

ORDINANCE NO. 20-\_\_\_\_\_

AN ORDINANCE CREATING PART 7 (ELIGIBLE FACILITIES REQUESTS) OF ARTICLE 4 (SITE DEVELOPMENT STANDARDS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO ELIGIBLE FACILITIES REQUESTS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Part 7 (Eligible Facilities Requests) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is created to read as follows:

**PART 7: ELIGIBLE FACILITIES REQUESTS**

**7.4.701: PURPOSE AND INTENT:**

**7.4.702: DEFINITIONS:**

**7.4.703: REVIEW PROCEDURES AND REQUIREMENTS:**

**7.4.701: PURPOSE AND INTENT:**

The purpose of this Part is to provide for modifications of existing wireless communications facilities that meet the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. This Part does not supersede generally applicable health and safety regulations set forth in or incorporated into this Code.

**7.4.702: DEFINITIONS**

Defined terms used in this Part shall have the definition provided for in this Section or as provided for in Part 6 of this Article.

BASE STATION: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or

encompass a Tower as defined herein or any equipment associated with a Tower including Accessory Equipment. Base Station does include, without limitation:

- A. 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 Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks) that, at the time the relevant application is filed with the City, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs (A) and (B) above.

**COLLOCATION:** The mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

**ELIGIBLE FACILITIES REQUEST:** Any request for modification of an Existing Tower or Existing Base Station that is not a Substantial Change, and involves: (i) Collocation of Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement of Transmission Equipment.

**ELIGIBLE SUPPORT STRUCTURE:** Any Tower or Base Station as defined in this Section, provided that it is Existing at the time the application is filed with the City under this Section.

**EXISTING:** A constructed Tower or Base Station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower. A legal non-conforming Tower or Base Station, including any Tower that has not been

reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

SITE: When used in the context of Eligible Facilities Requests, for Towers other than towers in the public rights-of-way, the area in proximity to the Structure and to other Transmission Equipment already deployed on the ground.

SUBSTANTIAL CHANGE: A modification that substantially changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:

A. For Towers, other than Towers in the Right-of-Way, it increases the height of the Tower by more than ten percent or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater;

B. For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for other Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;

C. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for Towers in the Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;

D. For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;

E. For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection, a change which undermines the concealment elements of an Eligible Support Structure will be considered to defeat the concealment elements; or

F. For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (A), (B), and (C) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or Base Station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

TOWER: Any structure that is built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

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

#### **7.4.703: REVIEW PROCEDURES AND REQUIREMENTS:**

A. Submittal Requirements for Eligible Facilities Requests. In all zoning districts, Eligible Facilities Requests shall be considered a use by right. The City shall prepare, and from time to time revise and make publicly available, an application form which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification or collocation. Such information may include, without limitation, whether the project:

1. Would result in a Substantial Change;

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

B. Review Periods. Subject to tolling as provided for below, and unless a longer review period is agreed to by the Applicant, applications for Eligible Facilities Requests shall be subject to a review period of sixty (60) days. The application shall not be deemed to be approved by the City for failure to meet the review period.

C. Tolling of Review Period for Eligible Facilities Requests. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:

1. 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;

2. The timeframe for review continues running again when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and

3. Following a supplemental submission, the City will notify the Applicant within ten (10) days that the supplemental submission did not provide the missing information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (c)(1). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

D. Presumptions. For purposes of determining if a constructed Tower or Base Station is Existing, the Tower or Base station shall be presumed to have not been approved under a zoning or siting process, or other regulatory review process, unless a building permit or other proof of such process is provided by the Applicant or by the City.

E. Decisions. Upon receipt of an application for an Eligible Facilities Request, the Manager shall review such application to determine whether the application so qualifies. If the Manager determines that the Applicant's request is an Eligible Facilities Request, the Manager shall approve the application. If the Manager determines that the Applicant's request is not an Eligible Facilities

Request, the Manager shall deny the application, and, notwithstanding anything else in this Code, the applicant may immediately submit an application for modification of the WCF. Each decision shall be in writing and supported by substantial evidence in a written record. The Applicant shall receive a copy of the decision.

F. Reconsideration. If the Manager denies an application for an Eligible Facilities Request at least fifteen (15) days prior to the expiration of the review period, the Applicant may request reconsideration of the application by submitting a written objection that identifies clear error on the part of the Manager at least ten (10) days prior to the expiration of the review period. If the Manager does not approve the application in writing upon reconsideration, the original denial shall stand as the final decision of the Manager.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2020.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Council President

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

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Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk