



## City of Ketchum

April 5, 2021

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Provide Direction to Staff on Wireless Communication Regulations**

#### Recommendation and Summary

Staff is requesting the Council review the existing standards for regulating wireless communication facilities and provide direction to staff for any changes.

#### Introduction and History

In 1999 Ketchum adopted Ordinance 744 to regulate the placement, installation and requirements for wireless communication facilities to be placed in Ketchum. The regulations are contained in Chapter 17.140 of the Ketchum Zoning Ordinance. Since adoption of Ordinance 744, the wireless communication facilities ordinance has been updated, the most recent update occurring in 2015 (Attachment A).

Under the current ordinance, wireless communication facilities are defined as:

**WIRELESS COMMUNICATION FACILITY (WCF):** A facility that transmits and/or receives electromagnetic signals, including antennas, microwave dishes, parabolic antennas, directional antennas and other types of equipment for the transmission or reception of such signals, towers or similar structures supporting the equipment, equipment buildings, shelters, cabinets, parking area, and other accessory development.

Under KMC Section 17.140.020, the placement, use or modification of any wireless communication facilities at any location within the city is subject to the provisions of the ordinance requirements. WCFs are only permitted in designated zoning districts. A permit is required for installation of any WCF.

#### Required Master Plan

Prior to filing a permit for installation of a WCF, a provider must develop a master development plan showing where the provider intends to install their equipment. The master plan must be based upon engineering constraints and desired areas of service. WCFs shall be located on the master development plan in the following priority order:

- a. Collocation on an existing tower, structure or building. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
- b. In areas where the existing topography, vegetation, buildings and other structures provide the greatest amount of screening.
- c. Use of city owned property.
- d. Other nonresidential buildings or vacant non residentially zoned land.

Installation of WCFs may occur on private property subject to the ordinance requirements or on public property, such as within the city right of way. For installation of any WCF on city property or within the city right of way (light poles, power poles, etc.) the City Council must first approve the installation either through a contract or an encroachment agreement with the provider.

Attachments:

Chapter 17.140 of the KMC, Wireless Communication Facilities

## CHAPTER 17.140

# WIRELESS COMMUNICATION FACILITIES

### SECTION:

#### 17.140.010: Intent And Purpose

#### 17.140.020: District Regulations

#### 17.140.030: Application Procedures

#### 17.140.040: Standards

#### 17.140.050: Safety

#### 17.140.060: Maintenance

#### 17.140.070: Modification

#### 17.140.080: Abandonment Or Discontinuation Of Use

#### 17.140.090: Exempt Communication Facilities

#### 17.140.100: Recovery Of City Costs

#### 17.140.110: Revocation Or Termination Of Permit

#### 17.140.120: Notice And Duty To Cure

#### 17.140.010: INTENT AND PURPOSE:

A. The unique and diverse landscapes and scenic vistas of the city are among its most valuable assets. Protecting these assets will require sensitive placement and design of wireless communication facilities (WCFs) to remain in scale and harmony with the character of the community.

B. This chapter is intended to provide reasonable standards and procedures for the development of WCFs that will serve citizens, the traveling public and others within the city in order to:

1. Preserve the character and aesthetics of areas which are in close proximity to WCFs by minimizing the visual, aesthetic and safety impacts through careful design, placement and screening;
2. Protect the health, safety and welfare of persons living or working in the area surrounding such WCFs from possible adverse environmental effects (within the confines of the federal telecommunications act of 1996) related to the placement, construction or modification of such facilities;
3. Provide development that is compatible in appearance with allowed uses of the underlying zone;
4. Facilitate the city's permitting process to encourage fair and meaningful competition and, to the greatest extent possible, extend to all people in all areas of the city high quality wireless communication services at reasonable costs to promote the public welfare; and
5. Encourage the joint use and clustering of antenna sites and structures, when practical, to help reduce the number of such facilities which may be required in the future to service the needs of customers and, thus, avert unnecessary proliferation of facilities on private and public property. (Ord. 1135, 2015)

#### 17.140.020: DISTRICT REGULATIONS:

A. Use: The placement, use or modification of any wireless communication facilities at any location within the city is subject to the provisions of this chapter. WCFs are permitted in designated zoning districts listed in the district use matrix of subsection 17.12.020A of this title.

