



Agenda for Regular Planning & Zoning Commission Meeting

Wednesday, August 25, 2021 @ 6:00 PM

Location: DALTON GARDENS CITY HALL,
6360 N 4th St., Dalton Gardens, ID

The meeting will be conducted in person and with online access using ZOOM:

<https://us02web.zoom.us/j/82240296111?pwd=anlUMjE4YUNjOWhtVUYwM2l3Smtidz09>

To participate or listen via telephone dial 1-(253)-215-8782 OR 1-(301)-715-8592

Webinar ID: 822 4029 6111; Password: 302951

1. CALL TO ORDER
2. ROLL CALL OF COMMISSION MEMBERS
3. APPROVAL OF MINUTES: **ACTION ITEM**
Commission to review and approve minutes of the regular meeting July 22, 2021.
4. DISCUSSION AND APPROVAL OF RECOMMENDATION OF DAS AND SMALL CELL DRAFT 4 TO CITY COUNCIL FOR PUBLIC HEARING: **ACTION ITEM**
5. DISCUSSION OF AGENDA ITEMS FOR SEPTEMBER 23, 2021 MEETING
6. ADJOURN: **ACTION ITEM**

Original Posting: 8/18/21

The purpose of the Agenda is to assist the Commission and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of Public Hearings. Any individual who wishes to address the Commission on any other subject should plan to speak when Item: Public Comments is identified by the Chairman. The Chairman and Commission will not normally allow audience participation at any other time. Please no repetitive or abusive comments. Workshops are for Commission Members discussion only on a topic, no action or decisions occur at this time. No Public Comment is taken during Workshops. Assistance for persons with disabilities will be provided upon 24-hour notice prior to the meeting by calling, Deputy City Clerk at (208) 772-3698.

City of Dalton Gardens
Regular Planning & Zoning Meeting Minutes
Thursday, July 22, 2021 @ 6:00 PM

Meeting was conducted via teleconference and in person.

CALL MEETING TO ORDER: Chairman Becker called the meeting to order at 6:01 PM

ROLL CALL: Physically present were Commissioner Melissa Cleveland, Commissioner Tyler Drechsel, and Chairman Mike Becker. Commissioner Caitlin O'Brien was present via Zoom and Commissioner Ron Sampert was absent. Also present were Ryan Hughes-City Planner, Chris Gabbert- City Attorney and Teresa Janzen- City Clerk/Treasurer.

1. TDrechsel made a motion was made to approve the regular meeting minutes from June 24, 2021. MCleveland seconded.

CO'Brien: aye TDrechsel: aye MCleveland: aye MBecker: aye Motion carries.

Chairman Becker gave Commissioner Cleveland her official certificate of appointment

2. Public Comment:

- a. Sue Supp: 7024 N 16th St- periodic disclosure that she is an Attorney a member of the Arizona State Bar Association and Federal Bar for the 9th Circuit and other organizations. Her opinions and advocacy are as a private citizen and not legal opinions.
3. **Commission discussed priorities for City Planner Time going forward.** Commission elected the focus to be Small Cell Tower Ordinance and Building Permits backlog as the top priorities.

TDrechsel made a motion to direct the City Planner to move forward to clear the Building Permit backlog, then focus on Small Cell Ordinance, and then revisit with the Commission for prioritization of the items on the below list. MCleveland seconded.

CO'Brien: aye TDrechsel: aye MCleveland: aye MBecker: aye Motion carries.

- Update Commercial zone allowed and special uses, improve landscaping and buffering standards.
- Setbacks for accessory structures in residential zone
- Fences
- Light Trespass

- Business licenses and home-based businesses – clarify and enhance standards for home-based businesses, improve process for regular business licenses to simplify renewals
 - Fees – amend sections of code that prescribe specific fee amounts, allow fees to be set by resolution
 - Subdivisions and short subdivisions – bring code into compliance with Idaho Code for platting, update procedures and standards
 - Cell towers – clarify where they can and can't be sited within the City, add standards for different types of facilities
 - Mandatory pumping of septic tanks every 5 years – add violation provisions
 - Wind power generators – eliminate variance provision
 - Signs – simplify and bring code into compliance with constitutional requirements
 - Amend or eliminate lot coverage in residential zone
 - Prohibit camping on city property
4. Discussion of Small Cell Ordinance Status
- a. Public Comment was given by:
 - i. Sue Supp: 7024 N 16th St- concerned that ROW is not truly known by the City and that some utilities have been placed outside of the ROW.
 - ii. Kurt Jernigan: 7439 N Davenport- questioned how residents get notice of where utilities are going to be placed
 - b. Matt Hall, City Engineer gave update that Utilities are requesting permits as residents are signing up for services. Most Fiber optic companies are choosing to go underground so they don't have to pay for Avista poles. Reviewed that ROW permit has been reviewed by the City Attorney and clearly states that the City does not make a claim as to where the ROW is. It is the Utilities responsibility to know where the ROW is. All utilities must play nice with each other in the ROW. City does not currently require a bond for utility work.
 - c. Chris Gabbert, City Attorney reiterated that the on the front of the ROW encroachment permit it states, "City makes no representation of ROW width". City Council has authorized an audit of the ROW inventory by the City Engineer. Recommends update the application to show onus is on the Applicant to notice Dalton Water Association and resolve any ROW conflicts. Wireless Telecom Ordinance is separate from the ROW utility box issues.
 - d. Chairman Becker would like to have bonding be required for a ROW encroachment permit.
5. Discussion was held regarding increasing/changing the lot coverage code 5-5-4-C. Commission preferred to uphold the Comp Plan and not undertake a revision to allow for greater lot coverage at this time.

