this Code and applicable to City utility structures installed in public highways.
 2. The pole or structure shall be no more than ten (10) feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within six hundred (600) feet of the pole or structure.
 3. In no case shall any SCF be higher than forty (40) feet, unless the applicable support structure is already existing at a greater height prior to attachment of the SCF.
 4. If the applicant is not the owner of the pole, it shall provide appropriately authorized written permission from the pole owner at the time the application is submitted, pursuant to § 23-175(d).
- c. *Antenna.* Except for a modification to an eligible support structure that qualifies as an EFR, no antenna shall extend more than five (5) feet above the principal host structure, relative to original height of such structure. Nor shall any antenna significantly exceed the diameter of any host structure to which the antenna is attached or exceed a total of eighteen (18) inches in diameter, including housing and shroud elements.
- d. Where the Engineer determines particular sensitivity (e.g., proximity to historic or aesthetically significant structures, views, and/or community features) warrants

special consideration and in areas of high visibility, SCFs shall to the extent feasible be designed to minimize their profile.

- e. All visible SCF components, such as antennas, vaults, and equipment enclosures, shall be constructed of non-reflective materials, be painted to match the surrounding environment, and blend in with adjacent structures and vegetation.
 - f. Any SCF sited on a traffic signal standard shall be designed so the antenna is placed in a manner so the size, appearance, and function of the traffic signal is not altered.
- (2) Hazardous materials. No hazardous materials shall be permitted in association with SCFs, except those necessary for the operations of the SCF and only in accordance with all applicable laws governing such materials.
- (3) Siting.
- a. All elements of SCF permitted under this Article shall be located principally within the boundaries of a public highway.
 - b. The number of poles within the public highway shall be limited to the extent feasible and shall adhere to structural requirements set forth in an MLA.
 - c. Applicants may be required to design and construct SCFs to accommodate equipment for at least two (2) service providers on the same structure, unless the Engineer approves an alternative design, to the extent feasible based upon construction, engineering and design standards. No applicant or SCF operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Engineer, the applicant shall provide evidence explaining why collocation is not feasible at a particular facility or site. No applicant shall unfairly exclude a competitor from using a site when collocation is feasible based upon applicable construction, engineering, and design standards.
 - d. SCFs shall be sited in a location that does not alter or reduce parking or otherwise inhibit another principal uses of the public highway.
 - e. Without regard to whether any portion of a SCF is approved to be installed above ground, all elements of a SCF shall be grouped as closely as feasible, contained within a total footprint area no greater than thirty-five (35) square feet, and otherwise located in a manner necessary to address public safety and aesthetic concerns in the reasonable discretion of the Engineer.
 - f. A SCF shall not be located or maintained in a manner that causes unreasonable interference with a public highway.
- (4) Lighting. A SCF shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the SCF is mounted on a 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 views. Lighting shall be shielded or directed to the extent feasible to minimize glare and light falling onto nearby properties.
- (5) Landscape requirements.

- a. SCFs shall be sited in a manner that does not reduce landscaped areas of the public highway.
 - b. Applicants shall restore all landscaping impacted during SCF installation to City street vegetation standards. Supplemental landscaping will be a condition of approval for any SCF requiring visible ground-mounted equipment not internal to the support structure or in a below-grade vault.
 - c. Existing tree growth and natural landforms on the site shall be preserved and negative impacts to tree canopies and root systems avoided to the extent feasible.
 - d. No tree may be removed in siting a SCF, unless authorized by the City Forester. To obtain authorization the applicant shall show wireless services are not feasible without tree removal; the applicant's plan minimizes the total number of trees to be removed, avoids removal of any tree larger than four (4) inches at four and one-half (4 ½) feet high, and replaces any tree to be removed at a ratio of 2:1; and all new trees meet the replacement size standards in § 3.2.1.(d)(4) of the Land Use Code.
- (6) Noise. Noise generated on the site must not exceed levels permitted in Chapter 20.
- (7) Anticipated redevelopment. If the built environment is anticipated to change significantly during the usable life of a SCF, such as within an urban renewal district, the SCF shall be compatible with the anticipated future-built environment.
- (8) Additional design requirements. Other requirements applicable to SCFs are specified below:
- a. *Non-city utility structure attachments.* If a SCF is installed on a City structure other than utility, light, or traffic infrastructure, the SCF shall be of a neutral, non-reflective color identical to, or closely compatible with, the color of the supporting structure, or use other camouflage/concealment design techniques to make the SCF as visually unobtrusive as possible, e.g., painting antennas and equipment, and meet the following:
 - 1. All pole-mounted components of the SCF shall be located on or within an existing utility pole serving another utility;
 - 2. To the extent feasible, the SCF shall be consistent with the size and shape of pole-mounted equipment installed by other service providers on utility poles near the SCF; and
 - 3. The SCF shall be sized to minimize the negative aesthetic impacts to the public highway, and designed and constructed to resemble structures typically found in the area.
 - b. *Related Transmission Equipment.* Transmission equipment, other than antennae must comply with § 23-174.