1. Residential zones: Freestanding WCFs, including lattice towers, are prohibited. WCFs attached to street poles or facades attached to nonresidential buildings are permitted subject to the provisions of this chapter.
2. Nonresidential zones: Lattice tower WCFs are prohibited. Other WCFs are permitted subject to the provisions of this chapter.

#### B. Siting And Facility Type Priorities:

1. Site Selection Criteria: A master development plan is to be created, prior to any WCF permit request, based upon engineering constraints and desired areas of service. WCFs shall be located on the master development plan in the following priority order:
  - a. Collocation on an existing tower, structure or building. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate, as described in subsection C of this section.
  - b. In areas where the existing topography, vegetation, buildings and other structures provide the greatest amount of screening.
  - c. Use of city owned property.
  - d. Other nonresidential buildings or vacant nonresidentially zoned land.

2. Facility Type Preferred: Based on potential aesthetic impact, the order of preference for facility type is as follows: roof attached, facade attached, street pole attached and freestanding tower.

C. Collocation Requirement: Collocation is considered to be a visually unobtrusive installation method because the equipment is attached to an existing structure. Collocation shall require only an administrative review under the terms of the application procedures in section 17.140.030 of this chapter. No new tower shall be permitted unless the applicant demonstrates a good faith effort to collocate on an existing facility including good faith efforts to negotiate lease rights. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antennas may consist of any of the following:

1. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements;
2. Existing towers or structures are not sufficiently designed to meet the applicant's engineering requirements as indicated in their master development plan;
3. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment;
4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna; and/or
5. The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure, or to adapt an existing tower or structure for share, are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

D. Prohibitions: The following are prohibited or restricted within the city:

1. Lattice towers, prohibited.
2. Interference with city and public safety communication systems and/or area television or radio broadcast, prohibited.
3. Freestanding towers within residentially zoned districts, prohibited.
4. Guywires, restricted. No guywire or other support wires shall be used in connection with such antenna, antenna array or its support structure except when used to anchor the antenna, antenna array or support structure to an existing building to which such antenna, antenna array or support structure is attached. (Ord. 1135, 2015)

#### **17.140.030: APPLICATION PROCEDURES:**

A. Permit Granting Authority: The administrator shall be the granting authority for WCFs collocating on an existing structure or street poles. The city council must approve an encroachment permit for the street pole mounted WCFs. The commission shall be the granting authority for all other WCFs and all master development plans in compliance with the public hearing process identified in subsection G of this section.

B. Master Development Plan:

1. An approved master development plan is required prior to the processing of any WCF permit application. The administrator may waive the processing of a master development plan if it can be demonstrated that a network of WCFs will not be required of the owner/operator of the proposed WCF.
2. The master development plan illustrates a carrier's expected network of WCFs within and adjacent to the city. It shall forecast five (5) years in advance the approximate locations of future facilities and the area of service, but is not required to detail the specific type of facility (e.g., pole, roof, building attached). A master development plan shall be submitted prior to the submittal of any WCF permit application by each company desiring placement of a WCF(s) within the city. The master development plan shall be submitted and approved by the commission prior to the processing of any WCF permit. Future amendments to each company's master development plan shall be submitted and reviewed by the commission prior to approval of additional facility locations.