6. TDreschel made a motion to move the regular August 26, 2021 meeting to Wednesday, August 25, 2021. MCleveland seconded.

CO'Brien: aye TDrechsel: aye MCleveland: aye MBecker: aye Motion carries.

7. TDreschel made a motion to adjourn the meeting. MCleveland seconded. All in favor. Chairman Becker Adjourned the meeting at 8:14 PM

Mike Becker, Chairman

ATTEST:

Teresa Janzen, City Clerk/ Treasurer



City of Dalton Gardens

6360 N Fourth Street, Dalton Gardens, ID 83815

Phone: (208) 772-3698 Fax: (208) 762-5156

MEMORANDUM

TO: MIKE BECKER, CHAIRMAN, PLANNING AND ZONING

FROM: RYAN HUGHES, CITY PLANNER, CHRIS GABBERT, CITY ATTORNEY

SUBJECT: DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES

DATE: AUGUST 12, 2021

Please find the attached references in preparation of the Planning and Zoning Commission's August meeting. At that time, the P&Z commission will review a proposed ordinance addressing placement of distributed antenna systems and small cell wireless communication facilities in the City of Dalton Gardens.

Please also consider the following:

- **Regulatory Framework**

Staff has appreciated the flexibility to review the current proposals, desires and both federal and local regulatory frameworks for addressing small cell regulation in the telecommunications area. In short, the FCC has issued several orders which have preempted local jurisdictions from imposing restrictions on the location, placement or expansion of small cell wireless facilities which would prohibit or "have the effect" of prohibiting any entity from providing such services. Whether a regulation "materially inhibits" the development of such services is a factual inquiry and may impact providers differently depending on their position. While aesthetic regulations are allowed, such regulations could be found to materially inhibit such development. Aesthetic regulations are permitted if they are reasonable and published in advance of an application. The intent of the underlying legislation is to ensure local governments do not unreasonably favor one competitor over another under the guise of aesthetic regulation. While the legislation preserves a local entity's ability to treat facilities differently which create different aesthetic concerns (even among those which provide functionally equivalent

services) such provisions cannot discriminate among the providers in consideration of the requirements of the underlying technology.

- **Emission Preemption**

The City remains preempted from regulating the placement, construction and modification of such facilities on the basis of radio frequency emissions. While the City may require confirmation of compliance with federal emissions standards, imposing additional regulatory framework on such providers may be considered a material inhibition to the placement or expansion of such services.

- **Strategy for preparing a comprehensive telecommunication's ordinance**

The current proposed ordinance was drafted to address specific concerns regarding placement of distributed antenna systems and small cell wireless facilities. However, the ordinance does not attempt to manage all proposed telecommunications facilities. The Dalton Gardens City Code does not currently contain a comprehensive telecommunications or wireless telecommunications ordinance. As more is learned about the needs of the city, and its ability to regulate all telecommunications, the P&Z commission could decide to engage in a strategic process in the formulation of such a comprehensive telecommunications ordinance. This could happen over a period of six to eight months and allow for each component of such an ordinance to be developed, reviewed, and scrutinized as to its technical, legal and administrative strength. During which time, the P&Z could encourage robust community engagement. The process could also elicit further testimony from experts in the field. At the end of such a process, all stakeholders will be better informed and educated. It will also provide time to equip (and increase, if necessary) the city's capacity to administer such an ordinance.

- **Review of peer cities' telecommunications ordinances**

Attached are the municipal code references from three peer North Idaho communities. In discussions with representatives of two subject cities, ordinances were developed in consultation with technical experts and through careful study of the legal tools available to Idaho municipalities. Although each ordinance differs in minor ways, they are similar in the items which are managed. Namely, 1.) the priority for collocation, 2.) aesthetic requirements (color, stealth, etc.), 3.) height and setbacks, and 4.) screening for visual impacts. In addition, each ordinance is similar in describing the extent of their regulation. By reviewing peer communities' regulations, we can find patterns and commonalities which are instructive in developing Dalton Gardens' comprehensive telecommunications ordinance. We can also learn from their process, and what pitfalls to avoid.

Attachments:

- Proposed Code Dalton Gardens Code Amendment to address Distributed Antenna Systems and Small Cell Wireless Facilities -Draft 4 for Planning Commission hearing – August 25, 2021
- Post Falls Municipal Code 18-26, “Wireless Communications Facilities”
- Sandpoint Municipal Code Ch. 15, “Telecommunications Facilities”
- Hayden Municipal Code Ch. 6, “Wireless Communications Facilities”
- Telecommunications peer city review 07222021
- Presentation: “*Update on Federal Communications Rules That Impact Idaho Municipalities’ Rights*” – Idaho Municipal Attorneys

CITY OF DALTON GARDENS, IDAHO

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF DALTON GARDENS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 1, SECTION 4 TO ADD DEFINITIONS; AMENDING TITLE 5, CHAPTER 3, SECTION 1 TO ADD A NEW ALLOWED USE TO THE COMMERCIAL DISTRICT AND TO CLARIFY REQUIREMENTS FOR A SPECIAL USE PERMIT; AMENDING TITLE 5, CHAPTER 3, SECTION 14 TO DELETE WIRELESS COMMUNICATION FACILITY; AMENDING TITLE 5, CHAPTER 4, SECTION 1 TO REVISE THE USES ALLOWED IN THE UTILITY DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 1 TO ADD A NEW ALLOWED USE IN THE RESIDENTIAL DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 2 TO CLARIFY USES WHICH REQUIRE A SPECIAL USE PERMIT; AMENDING TITLE 5 TO ADD A NEW CHAPTER 13 FOR STANDARDS FOR SPECIFIC USES AND A NEW SECTION 1 TO SAID CHAPTER TO ADD STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES, PROVIDING SEVERABILITY, REPEALING CONFLICTING PROVISIONS, AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DALTON GARDENS, IDAHO:

SECTION 1: AMENDMENTS TO TITLE 5, CHAPTER 1, SECTION 4

5-1-4: DEFINITIONS:

DISTRIBUTED ANTENNA SYSTEMS (DAS): A form of wireless communication facility consisting of a network of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

MACROCELL: An antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.

SMALL CELL: A form of wireless communication facility consisting of compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells. Small cells shall not exceed 50 feet in height and shall have antennas that are less than 3 cubic feet in size.

UTILITY SUPPORT STRUCTURE: A freestanding structure that is used for supporting utilities, including, but not limited to electrical service and communications. Such structures may consist of a monopole, mast, lattice tower, utility pole, water tower, or other similar structures.

WIRELESS COMMUNICATION FACILITY (WCF): A staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure,

transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

SECTION 2: AMENDMENTS TO TITLE 5, CHAPTER 3, SECTION 1, SUBSECTION B.2.

5-3-1: USES

B. Allowed Uses:

2. Allowed Uses: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use.

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

4. Special Use Permits: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use. A structure, site or parcel may have more than one special use permit. Each special use is considered a separate permit.

Wireless communication facility, except distributed antenna systems and small cell wireless communication facilities

SECTION 3: AMEND TITLE 5, CHAPTER 3, SECTION 14

5-3-14: APPENDIX 1 ACTIVITY GROUPS:

~~Wireless communication facility (WCF). Any facility designed and used for the purpose of transmitting, receiving, or relaying voice and data signals. WCFs include siting areas, transmission towers and antennas.~~

SECTION 4: AMEND TITLE 5, CHAPTER 4, SECTION 1

5-4-1 USE RESTRICTIONS:

A The utility district shall permit no land uses other than the following:

1. Water infrastructure such as the maintenance of wells, pumps, pump houses, water tanks, pipes, and associated fencing, equipment and accessory structures or buildings, all of which must be compatible with one another.

2. Electrical substations and associated fencing, equipment, accessory structures or buildings.

3. Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

SECTION 5: AMEND TITLE 5, CHAPTER 5, SECTION 1

5-5-1: ALLOWED USES:

In the Residential District, no building or land located therein shall be used, nor any structure hereafter erected or altered, except for the following purposes:

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

SECTION 6: AMEND TITLE 5, CHAPTER 5, SECTION 2

5-5-2: SPECIAL USES:

Public utility structures such as substations, pumping plants, ~~telephone exchanges~~ and similar uses.