Sec. 23-177. - Application, review procedures and requirements for small cell facilities in the public highways.

- (a) *Small cell facilities.* Small cell facilities shall be a permitted use by right in all zoning districts, and permits shall be issued pursuant to this Article.
- (b) *Submittal required.* No new SCF shall be constructed and no collocation or modification to any SCF may occur except after a written request from an applicant, reviewed and approved by the Engineer and issuance of an encroachment permit in accordance with this Article.
- (c) *Consolidated applications and collocation.*
 - (1) A single permit may be issued for siting and collocating multiple small cell facilities spaced to provide wireless coverage in a contiguous area, provided all associated equipment is underground, or attached to or inside an existing structure that provides required clearances for the SCFs' operation without the necessity of constructing any apparatus to extend an antenna more than five (5) feet above the existing structure.
 - (2) Additional site-specific reviews are required when the applicant proposes a new vertical support structure or above-ground accessory equipment, pursuant to subsection (d)(2) and (3).
 - (3) If any support structure must be constructed to achieve needed elevation or if an attachment adds more than ten (10) feet or ten percent (10%) to the height of an existing structure, the proposal is subject to additional review, as described in § 23-176(c)(1)b. The height limitation applies to cumulative increases and includes in the measurement any height additions previously approved under this Section.
- (d) *Submittal requirements and review procedures.* SCFs permit applications shall be reviewed pursuant to the following procedures:
 - (1) Elements. A complete application for a permit under this Article must include the following:
 - a. Application form, as provided by the Engineer;
 - b. Executed master license agreement;
 - c. A report, signed by a professional engineer in the State of Colorado, or a verified statement from a qualified radio frequency engineer, demonstrating or assuring that the site will be in full compliance with federal radio-frequency emissions standards for wireless facilities;
 - d. Signal interference certification signed under penalty of perjury by a professional engineer in the State of Colorado, representing that all SCFs covered by the application shall be designed, sited and operated in accordance with applicable federal signal interference requirements, and as otherwise described in § 23-175(c);
 - e. Submittal fees;
 - f. Scaled site plan, photo simulation, scaled elevation view and supporting drawings, calculations, showing the location and dimension of all improvements, including information concerning topography, setbacks, drives, parking, street trees, adjacent uses, drainage;

