

ORDINANCE NO. 30, Series 2018
INTRODUCED BY: COUNCILOR ALEXANDRA LYNCH

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING SECTION 26-22.5 OF THE CODE OF ORDINANCES OF LAFAYETTE, COLORADO, REGARDING WIRELESS COMMUNICATION FACILITIES

WHEREAS, in its desire to address the ongoing amendments of federal and state laws and regulations and the advance of technology concerning wireless communications, the City, through adoption of Ordinance No. 36, Series 2017, adopted on September 19, 2017, repealed its existing telecommunications regulations and adopted updated regulations for wireless communication facilities, and

WHEREAS, given the fluidity of the wireless communication field and its regulations, the City, based upon input from the expertise provided by the Colorado Communications Utility Alliance which is a consortium of political subdivisions formed in part, to protect communities interests in all matters related to telecommunications and wireless communication facilities and comments from members of the industry desires to further update its wireless communication facility regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. Section 26-22.5-2(a) (1), “Applicability,” of the Code of Ordinances of the City of Lafayette, Colorado, is amended to read:¹

(a) The requirements set forth in this section shall apply to all WCF applications for base stations, alternative tower structures, small cell facilities, alternative tower structures located within right-of-way, and towers as defined in this section and further addressed herein.

The requirements set forth in this section shall not apply to:

(1) Amateur radio antennas, OTARD and other residential television reception/antenna towers except as required in the operational standards set forth in this section.

Section 2. Section 26-22.5-3, “Definitions,” of the Code of Ordinances of the City of Lafayette, Colorado is amended, in part, to read:²

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

¹ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~striketrough~~.

² Ibid.

Alternative tower structure means manmade trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are compatible with the natural setting and/or surrounding structures, and camouflage or conceals the presence of antennas or towers so as to make them architecturally compatible with the surrounding area. This term also includes any antenna or antenna array attached to an alternative tower structure or a stand-alone pole (including a replacement pole) in the right-of-way that accommodates small cell facilities to the extent the pole meets the camouflage and concealment standards of this chapter.

Monopole means a single, freestanding pole-type structure supporting one or more antennas.

Pole-mounted small cell facility means a small cell facility with antenna that are mounted and supported on an alternative tower structure, which includes a replacement pole.

Replacement pole means a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a WCF or small cell facility or to accommodate collocation and remove the pre-existing pole or structure.

Site means the area comprising the base of the structure and other related accessory equipment deployed on the ground.

Small cell facility means a WCF where each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than 17 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cell facilities may be attached to alternate tower structures, monopoles, and pole support structures.

Substantial change means a modification that substantially changes the physical dimensions of an eligible support structure, which meets any of the following criteria:

- (1) it increases the height of the structure by more than 10 percent or more than ten feet, whichever is greater;
- (2) it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (3) 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 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

- (4) it entails any excavation or deployment outside the current site;
- (5) it would undermine the concealment elements of the eligible support structure; or
- (6) it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), and (3) of this subsection. 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 traffic signals; 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 means any structure that is built for the sole or primary purpose of supporting one or more Federal Communications Commission ("FCC") licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guy towers or monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

Section 3. Section 26-22.5-4(b), "Operational standards; radio frequency standards," of the Code of Ordinances of the City of Lafayette, Colorado, is repealed in its entirety and retitled "Permission to use within rights of way upon public property," to read as follows:³

(b) *Permission to use within rights-of-way or upon public property.* For WCFs in the right-of-way, the applicant shall execute a master license agreement with the city, granting applicant a non-exclusive license to use the right of way. Applicants shall also, as applicable, execute supplemental site licenses with the city for each facility subject to the master license agreement. An annual attachment fee shall be required for each supplemental site license involving the attachment of WCF's to any city owned structure in the right-of-way. Master licenses and supplemental site licenses are subject to administrative processing fees, and such fees along with the attachment fee shall be established by resolution of city council. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner. Prior to, or concurrently with, seeking land use approval for a WCF on public property, the applicant shall execute a lease agreement with the city

Section 4. Section 26-22.5-4(f), "Operational standards; abandonment and removal," of the Code of Ordinances of the City of Lafayette, Colorado, is amended to read as follows:⁴

³ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~.