SECTION 7: AMEND TITLE 5, TO ADD A NEW CHAPTER 13

CHAPTER 13 **STANDARDS FOR SPECIFIC USES**

5-13-1: STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES

- A. Distributed antenna systems (DAS) and small cells are allowed in all zones, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act) and State laws and requirements.
- B. Distributed antenna systems and small cells located within city right-of-way are subject to approval of encroachment permits, licensing agreements, building permits and administrative review, as applicable for the circumstance.
- C. Distributed antenna systems and small cells located on private property are subject to administrative review and building permit approval. No private property shall host more than one antenna system.
- D. Installation of a distributed antenna system or small cell on an existing building or existing utility support structure shall not result in an increase in height greater than 15' higher than the existing building or utility support structure. Utility support structures may be replaced, but shall be no more than 15 feet higher than the previous structure which did not support a distributed antenna system or small cell.
- E. New support structures used for distributed antenna systems or small cells which are not replacements shall not exceed 45 feet in height above grade. In no case shall the utility support structure and antenna in combination exceed 50 feet in total height.
- F. The antenna array shall be designed, placed and colored to blend into the architectural detail and coloring of the host structures. Support towers or poles shall be painted a non-reflective color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site-specific colors may be appropriate; however, each case should be evaluated individually.

G. A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

H. The City may charge fees for permit review and/or use of City-owned right-of-way, in accordance with the duly-adopted fee schedule.

I. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. If the report is prepared by an employee of the applicant, who is not an Idaho-licensed professional engineer, the report must be accompanied by documentation establishing the employee's competence to complete the report.

J. Documentation from an Idaho-licensed professional engineer shall be submitted which shall demonstrate the proposed facility's compliance with applicable Building Code standards, and describing the general structural capacity of the proposed facility, including the maximum number and type of devices that can be accommodated and the basis of the calculation of capacity. Additionally, a Non-Ionizing Electromagnetic Radiation Report demonstrating compliance with FCC regulations shall also be submitted.

K. Colocation of Facilities:

1. Policy: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.

2. Written consent to place DAS and small cell wireless facilities on utility poles and related infrastructure shall be submitted with the application to the City.

3. Colocation consent shall be required and a written statement shall be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

L. Setback Requirements:

1. Except for facilities which are collocated on the same structure, no DAS or small cell shall be located within 500 feet of another DAS or small cell installation.

2. No DAS or small cell shall be located within 100 feet of a residence.

3. Antenna towers shall be separated from the property line of any adjacent residentially zoned property at least a distance equal to the height of the antenna tower or one hundred feet (100'), whichever is greater.

M. Compliance:

1. All DAS and small cell facilities must comply with all standards and regulations of the FCC and any State or other Federal government agency with the authority to regulate wireless communication facilities.
2. All graffiti on DAS and small cell facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the facility. The graffiti must be removed within fourteen (14) days after notification by the City.
3. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

N. Indemnification. Each permit issued for a DAS or small cell facility located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the DAS or small cell.

O. Insurance. Each permit issued for a DAS or small cell facility located on City property shall procure and maintain insurance, in the amount set forth in the Master License Agreement, but in no event less than the minimum amount provided by the Idaho Tort Claims Act, Idaho Code Section 6-901 *et seq.*, and provide the City with a certificate of insurance on a standard insurance industry ACORD form or its equivalent. The insurance coverage required must be issued by an insurer licensed, authorized or permitted to transact business in the State of Idaho.

P. Colocation of DAS or Small Cell on Pre-Existing Structure. For the mounting or installation of a DAS or small cell facility on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within sixty (60) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

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 between the City and the applicant, or in cases where the City 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 begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Q. New Structure to Support Small Cell. For the mounting or installation of a DAS or small cell facility on a new tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within ninety (90) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City 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 begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

R. Abandonment. Any DAS or small cell that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such DAS or small cell shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Additionally, upon written notice from the City that the DAS or small cell has been abandoned by the owner of such infrastructure for a continuous period of more than twelve (12) months, the owner shall remove the same within ninety (90) days. If the removal cannot be accomplished within this timeframe, the owner shall request an extension and provide a plan to remove the same and the associated timelines to accomplish the removal. Failure to remove an abandoned DAS or small cell within said ninety (90) days shall be grounds to remove the DAS or small cell at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between the owner of a facility and the owner of a building or land upon which the facility is located to the contrary, they shall be jointly and severally responsible for the removal of abandoned unused facilities and the facility's foundation, if any.

SECTION 8. SEVERABILITY.

If any provision of this chapter, or its application to any person or circumstances, be declared unconstitutional or invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter or the application of the provisions to other persons or circumstances.

Nothing in this chapter shall be construed as preventing the adoption of more restrictive provisions set forth in other sections of the Dalton Gardens Municipal Code. The more restrictive provisions of the code shall control.

SECTION 9. REPEAL OF CONFLICTING PROVISIONS.