C. Master Development Plan Filing Requirements: The city, prior to processing a master development plan application, must determine a master development plan application to be complete. The city shall determine an application complete when the application contains the information described below. The following shall be included with an application for master development plan approval:

1. Application: The application form shall include at a minimum:
  - a. Name, address and telephone number of the applicant, any coapplicants as well as any agents for the applicant and coapplicants. The applicant or coapplicant shall be a licensed carrier.
  - b. Name, address and telephone number of the licensed carrier.
  - c. Original signatures for the applicant and all coapplicants applying for master development plan approval. If the applicant or coapplicant will be represented by an agent, the original signature authorizing the agent to represent the applicant and/or coapplicant.
  - d. Application fee.
2. Map: A map encompassing the city and surrounding area within one mile drawn to scale of no less than one inch equals five hundred feet (1" = 500'), specifying the following:
  - a. Location of proposed WCFs;
  - b. Service area of each WCF;

- c. Street names of major streets and streets adjacent to identified WCF locations;
- d. All existing WCFs operated by the applicant and other carriers;
- e. Separation distance between proposed and existing WCFs measured in feet;
- f. Information demonstrating compliance with the standards of this chapter;
- g. Existing watercourses and natural features that restrict the placement of WCFs or the associated service areas; and
- h. North arrow, scale and legend.

D. Preapplication: Prior to submission of a WCF permit application under this chapter requiring commission approval, the applicant will meet with the commission at a public meeting to discuss the proposed WCF in general terms, its compliance with the carrier's master development plan and to clarify the filing requirements. The commission shall meet with an applicant under this chapter within twenty one (21) days following a written request submitted to the planning and zoning department. If the commission fails to meet with an applicant who has requested such a meeting within twenty one (21) days of such request and such meeting has not been postponed due to mutual agreement, the applicant may proceed with a WCF permit application under this regulation without need for a preapplication conference.

E. Preapplication Filing Requirements: The purpose of the conference is to inform the commission as to the preliminary nature of the proposed WCF and its relation to the master development plan. As such, only the evidence of the inability to collocate is required. However, the applicant is encouraged to also submit sufficient preliminary architectural and/or engineering drawings to inform the commission of the location of the proposed facility, as well as its scale and overall design.

F. Application Filing Requirements: A WCF permit is required prior to the installation or modification of any new or existing WCF. An application for a WCF permit must be determined to be complete by the city prior to processing. The city shall determine an application complete when the application contains the information described below, in addition to the standard application information required under the design review chapter, chapter 17.96 of this title. The following shall be included with an application for a WCF permit:

1. The application form shall include at a minimum:
  - a. Name, address and telephone number of the applicant, any coapplicants, as well as any agents for the applicant and coapplicants. The applicant or coapplicant shall be a licensed carrier.
  - b. Name, address and telephone number of the property owner(s).
  - c. Original signatures for the applicant and all coapplicants applying for a WCF permit. If the applicant or coapplicant will be represented by an agent the original signature authorizing the agent to represent the applicant and/or coapplicant.
  - d. A complete legal description of the subject property.
  - e. Application fee.
2. A site plan drawn to scale of no less than one inch equals twenty feet (1" = 20'), specifying the following:
  - a. Location, type and height of the proposed WCF with setbacks;
  - b. On site structures, land uses and zoning;
  - c. Circulation. Adjacent roadways, ingress and egress from such roadways, parking and pedestrian circulation and access;
  - d. Fences, signs, exterior lighting and storm drainage;
  - e. Property lines with dimensions, adjacent land uses, structures and zoning;
  - f. Information demonstrating compliance with the standards of this chapter;
  - g. Existing watercourses, utility lines, easements, deed restrictions and other built or natural features restricting the use of the subject property;
  - h. North arrow, scale and legend; and
  - i. The city, at its discretion, may waive any of the above site plan requirements for WCFs attached to existing structures.
3. A written description of how the proposed WCF fits within the master development plan.
4. A landscape plan drawn to scale of no less than one inch equals twenty feet (1" = 20'), specifying the following:
  - a. Existing and proposed landscaping indicating size, location and species of vegetation;
  - b. Indication of existing vegetation to be removed or retained;
  - c. Information demonstrating compliance with the screening standards of this chapter; and
  - d. The landscape plan may be waived when the WCF is to be attached to a building and the equipment is located within the building.
5. Elevation drawings or before and after photographs/drawings simulating and specifying the location and height of the antennas, support structures, equipment enclosure(s) and other accessory uses, fences and signs.
6. Elevations of proposed aboveground equipment enclosures in compliance with the requirements of the design review

chapter, chapter 17.96 of this title.

7. A map indicating the service area of the facility.
  8. A map indicating locations and service areas of other WCF sites operated by the applicant and sites of other providers' facilities in the city and within one mile of the city's corporate limits.
  9. Four (4) copies of all plans and one eleven inch by seventeen inch (11" x 17") paper reduction of each plan.
  10. Photo simulations of the proposed WCF from affected residential properties and public rights of way at varying distances.
  11. Evidence as specified in subsection 17.140.020C, "Collocation Requirement", of this chapter.
  12. Written documentation demonstrating a good faith effort in locating facilities in accordance with subsection 17.140.020B, "Siting And Facility Type Priorities", of this chapter.
  13. A description of the support structure or building upon which the WCF is proposed to be located, and the technical reasons for the design and configuration of the WCF.
  14. Signed and notarized statement by the applicant indicating:
    - a. The proposed tower shall accommodate collocation of additional antennas, and the applicant shall enter into leases with other providers on such tower;
    - b. Certification that the antenna usage shall not interfere with other adjacent or neighboring transmission or reception functions;
    - c. The applicant agrees to remove the WCF and equipment within ninety (90) days after the site's use is discontinued; and
    - d. The tower shall comply with all EIA standards and applicable federal and state laws and regulations and the city ordinances including FAA regulations.
  15. A lease agreement with the landholder that:
    - a. Allows the landholder to enter into leases with other providers; and
    - b. Specifies that if the provider fails to remove the WCF and equipment within ninety (90) days of its discontinued use, the responsibility for removal belongs to the landholder.
  16. The applicant shall demonstrate that it is licensed with the FCC.
  17. A completed right of way encroachment permit application if the WCF is to be located within a public right of way.
- G. Public Hearing: Prior to approving a master development plan or a WCF permit as specified in subsection A of this section, the commission shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. The public hearing shall be noticed in the following manner:

1. Publication: At least fifteen (15) days prior to the public hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the city. Notice may also be made available to other newspapers and radio and television stations serving the city for use as public service announcements.
2. Posting: Notice shall be posted on the premises not less than one week prior to the public hearing.
3. Mailing: Notice shall be mailed to property owners or purchasers of record within three hundred feet (300') of the external boundaries of the land being considered.
4. Commission Action: Following the public hearing, within sixty (60) days from said hearing, the commission shall approve, deny or approve with conditions the application for a WCF permit. (Ord. 1135, 2015)

**17.140.040: STANDARDS:**

A. Applicability: The standards identified in this section shall apply to all WCFs constructed or located in the city, unless otherwise specified.

B. Height: WCFs shall not exceed thirty five feet (35') in height above the existing or natural grade or the maximum permissible height of the given zoning district, whichever is more restrictive, with the exception of facade and roof attached WCFs as described below:

1. Roof attached WCFs shall not exceed five feet (5') above the highest portion of the roof membrane. The antenna and support system for whip antennas shall not exceed ten feet (10') above the highest portion of that roof, including parapet walls.
2. Facade attached WCFs shall not exceed five feet (5') above the facade to which it is attached.
3. If the height of the structure is in excess of the maximum height allowed within the zone and was legally established, then the combined height of the building and antenna shall not exceed the maximum height allowed by such approval unless determined by the commission to be suitably camouflaged.
4. Street pole attached WCFs may only extend six feet (6') above the existing street pole as provided in subsection 12a of this section. A maximum extension of fifteen feet (15'), from the top of the street pole, may be permitted pursuant to standards provided in subsection 12b of this section, if a utility disturbance can be clearly demonstrated.

C. Setbacks: All WCFs shall comply with the building setback provisions of the zoning district in which the WCF is located. In addition, the following setbacks shall be observed:

1. Street Pole Attached: No setback when constructed within the public right of way and under the provisions of subsection I of this section.