- g. Narrative for each new installation proposed in a residential zone district or within one hundred fifty (150) feet of an existing residential lot; and
 - h. Proof of bonding and insurance satisfying the requirements of § 23-19 for any SCF installation that entails excavation of a public highway; and
 - i. Other information reasonably deemed by the Engineer to be necessary to assess compliance with this Article. Documents requiring signatures and seals by appropriate qualified professionals shall be provided by applicant prior to issuance of a permit under this Article.
 - (2) Structural assessment. Prior to issuance of a SCF permit for any SCF proposing a new pole or attachment to a non-city-owned structure, the applicant shall submit a stamped and signed structural assessment for each new proposed SCF host support structure conducted by a professional engineer, licensed in the State of Colorado.
 - a. When the structural assessment indicates a need for a stronger structure to address issues such as wind load factor, applicant shall provide a replacement structure at applicant's cost satisfactory to the Engineer in consultation with Fort Collins Utilities, as applicable.
 - b. All costs for conducting an assessment under this subsection (2) shall be borne by the applicant, and shall be paid by the applicant prior to issuance of a permit under this Article.
 - (3) New structures. All applications for new vertical structures associated with a SCF in a public highway shall demonstrate that other alternative siting options, including collocations, are not feasible. Notwithstanding anything in this Article to the contrary, all structures located in a public highway shall satisfy the location and design criteria set forth in §§ 23-174 and 23-176.
 - (4) Decision. Any decision to approve, approve with conditions, or deny an application for a SCF permit, shall be in writing and supported by substantial evidence in a written record. The Engineer shall cause a copy of the decision to be provided to the applicant. The foregoing shall apply only to applications for SCF permits under this Article and shall not apply to any building, excavation, or any other permit issued pursuant to or required by other Articles of this Code.
- (e) *Submittal requirements and review procedures for eligible facilities requests.*
- (1) Application. The City shall prepare, and from time to time revise and make publicly available, an application form requiring the information necessary for the Engineer to consider whether the project covered by the application would:
 - a. Result in a substantial change to the physical dimensions of the site; or
 - b. Violate a generally applicable law, regulations, or other rule codifying objective standards reasonably related to public health and safety.

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

- (2) Type of review. Upon receipt of an application for an eligible facilities request pursuant to this Section, the Engineer shall review such application to determine whether the application so qualifies.
- (3) Timeframe for review. Subject to the tolling provisions of subsection (4) below, within sixty (60) days of the date on which an applicant submits a complete application under this Section, the Engineer shall act on the application unless they determine the application is not covered by this subsection.
- (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 agreement of the Engineer and applicant, or in cases where the Engineer determines the application is incomplete:
 - a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - b. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - c. Following a supplemental submission, the City will notify the applicant within ten (10) days 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 subsection (4) a. In the case of a second or subsequent notice of incompleteness, the City may not toll the shot clock by specifying missing information or documents that were not delineated in the original notice of incompleteness.
- (5) Failure to act. In the event the Engineer 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. In such event, the 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.
- (6) Interaction with Telecommunications Act 47 U.S.C. § 332(c)(7). If the City determines that the applicant's request is not an Eligible Facilities Request delineated in this subsection, the applicant shall be advised as to the relevant provisions of the City Code(s), including land use and/or development codes, that govern the process to consider the request, and whether the Code(s) requires any additional information that may be required to be submitted in order for the request to be considered complete. If the applicant subsequently indicates an intent for the proposal to be considered under the relevant section of the City Code(s) and submits all required information, the presumptively reasonable timeframe under 47 U.S.C. § 332(c)(7), as set forth in applicable federal and state law will begin to run from submittal of the proposal required information under the applicable provision of this Code.
- (f) Review procedures for collocating small cell facilities on an existing tower or base station. Within ten (10) business days of receipt of an application for a small cell facility that does not qualify as an EFR, the City 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 subsection.

- (1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within ten (10) business days of receipt of the application, specifically delineating all missing documents or information required in the application.
- (2) The timeframe for review resets to zero (0) when the applicant makes a supplemental written submission in response to the City's notice of incompleteness.
- (3) Following a supplemental submission, the City will notify the applicant within ten (10) business days whether the supplemental submission provided the information identified in the original notice delineating missing information. If the application remains incomplete, the timeframe is tolled pursuant to the procedures identified in subparagraphs (1) and (2) of this paragraph. In the case of a second or subsequent notice of incompleteness, the City may not toll the shot clock by specifying missing information or documents that were not delineated in the original notice of incompleteness.
- (4) Final action on complete applications for small cell facilities in the public highways will be no more than sixty (60) days, provided all standards in this Section are met.

Sec. 23-178. - Standards for approval.

- (a) *Administrative approval.* An applicant for a SCF permit shall be subject to administrative review as set forth in § 23- 177.
- (b) Notwithstanding the approval of an application for collocation or a new non-city-owned structure as described herein, all work performed on SCFs must be completed in accordance with applicable building and safety requirements of the City.

Introduced, considered favorably on first reading, and ordered published this 17th day of January, 2023, and to be presented for final passage on the 2nd day of February, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 7th day of February, 2023.

Mayor

ATTEST:

City Clerk