All provisions of the ordinances of the City of Dalton Gardens which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 10. EFFECTIVE DATE.

Upon passage and approval and publication in one (1) issue of the Coeur d'Alene Press, the official newspaper of the City of Dalton Gardens, Idaho, this Ordinance shall be in full force and effect.

PASSED under suspension of the rules at which a roll call vote was taken at the regular meeting of the city council of the City of Dalton Gardens, Kootenai County, Idaho, this _____ day of _____, 2021.

ATTEST:

DAN EDWARDS, Mayor

TERESA JANZEN, Clerk



Idaho Municipal Attorneys
INCORPORATED



Update on Federal Communications Rules That Impact Idaho Municipalities' Rights

Gerard Lavery Lederer



BEST BEST & KRIEGER
ATTORNEYS AT LAW

January 21, 2021

Top Telecom Issues for 2021

1. Aftermath of Ninth Circuit ruling on small cells
2. FCC actions on Eligible Facility Requests (6409 (a)) require communities to revise standards
3. Cable operators may come after your franchise fees
4. COVID-19 pandemic accelerates growing digital divide and lack of access to high speed broadband service
5. Is your community pursuing Emergency Broadband Funds.
6. Sprint/T-Mobile merger impacts cell site market
7. OTARD Rules clarified. Not sure what to recommend other than to know the rules



Issue Number 1: Ninth Circuit Rules on Small Cells



Idaho Municipal Attorneys
INCORPORATED



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Sprint Corp. v. FCC, No. 19-70123 (9th Cir.)

- Two important orders in 2018:
 1. Small Cell Order
 2. Moratoria Order
- The Ninth Circuit issued a decision on 8/12/2020
 - It had mixed results, with some outcomes benefitting local governments and more outcomes benefitting the wireless industry
- Cert Petition is being drafted.



2018 Small Cell Order

Sept. 26, 2018: FCC Adopts *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79

- Establishes special rules for small wireless facilities (SWFs)
 - Defines “small wireless facility” (SWF)
 - Redefines “effective prohibition” (materially inhibit)
 - Sets new 60-day and 90-day shot clocks for action
 - Limits fees and rents that can be charged for use of public right-of-way and municipal infrastructure for placement of small cells to reasonable, cost-based fees, and creates “safe harbors” (\$500, \$1000, and \$270)
 - Adopts new standards for limiting aesthetic regulations
- Also holds:
 - All permits/authorizations subject to FCC shot clocks
 - Collocation does not require existing wireless facilities, only an existing structure



2018 Moratoria Ban

August 3, 2018: FCC released *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 18-111, Third Report and Order and Declaratory Ruling, WT Docket No. 17-79

- *De jure* moratoria and *de facto* moratoria on wireless and wireline deployment generally “prohibit or effectively prohibit” provision of telecom services in violation of federal law, and are not saved from preemption as a form of rights-of-way management
- *De facto* moratoria are “...state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.” (¶139)
- *Example*: street cut moratoria that don’t allow alternative means of deployment such as aerial lines
- Went into effect immediately



Sprint Corp. v. FCC

- **In Favor of Local Governments** (BB&K Legal Alert: 8/17/20)
 - Court vacated portions of FCC aesthetic standards requirements
 - Aesthetic requirements (and undergrounding and spacing) *not* preempted if:
 - (1) reasonable,
 - ~~(2) no more burdensome than those applied to other types of infrastructure deployments, and~~
 - ~~(3) objective~~ and published in advance
 - Rejected industry request for “deemed granted” remedy for FCC shot clocks
 - This decision does **not** impact state shot clock rules or remedies
- **Action Item for 2021**: revisit aesthetic standards



Sprint Corp. v. FCC (cont'd)

- **In Favor of Status Quo** – Court upheld portions of the Order:
 - Limiting fees to cost recovery (2 to 1 vote)
 - Adopting “materially inhibits” standard and rejecting significant gap/least intrusive means test
 - Requiring aesthetic standards to be published in advance and be reasonable (technically feasible)
 - Adopting shortened shot clocks for small wireless facilities
 - Applying FCC shot clocks to all permits and authorizations
- Court also:
 - Upheld ban on moratoria (under certain conditions)
 - Dismissed as moot Montgomery County’s challenge based on FCC’s failure to act on RF standards



Sprint Corp. v. FCC (cont'd)