2. Facade Attached: The maximum projection shall be eighteen inches (18"). The location of a WCF on the wall of a legal nonconforming structure is permitted. However, the WCF shall not be located on an exterior wall in a manner that will increase the degree of nonconformity. Additional standards for antennas attached to the facade of structures are listed in subsection I of this section.

3. Roof Attached: Roof attached WCFs shall be set back from the edge of the building the height of the antenna and support system as measured from the roof membrane.

4. Freestanding Tower: Setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Towers shall be set back from all property lines one hundred twenty five percent (125%) of the tower height as measured from ground level.

5. Equipment Enclosure: Underground vaults or aboveground structures shall comply with the setback requirements of the underlying zoning district.

6. Freestanding WCFs Or Equipment Enclosures: No freestanding WCFs or equipment enclosures shall be located between the face of a structure and a public street, bikeway, park or residential development, except for approved facade attached WCFs located on existing or new permitted structures in accordance with this chapter.

D. Evaluation Standards: The following design criteria shall be addressed by each applicant seeking WCF permit approval:

1. Architectural Compatibility:

a. All facilities shall be designed to minimize the visual impact to the greatest extent feasible, considering technological requirements, by means of placement, screening and camouflage, to be compatible with existing architectural elements and building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the owner/operator's coverage objectives.

b. Colors and materials for facilities shall be chosen to minimize visibility. Facilities shall be painted or textured using colors to match or blend with the primary background.

c. WCFs located on buildings, walls or roofs shall blend with the existing building's architecture by painting or shielding with material which is consistent with the design features and materials of the building.

d. Equipment enclosures of WCFs shall be designed consistent with one of the following design standards. The facility types are listed in order of preferred design.

(1) Equipment enclosures shall be placed in underground vaults; or

(2) Equipment enclosures shall be designed consistent with the design review requirements, chapter 17.96 of this title, and this chapter.

2. Screening: Landscaping, as described in this chapter, shall be required to screen as much of the support structure and the equipment enclosure as possible. The following standards shall apply to all WCFs. However, if the antenna is mounted flush with the building or on the roof, and other equipment is located inside the existing building, landscaping shall not be required.

a. Support structures and equipment enclosures shall be installed so as to maintain and blend with existing landscaping on site, including trees, foliage and shrubs, whether or not utilized for screening.

b. Additional landscaping and screening shall be installed to visually screen the support structures and aboveground equipment enclosures. Landscaping and screening shall consist of a combination of trees, foliage and shrubs of dense spacing in one of the following designs:

(1) A screening wall or fence and a five foot (5') wide landscape planter located in front of the wall or fence;

(2) A ten foot (10') wide landscape planter; or

(3) Any combination of existing vegetation, topography, decorative walls/fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping described in subsections D2b(1) and D2b(2) of this section.

c. Upon completion, the owner(s)/operator(s) of the facility shall be responsible for the continued maintenance and replacement of all required landscaping and screening materials.

3. Color:

a. WCFs located on buildings, walls or roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the WCF.

b. To the extent any WCFs extend above the height of the vegetation immediately surrounding it, they shall be painted in a nonreflective light gray, light blue or other hue, which blends with the skyline and horizon.

E. Facility Lighting And Signage:

1. Facility lighting shall be designed so as to meet but not exceed minimum requirements for security, safety or FAA regulations. Lighting of antennas or support structures shall be prohibited unless required by the FAA. In all instances, the lighting shall be designed so as to avoid glare and minimize illumination on adjacent properties. Lighting shall also comply with all of the city's lighting regulations.

2. Signs shall be limited to those needed to identify the telephone number(s) to contact in an emergency, public safety warnings, certifications or other required seals. These signs shall also comply with the requirements of the city's sign regulations.

F. Access: In addition to ingress and egress requirements of the international building code, access to and from WCFs and equipment shall be regulated as follows:

1. No WCF or equipment shall be located in a required parking, maneuvering or vehicle/pedestrian circulation area such that it interferes with, or in any way impairs, the intent or functionality of the original design.