(f) *Abandonment and removal.* If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the city of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The city, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the city. If the WCF is not removed within said 30 days, the city may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the city, in its sole discretion, shall not approve any new WCF application until the applicant, if also an owner or operator of an abandoned WCF, has removed such WCF or payment for such removal has been made to the city.

Section 5. Section 26-22.5-5, "Design standards," of the Code of Ordinances of the City of Lafayette, Colorado, is amended to read, in its entirety, as follows:⁵

26-22.5-5. Design standards.

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

(1) *Camouflage/concealment.* All WCFs and any transmission equipment shall, to the extent possible, use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and built environment. Design, materials and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.

a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., placed underground, depressed, or located behind earth berms) to minimize their profile.

b. The camouflage design may include the use of alternative tower structures should the director determine that such design meets the intent of the Code and the community is better served thereby.

c. All WCFs, such as antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

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

(3) *Colocation.* WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF unless

⁴ Ibid.

⁵ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~striketrough~~.

the city approves an alternative design to the extent such design is reasonably feasible based upon construction, engineering and design standards. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the city, the owner or operator shall provide evidence demonstrating why colocation is not possible at a particular facility or site.

(4) *Siting.*

a. No portion of any WCF may extend beyond the property line of the lot upon which it is located.

b. Colocation. WCFs may be required to be designed and constructed to permit the facility to accommodate WCFs from at least two wireless service providers on the same WCF unless the city approves an alternative design. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or location.

c. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Code standards.

(5) *Lighting.* WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

(6) *Landscaping and fencing requirements.*

a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below Code standards.

b. WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.

c. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by the director.

d. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the site perimeter may be a sufficient buffer.

e. No trees larger than four inches in diameter measured at four and one-half feet high on the tree may be removed, unless authorized by the director. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1.

(7) *Noise.* Noise generated on the site must not exceed the standards in the Code, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the city.

(8) *Adjacent to single family residential uses.* WCFs shall be sited in a manner that considers the proximity of the facility to residential structures and residential district boundaries. When placed by residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on

the corner formed by two intersecting streets. If these requirements are not reasonably feasible from a construction, engineering or design perspective, the applicant may submit a written statement to the director requesting the WCF be exempt from these requirements.

(9) Additional design requirements shall be applicable to the various types of WCFs as specified below:

a. *Base stations.* If an antenna is installed on a structure other than a tower, or alternative tower structure, such as a base station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the antennas and accessory equipment to match the structure. Additionally, any ground-mounted equipment shall be located, based upon the reasonable discretion of the city, in a manner necessary to address both public safety and aesthetic concerns and may, where appropriate, require a flush-to-grade underground equipment vault.

b. *Alternative tower structures and small cell facilities.*

1. Shall be designed and constructed to look like a building, facility, or structure typically found in the area;

2. Be camouflaged/concealed consistent with other existing natural or manmade features in the immediate proximity of the location where the alternative tower structure will be located.

3. Height or size of the proposed alternative tower structure or small cell facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of 60 feet;

4. Shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;

5. Shall take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;

6. Shall be compatible with the surrounding topography, tree coverage, and foliage;

7. Shall be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

8. Visual impacts of the proposed ingress and egress shall be minimized.

c. *Alternative tower structures and small cell facilities located in the right-of-way, requirements in addition to those set forth herein this subsection.*

1. Shall be no higher than 35 feet.

2. Shall be no more than ten feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 500 feet of the pole or structure.

3. Any new pole for an alternative tower structure or small cell facility shall be separated from any other existing WCF facility by a distance of a least 600 feet, unless the new pole replaces an existing traffic signal, street light pole, or similar structure determined by the director.

4. Pole-mounted components shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives.

5. Shall be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the alternative tower structure will be located.

6. Shall to the extent feasible, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the alternative tower structure.

7. Shall when located near a residential property, be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two intersecting streets.

8. Shall be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered.

9. Facility antennas, mast arms, equipment, and other facilities shall be sized to minimize visual clutter.

10. Any ground mounted equipment shall be installed in an underground or partially underground equipment vault (projecting not more than 36 inches above grade), or co-located within a traffic cabinet of a design approved by the director.

11. Shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. Must comply with the federal Americans with Disabilities Act and all applicable local, state, and federal law and regulations. No alternative tower structure nor small cell facility may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with this use by the city, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

d. *Towers.*

1. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the city;

2. Tower structures should use existing land forms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment;

3. Monopole support structures shall taper from the base to the tip;

4. All towers, excluding alternative tower structures in right-of-way, shall be enclosed by security fencing or wall at least six feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material; and

5. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of 60 feet;

6. Towers should be sited in a manner that is least obtrusive to residential structures and residential district boundaries where feasible;

7. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the tower to these uses;

8. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

9. Visual impacts of the proposed ingress and egress shall be minimized;

10. No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that no existing WCFs can accommodate the needs that the applicant proposes to address with its tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:

i. No existing WCFs are of sufficient height and are located within the geographic area required to meet the applicant's engineering requirements;

ii. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF; and

iii. The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for colocation.

11. A tower, located outside of the right-of-way, shall meet the greater of the following minimum setbacks from all property lines:

i. The setback for a principal building within the applicable zoning;

ii. Twenty-five percent of the facility height, including WCFs and transmission equipment; or

iii. The tower height, including antennas, if the tower is in or adjacent to a residential district or residential zoned property.

iv. Towers over 40 feet in height shall not be located within one-quarter mile from any existing tower that is over 40 feet in height, unless the applicant has shown to the satisfaction of the city that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

e. *Related accessory equipment.* Accessory equipment for all WCFs shall meet the following requirements:

1. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;

2. The total footprint coverage area of the WCFs accessory equipment shall not exceed 350 square feet;

3. No related accessory equipment or accessory structure shall exceed 12 feet in height;

4. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

Section 6. Section 26-22.5-6, “Review procedures and requirements,” of the Code of Ordinances of the City of Lafayette, Colorado, is amended to read, in its entirety, as follows:⁶

26-22.5-6 Review procedures and requirements.

(a) No new WCF shall be constructed and no colocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the city in accordance with this section. All WCFs shall be reviewed pursuant to the following procedures:

(1) *Submittal requirements.* In addition to an application form, signal interference letter, removal affidavits, and payment of all application and review fees, as established by resolution of city council, each applicant shall submit a scaled site plan, photo simulation, scaled elevation view and other supporting drawings, calculations, and other documentation showing the location and dimension of all improvements, including information concerning topography, radio frequency coverage, tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed by the director to be necessary to assess compliance with this section. Documents requiring signatures and seals by appropriate qualified professionals shall be provided by applicant after approval of the application by the director.

(2) *Inventory of existing sites.* Each applicant for a WCF shall provide to the director a narrative and map description of the applicant's existing or then currently proposed WCFs within the city, and outside of the city within one mile of its boundaries. In addition, the applicant shall inform the city generally of the areas of the city in which it believes WCFs may need to be located within the next three years. The inventory list should identify the site name, site address, and a general description of the facility (for example, rooftop antennas and ground mounted equipment). This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the city. Rather, it is an attempt to provide a mechanism for the city and all applicants for WCFs to share general information, assist in the city's comprehensive planning process, and promote colocation by identifying areas in which WCFs might be appropriately constructed for multiple users.

The city may share such information with other applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the city, provided however, that the city is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(3) *Abandonment and Removal.* Prior to approval, affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six months.

(4) In all zoning districts, applications for base stations, alternative tower structures, and towers may be permitted only as a conditional use in accordance with the requirements of this section. All applications for towers shall demonstrate that other alternative design options such as base stations or alternative tower structures are not viable options as determined by the city. Notwithstanding anything in this section to the contrary, no towers located in the right-of-way shall exceed 35 feet in height.

⁶ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~.

(5) *Applications for base stations, alternative tower structures and small cell facilities within right-of-way.* In all zoning districts each application for a base station, alternative tower structure or small cell facility within the right-of-way shall be reviewed and considered for approval by the director for conformance with this section and the applicant's execution of a license agreement as approved by the director. Applicants may appeal the director's decision by submitting a written notice of appeal to the city manager within ten calendar days from the date of the director's decision. The notice of appeal must specifically set forth the grounds for appeal and include all documentation the applicant deems relevant. The city manager shall within ten business days of receipt of the notice of appeal and review of all documentation submitted by the applicant and the director's decision issue a final decision which may affirm, overturn or modify the director's decision.