- **En banc petition filed** on 9/28/2020
 - Four main issues in petition:
 1. Ninth Circuit panel wrongly upheld the FCC's interpretation of the phrase "prohibit or have the effect of prohibiting" from 47 U.S.C. 253(a) and 332(c)(7)(B)
 2. Ninth Circuit panel adopted the FCC's cost-based limits on municipal fees and rents, including use of city-owned poles
 3. The FCC ignored established tests to distinguish proprietary and regulatory activities, and Ninth Circuit panel failed to heed Supreme Court guidance
 4. Ninth Circuit panel upheld an overly broad interpretation of Sections 253 and 332, which encroaches on the constitutional limits set by the Fifth and Tenth Amendments
- **En banc petition denied** on 10/22/2020
- **Petition for writ of certiorari due** on 3/22/2021
 - **Action item for 2021**: Monitor litigation as the orders could still be fully or partially invalidated



Major Elements of Order

- Establishes “materially inhibit” as what Section 253 and 332 means to prohibit or effectively prohibit.
- Rejects local government proprietary right to say no to access to RoW and government facilities in the RoW.
- Creates tests to see if local government action exceeds “materially inhibit” standard:
 - Tests for when fees, aesthetics, undergrounding & spacing, “act in a timely manner,” and other requirements materially inhibit service.
 - Creates 2 new shot clocks for “small cells” both inside and outside of rights-of-way; cost caps within RoW.
 - “Enhanced” remedy for failing to meet shot clocks
- Redefines “Collocate”



What Is a Small Cell?

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas ..., **or**

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, **or**

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment ... is no more than three cubic feet in volume; **(Note: no limit)**

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, **is no more than 28 cubic feet in volume...**

(4)... (5) ... and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).



Redefinition of Effective Prohibition (Para 34-43)

- “[P]rior approaches erred by requiring coverage gaps...”
 - “Significant gap” (9th Cir.) and “least intrusive alternative” (2nd, 3rd and 9th Cir.) appear abandoned – *See n. 94*
- A state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” (Para. 35 quoting *California Payphone*.)
- “We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities...also by materially inhibiting the introduction of new services or the improvement of existing services.” (Paragraph 37)



According to FCC, a Fee Is Permitted If...

- (1) The fees are a reasonable approximation of the state or local government's costs,
- (2) Only objectively reasonable costs are factored into those fees, and
- (3) Fees are no higher than the fees charged to similarly-situated competitors in similar situations.
- (4) Presumptively reasonable:
 - Non-recurring fees =
 - \$500 for first 5/\$100 for each additional
 - \$1,000 for new pole
 - Recurring fees = \$270 per facility including RoW fee and fee for attachment to municipal infrastructure
- (5) Specifically rejects rights of localities to act as a landlord in setting rates for RoW infrastructure (See paras. 92-97.)



Existing Agreements (Para 66)

- “... [T]his Declaratory Ruling’s effect on any particular existing agreement will depend upon all the facts and circumstances of that specific case. Without examining the particular features of an agreement, including any exchanges of value that might not be reflected by looking at fee provisions alone, we cannot state that today’s decision does or does not impact any particular agreement entered into before this decision....”



Aesthetics (para 84-89)

- Aesthetics requirements not preempted if:
 - (1) reasonable,
 - (2) no more burdensome than those applied to other types of infrastructure deployments, and
 - (3) objective and published in advance.
- “...aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible.”
- Focuses on cost of aesthetics – Is a requirement that is not an additional cost protected?



Undergrounding (para 90)

- “[...[You don’t have to]...go so far as requiring that all wireless facilities be deployed underground, [to] ...be considered an effective prohibition of service.”
- Test: “same criteria of aesthetics generally...”
 - (1) reasonable,
 - (2) no more burdensome than those applied to other types of infrastructure deployments, and
 - (3) objective and published in advance.



Spacing Requirements

- “...a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.” para 87
- “Some parties complain of municipal requirements regarding the spacing of wireless installations... ostensibly to avoid excessive overhead “clutter” that would be visible from public areas. We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements.”
- “For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use.”



Shot Clocks

- Apply to all permits required for deployment, not just wireless permits
- “We conclude that if an applicant proffers an application, but a...locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered...”
- Locality must accept “batched” applications
- Failure to meet shot clocks deemed an “effective prohibition” **NOT DEEMED GRANTED.**



Small Cell Shot Clock Reset

- Siting authority must:
 - Notify the applicant on or before the 10th day after submission that the application is *materially* incomplete.
 - Clearly and specifically identify the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information,
- Shot clock date calculation “shall restart at zero on the date on which the applicant submits all the documents and information required...”
- But...operators will argue shot clock starts on resubmission. Additional incompleteness notice is required if resubmission is inadequate



Collocation

- Two meanings:
 - Non 6409 context – there is a structure present, but not a wireless device. This provides 60 day shot clock for small cell and 90 day shot clock for all others
 - 6409 Context – there is a structure and the structure has a permitted wireless device.



Section 332(c)(7)

- Applies to “Personal Wireless Service [PWS] Facilities”
 - Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services
- Preserves local zoning authority, with five limitations **as interpreted and modified by Carr order**:
 - Shall not “unreasonably discriminate” among providers of functionally equivalent services – 332(c)(7)(B)(i)(I)
 - Prohibit or effectively prohibit provision of PWS – 332(c)(7)(B)(i)(II) **with Carr order standard define prohibit as ‘materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.’”**
 - Must act on request within “reasonable period of time” – 332(c)(7)(B)(ii). **Carr order creates two new small cell shot clocks and codifies two existing shot clocks.**
 - Must make final decision to deny “in writing” and supported by “substantial evidence” in written record – 332(c)(7)(B)(iii);
 - May not deny based on RF regulation if facility satisfies FCC rules – 332(c)(7)(B)(iv)



What's a “Written Decision?”

- The Telecom Act “does not require localities to provide [its] reasons in written denial letters . . . [so long as the locality] states its reasons with sufficient clarity in some other written record issued essentially contemporaneously with the denial.”
- *T-Mobile South LLC v. Roswell*, 135 S.Ct. 808, 818 (2015)



What's “Substantial Evidence?”

- Substantial evidence test similar to judicial review of administrative actions
 - “The substantial evidence inquiry is deferential: [we] may not overturn the [City’s] decision on ‘substantial evidence’ grounds if that decision is authorized by applicable local regulations and [is] supported by a reasonable amount of evidence (i.e., more than a ‘scintilla’ but not necessarily a preponderance).”
 - *Am. Tower Corp. v. San Diego*, 763 F.3d 1035, 1053 (9th Cir. 2014)



Action within a Reasonable Time 47 USC § 332(c)(7)(B)(ii)

Locality shall act “on any request for authorization to place, construct, or modify” facilities “within a reasonable period of time after the request is duly filed” considering “nature and scope of such request” FCC says, absent agreement with applicant, 332(c)(7) presumed violated if locality fails to act (Carr order would codify in 47 CFR 1.6001, 1.6002, 1.6003 and renumbers 1.40001 as 1.6100) :

- Small Cell (proposed new CFR 1.6001-6003)
 - Existing Structure = 60 days
 - New Structure = 90 days
- 6409 (47 U.S.C. § 1455) Collocation = 60 days
- Collocation application not subject to Section 6409) = 90 days
- On new sites = 150 days

Applicant must file suit within 30 days of denial or local failure to act, or lose rights



Meeting Deadlines

- General “shot clock” rules
 - Commences at submittal (even for incomplete apps)
 - Shot clock may toll (pause) but never resets
 - Clock ends when local government “acts” on application
- Complex rules for incomplete applications (Carr order would convert prior declaratory orders to 47 CFR 1.6003)
 - General rule: LGs may generally toll the clock with a written incomplete notice given within the first 30 days
 - 10-day resubmittal rule: application deemed complete if LG fails to deem it incomplete w/in 10 days after response to inc. notice
 - Publicly-stated rule: incomplete notice not effective when it asks for information not publicly stated as a requirement
 - One-bite rule: incomplete notices not effective if asks for information not requested in first notice
- Shot clock can always be tolled/extended by mutual agreement with applicant



Managing Wireless: Do's

- You must develop strategy based on considering local authority under Idaho law PLUS fed regs **after Carr.**
- For federal:
 - Examine whether laws/forms are consistent with **Carr order**/ consider special type of permit for 6409 **and Small Cell.**
 - Consider enactment of an ordinance that allows use of government property for cell locations -- **Carr order may challenge this concept.**
 - Ensure everyone in your organization understands that existing regs do not grant right of free collocations on government property
 - Ensure you don't grant that right in leases /licenses
 - Remember that in addition to land use requirements, wireless provider may require consent to be in RoW
 - Consider whether costs associated with RoW management need to be analyzed closely **as Carr order will limit rent to costs.**



Managing Wireless: Don'ts

- Try to avoid rules through a moratorium –
 - Commission is specific that moratoria will not toll 6409(a) or 332(c)(7) applications.
 - FCC on 8/6 established Moratoria are violations of Section 253 (a)
- Approve without understanding how a facility may expand – the smallest facility may grow an additional 10 feet up and 6 feet out.
- Demand documentation for the business need for an Section 6409 modification (Different rules apply for initial installation or substantial).