2. The WCF shall be secured from access by the general public, but access for emergency services must be ensured. Access roads shall comply with fire department standards for emergency vehicular access.

G. Scenic Landscapes And Vistas:

1. Freestanding WCFs shall not be located within open areas that are visible from public roads, recreational areas or residential development. As specified in subsection D2a of this section, WCFs shall be installed to blend with existing landscaping and structures.

2. Any WCF that is located within three hundred feet (300') of a scenic vista, scenic landscape or scenic road as designated by the city, in addition to regulations specified in subsection B, "Height", of this section, shall not exceed the height of vegetation at the proposed location. If the facility is located further than three hundred feet (300') from the scenic vista, scenic landscape or scenic road, subsection B, "Height", of this section, shall apply exclusively.

H. Environmental Standards:

1. WCFs shall not be located in wetlands. WCFs shall also be avoided whenever possible in wetland buffer areas, and disturbance to wetland buffer areas shall be minimized.

2. WCFs shall not be located in riparian setbacks along watercourses.

3. WCFs shall avoid locating in the avalanche overlay zone, as defined by this title. Evidence shall be submitted to demonstrate that no location outside the avalanche overlay zone can accommodate the applicant's proposed antenna as specified in subsection 17.140.020C, "Collocation Requirement", of this chapter. WCFs located within the avalanche overlay zone shall comply with the additional placement standards identified within this title and provide proof of FCC acceptance of the proposed location.

4. No hazardous waste shall be discharged on the site of any WCF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor designed to contain at least one hundred ten percent (110%) of the volume of the hazardous materials stored or used on site.

5. Stormwater runoff shall be contained on site.

6. WCFs locating within the floodplain overlay zone shall comply with the additional placement standards as identified within this title and provide proof of FCC acceptance of the proposed location.

7. Aboveground equipment for WCFs, exclusive of roof and facade attached WCFs, shall not generate noise in excess of fifty (50) decibels at the property line.

8. Roof or facade attached equipment for WCFs shall not generate noise in excess of fifty (50) decibels at ground level at the base of the structure closest to the antenna.

9. The noise standards of this chapter require measurements by a qualified acoustical engineer.

I. WCF Specific Standards: Street pole and facade attached WCFs shall meet the following conditions and criteria in addition to the other standards identified in this section:

1. Facade Attached WCFs: Equipment enclosures shall be located within the structure in which the WCF is placed or located underground if site conditions permit. Otherwise, equipment enclosures shall comply with the design standards listed in subsection D of this section.

2. Street Pole Attached WCFs:

a. Attachment: Only one WCF shall be permitted on any one street pole. The antenna shall be equal to or less than six feet (6') in height, including the support system, if any. Surface area of an antenna shall not exceed five hundred eighty (580) square inches. The antenna shall be either fully concealed within the street pole or camouflaged to appear to be an integrated part of the street pole. An antenna not flush mounted on the side of the street pole shall be centered on the top of the street pole to which it is attached and camouflaged or disguised.

b. Utility Separation: In the event that a utility located upon the street pole requires vertical separation between its utility facilities and the antenna so attached, the antenna may be raised by a support system to accommodate the separation requirement to an elevation not exceeding an additional fifteen feet (15') or the required separation, whichever is less. Any such support shall not be greater in diameter than the existing street pole and shall be designed to blend into the colors and textures of the existing street pole.

c. Pole Replacement: Existing street poles may be replaced with a new street pole of the same height, dimensions and appearance as the existing street pole. An antenna located upon the new street pole shall meet the standards for attaching an antenna to an existing street pole, as set forth above.

d. Equipment Enclosures:

(1) Belowground: Belowground equipment enclosures shall not be greater than six (6) cubic feet in volume. An underground



equipment enclosure may be connected to an aboveground equipment enclosure for a combined total volume of no greater than twelve (12) cubic feet.

(2) Aboveground: Aboveground equipment enclosures shall not be greater than six (6) cubic feet in volume. No single dimension shall exceed three feet (3'). The equipment enclosure shall be constructed so as to minimize its visual impact. Evergreen landscape planting shall be installed and maintained to completely obscure the visibility of the equipment enclosure from the developed street and adjacent properties. Sight distance clearance shall be maintained for the equipment enclosure and associated landscape per the requirements of this title and this code.

e. Horizontal Separation: For WCFs located within developed streets, there shall be a minimum horizontal separation of three hundred feet (300') between the WCFs of a single licensed carrier and a minimum horizontal separation of one hundred feet (100') between the WCFs of any other licensed carrier.

f. Approval Of Encroachment Permit: An encroachment permit shall be approved by the city council after staff review of the WCF permit application.

g. Relocation Underground: In the event the utilities located on a street pole are relocated underground, the WCF shall be relocated to another location pursuant to the requirements of this chapter. (Ord. 1135, 2015)

#### **17.140.050: SAFETY:**

A. Federal Requirements: All WCFs shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the WCFs governed by this chapter shall bring such WCFs into compliance with the revised standards and regulations within three (3) months of the effective date of the revised standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring WCFs into compliance with such revised standards and regulations shall constitute grounds for the removal of the WCF at the owners' expense.

B. Antenna Support Structure Safety: The applicant shall demonstrate that the proposed antenna and support structure is safe and the surrounding areas shall not be negatively affected by support structure failure, falling ice or other debris or interference. All support structures shall be fitted with anticlimbing devices, as approved by the manufacturers. (Ord. 1135, 2015)

#### **17.140.060: MAINTENANCE:**

A. Each permittee shall maintain its WCF in a good and safe condition, preserving the original appearance and concealment, disguise or screening elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment and maintenance of landscaping. If the permittee fails to maintain the facility, the city may undertake the maintenance at the expense of the permittee or terminate the permit, at its sole option.

B. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes and the applicable standards for towers that are published by the EIA, as amended from time to time. If, upon inspection, the city concludes that the tower fails to comply with such codes or standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days constitutes grounds for the removal of the WCF at the owner's expense. (Ord. 1135, 2015)

#### **17.140.070: MODIFICATION:**

A. New Permit: Any proposed change or addition to any WCF shall require the issuance of a new WCF permit, pursuant to the requirements of this chapter. This provision shall not apply to routine maintenance of a WCF or to the replacement of any portion of the WCF with identical equipment on a WCF in conformance with this chapter.

B. Facility Upgrade: At the time of modification or upgrade of facilities, existing equipment shall be replaced with equipment of equal or greater technical capacity and reduced in size so as to reduce visual impact.

C. Existing Uses:

1. All WCFs existing on the effective date hereof shall be allowed to continue their operation as they presently exist, subject to section 17.140.080 of this chapter. Routine maintenance shall be permitted. However, construction involving the replacement of support structure apparatus, antennas or any exterior alteration shall comply with all the requirements of this chapter.

2. Emergency service WCFs may obtain a waiver from the city council in order to preserve the public health and safety. In order to receive a waiver, the city council must determine that the modifications cannot comply with this chapter without an extreme burden to the citizens of Ketchum. The waiver shall be noticed pursuant to the public hearing requirements identified in subsection 17.140.030G of this chapter. (Ord. 1135, 2015)

#### **17.140.080: ABANDONMENT OR DISCONTINUATION OF USE:**

A. Construction or activation of a WCF shall commence within ninety (90) days of approval of the WCF permit or the permit shall be null and void. An additional ninety (90) day extension may be granted by the approving body due to weather conditions or other extenuating circumstances beyond the control of the applicant as accepted by said approval body. Requests and approvals of extensions shall be made in writing.

B. At such time that a licensed carrier plans to abandon or discontinue operation of a WCF, such carrier shall notify the city by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the WCF shall be considered abandoned upon such discontinuation of operations.

C. Upon abandonment or discontinuation of use, the carrier shall physically remove the WCF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antennas, support structures, equipment enclosures and security barriers from the subject property;
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
3. Restoring the location of the WCF to its natural condition; except, that any landscaping and grading shall remain in the after condition. Minor modification for integration with other landscaping or site design will be permitted and approved by staff.

D. If a carrier fails to remove a WCF in accordance with this section, the city may cause the facility to be removed, and all expenses of removal shall be paid by the owner of the land where the facility is located.

E. In the event that more than one provider is using the WCF, the WCF shall not be considered abandoned until all such users cease using the structure as provided in this chapter. (Ord. 1135, 2015)

**17.140.090: EXEMPT COMMUNICATION FACILITIES:**

A. The requirements imposed by this title shall not apply to antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, multichannel multipoint distribution providers (MMDS), or television broadcast stations (TVBS); provided, that all of the following conditions are met:

1. The antenna measures thirty nine inches (39") (1 meter) or less in diameter.
2. The antenna, if attached to a building, shall comply with subsections 17.140.040B1 and B2 of this chapter.
3. The antenna is attached to a freestanding tower measuring less than twelve feet (12') in height.

B. Additionally the requirements of this title shall not apply to wi-fi facilities serving an individual building or development or a wireless communications facility that measures less than four (4) cubic feet in size. (Ord. 1135, 2015)

**17.140.100: RECOVERY OF CITY COSTS:**

The wireless communication providers use various methodologies and analysis tools, including geological based computer software, to determine the specific technical parameters of personal wireless services and low power mobile radio facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, there may be need for expert review by a third party of the technical data submitted by the applicant. The city council or the commission shall require such technical review to be paid for by the applicant. The selection of the third party expert shall be at the city's discretion. Based on the results of the third party review, the city may require changes to the application for the WCF that comply with the recommendations of the expert. The expert review of the technical submission shall address the following:

- A. The accuracy and completeness of submissions;
- B. The applicability of analysis techniques and methodologies;
- C. The validity of conclusions reached; and
- D. Any specific technical issues designated by the city. (Ord. 1135, 2015)

**17.140.110: REVOCATION OR TERMINATION OF PERMIT:**

A permit issued pursuant to this chapter may be revoked for the following reasons:

- A. Construction and/or maintenance operation of a WCF at an unauthorized location;
- B. Construction or operation of a WCF in violation of any of the terms and conditions of this chapter or the conditions attached to the permit;
- C. Misrepresentation or lack of candor by or on behalf of an applicant, permittee or wireless communication provider in any application or written or oral statement upon which the city substantially relies in making the decision to grant, review or amend any permit pursuant to this chapter;
- D. Abandonment of the WCF as set forth in this chapter; or
- E. Failure to promptly cure a violation of the terms or conditions of the permit. (Ord. 1135, 2015)

**17.140.120: NOTICE AND DUTY TO CURE:**

A. Notice: In the event the city believes that grounds exist for revocation of a permit, the permittee shall be given written notice, by certified mail, of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the permittee a reasonable period of time, not exceeding thirty (30) calendar days, to furnish evidence:

1. That corrective action has remedied the violation or noncompliance;
2. That rebuts the alleged violation or noncompliance; and/or
3. That it would be in the public interest to impose some penalty or sanction less than revocation.

B. Hearing: In the event that a permittee fails to provide evidence reasonably satisfactory to the city as provided in subsection A of this section, the city shall refer the apparent violation or noncompliance to the commission.

1. The commission shall provide the permittee notice and reasonable opportunity to be heard concerning the matter, and a public hearing shall be conducted.
2. Within ten (10) calendar days of the completion of the hearing, the commission shall issue a written decision revoking the WCF permit or imposing such lesser sanctions as may be deemed appropriate under the circumstances.

3. In making its decision, the commission shall apply the following factors:
  - a. Whether the misconduct was egregious;
  - b. Whether substantial harm resulted;
  - c. Whether the violation was intentional;
  - d. Whether there is a history of prior violations of the same or other requirements;
  - e. Whether there is a history of overall compliance; and
  - f. Whether the violation was voluntarily disclosed, admitted or cured. (Ord. 1135, 2015)