Except for WCFs in the right-of-way that meet all requirements of this section, the director may refer the application to planning and zoning commission for conditional use review if the director finds the proposed WCF to have a significant visual impact (e.g., proximity to historic or designated view corridors, or on significant community features), or otherwise is substantially incompatible with the structure on which the WCF will be installed, or it does not meet the clear intent of this section.

(6) *Review procedures for eligible facilities requests.*

a. *Application.* In all zoning districts, eligible facilities requests shall be considered a use by right subject to administrative review. The city shall prepare, 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. Such information may include, without limitation, whether the request:

1. Would result in a substantial change;
2. 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 colocation.

b. *Type of review.* Upon receipt of an application for an eligible facilities request pursuant to this section, the director shall review such application to determine whether the application so qualifies.

c. *Timeframe for review.* Subject to the tolling provisions of subparagraph d. below, within 60 days of the date on which an applicant submits an application seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by this subsection.

d. *Tolling of the timeframe for review.* The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the city and the applicant, or in cases where the director determines that the application is incomplete:

1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application;

2. 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

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

e. *Failure to act.* In the event the city fails to act on a request seeking approval for an eligible facilities request under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant becomes effective when the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

f. *Interaction with Telecommunications Act Section 332(c)(7).* If the city determines that the applicant's request is not an eligible facilities request as set forth in this section the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the city's decision that the application is not a covered request. To the extent such information is necessary, the city may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

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

(8) *Compliance with applicable law.* Notwithstanding the approval of an application for colocation as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in the Code and any other applicable federal, state, and/or local laws and regulations. In addition, all WCF applications shall comply with the following:

a. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;

b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;

c. Be maintained in good working condition and to the standards established at the time of application approval; and

d. Remain free from trash, debris, litter, noxious weeds, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the city or after discovery by the owner or operator of the site.

(9) *Compliance report.* Upon request by the city, the applicant shall provide a compliance report within 45 days after installation of a WCF, demonstrating that as installed and in operation, the WCF complies with all conditions of approval, all applicable Code requirements and standard regulations.

Section 7. Section 26-22.5-7(a), “Special use standards for approval,” of the Code of Ordinances of the City of Lafayette, Colorado is amended, in part, to read as follows:⁷

(3) *All other towers.* The city shall within the framework of the review criteria set forth in this section consider the following factors in determining whether to issue a conditional use approval, although the city may waive or reduce the burden on the applicant of one or more of these criteria if the city concludes that the goals of this section are better served thereby.

- a. Height or size of the proposed tower;
- b. Proximity of the tower to residential structures and residential district boundaries;
- c. Nature of uses on adjacent and nearby properties;
- d. Compatibility with the surrounding topography;
- e. Compatibility with the surrounding tree coverage and foliage;
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- g. Proposed ingress and egress; and

h. No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that no existing WCFs can accommodate the needs that the applicant proposes to address with its tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:

1. No existing WCFs with a suitable height are located within the geographic area required to meet the applicant's engineering requirements;
2. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF; and

3. The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for colocation.

(4) *Setbacks and Separation.* The following minimum setbacks and separation requirements shall apply to all WCFs for which a special use approval is required; provided, however, that the city may reduce standard setbacks and separation requirements if the applicant demonstrates that the goals of this section can be better met by reduced setback and separation requirements that protect the public health and safety, view corridors, or minimize adverse impact. A tower shall meet the greater of the following minimum setbacks from all property lines:

- a. The setback for a principal building within the applicable zoning district;
- b. Twenty-five percent of the facility height, including WCFs and related accessory equipment;
- c. The tower height, including antennas, if the tower is in or adjacent to a residential district; and

⁷ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~.

d. Towers over 90 feet in height shall not be located within one-quarter mile from any existing tower that is over 90 feet in height, unless the applicant has shown to the satisfaction of the city that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

Section 8. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 9. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 10. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 11. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 12. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section _____ 13. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE _____ DAY OF _____, 2018.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE _____ DAY OF _____ 2018.

CITY OF LAFAYETTE, COLORADO

Christine Berg, Mayor

ATTEST:

Susan Koster, CMC, City Clerk

APPROVED AS TO FORM:

David S. Williamson, City, Attorney