Changes to Your Process

- More stealth **and make sure requirement are pre-published.**
- Fees to cover costs
- Use forms
- Pre-meetings **but not if they run against shot clock.**
- Require applicant provide documentation that request meets the requirements of **Small Cell/Section 6409(a).**
 - Meets size change – including cumulative limit
 - Meets any stealth obligations
 - Meets any building code/safety/non-discretionary structural code
 - Complies with any condition of approval of construction or modification imposed on the applicable wireless tower or base station
- Make clear how franchising/RoW use/land use requirements apply



Issue Number 2: FCC Action on Section 6409 Requests (EFRs)



Idaho Municipal Attorneys
INCORPORATED



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Section 6409 Orders

- Section 6409(a) of the 2012 Spectrum Act
 - “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”
- FCC 2014 implementing order set detailed parameters for EFRs (47 CFR 1.6100)
- **Two substantial orders**
 - Clarifications Order ([BB&K Legal Alert: 6/22/20](#))
 - On 6/9/2020, in response to industry petitions FCC adopted “clarifications” to Section 6409 rules
 - Expansion Order



Section 6409 Clarifications Order

- **Concealment Elements** – protections for concealment elements *only apply to stealth facilities*
- **Aesthetic Conditions** – placement of a facility behind or beneath surrounding structures is aesthetic condition that *cannot* prevent a non-substantial increase in height
- **Equipment Cabinets** – limit of 4 ground-mounted cabinets applies separately to each EFR and is *not cumulative*
- **Height Increases** – for towers outside of PROW, height can increase 20 feet *plus* the height of new antenna, and there is **no limit** on new antenna's height
- **Shot Clock Rules** – shot clock triggered if applicant: (1) takes first procedural step; and (2) submits documentation addressing EFR criteria
- **Environmental Assessments** – under certain circumstances, an environmental assessment is not needed if applicant and the FCC have entered into a memorandum of agreement



Section 6409

Clarifications Order Appeal

- Filing deadline for appeals was 8/10/2020
- Appeals were filed by local governments:
 - Ninth Circuit Court of Appeals
 - D.C. Circuit Court of Appeals
 - Appeals will be consolidated in the Ninth Circuit
- Deadline to file interventions was 9/9/2020
- **Action Items for 2021:**
 - Monitor litigation
 - Update design standards and/or permitting process to require or encourage “stealth” facilities



Section 6409 Expansion Order

Expansion Order adopted: 10/27/2020

- Allows excavation up to 30 feet outside of site
- Only applies to towers (no base stations)
- Expansion is limited to transmission equipment
- Baseline size of “site” as of 2/22/2012 (Spectrum Act)
- Not to be used in public right-of-way or on municipal property
- Local governments can still enforce setbacks, health codes, and public safety codes

Action Items for 2021:

- Local Government filed a Petition for Reconsideration – awaiting decision on action by the
- Consider whether any updates to existing municipal code or design standards are warranted to protect against future Section 6409 requests



Summary of FCC Shot Clocks

FCC Category	Applicable Shot Clock
<p><u>Eligible Facilities Requests (EFR)</u> Must involve modification to existing wireless facility (tower or base station) and meet size and other requirements to qualify as EFR</p>	60 days
<p><u>Small Cells (Small Wireless Facility (SWF))</u> Must be personal wireless services facility that meets size and other requirements to qualify as SWF.</p>	Placement on existing structure (need not be existing wireless facility)
	New
<p><u>Collocations</u> Must involve placement of personal wireless services facility (that does not qualify as EFR or SWF) on existing structure which need not have wireless facility already on it</p>	90 days
<p><u>Other</u> Personal wireless services facility that does not fall in any other category</p>	150 days



Summary of NOI Deadlines

FCC Category	NOI Deadlines
<u>Eligible Facilities Requests (EFR)</u>	Initial Submission: 30 days Resubmissions: 10 days
<u>Small Cells (Small Wireless Facility (SWF))</u>	Initial Submission: 10 days* Resubmissions: 10 days *First NOI resets shot clock
<u>Collocations</u>	Initial Submission: 30 days Resubmissions: 10 days
<u>Other</u>	Initial Submission: 30 days Resubmissions: 10 days



Contact Information



Gerard Lavery Lederer

Gerard.Lederer@bbklaw.com

Best Best & Krieger

1800 K. Street N.W.

Suite 725

Washington DC 20006

Phone: (202) 785-0600

Fax: (202) 785-1234

Cell: (202) 664-4621

Website: www.bbklaw.com



City	Code section	Zones Allowed	Permit required	Criteria	Standards	Extent of regulation
						promote and protect the public health, safety and welfare, preserve the aesthetic character of the Post Falls community,
Post Falls	Chapter 18:26 - Wireless Communication Facilities		right-of-way encroachment permits and/or		inventory of its existing towers	and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted
			building permits and administrative review unless their installation requires the construction of a new tower or building		Color	under State and Federal law
			A single permit application may also be used for multiple small cells		Lighting:	
					State Or Federal Requirements:	To ensure City zoning regulations are applied consistently with Federal and State telecommunications laws, rules, regulations
	18.26.040	allowed in all zones subject to standards (18.26.040(A))			Use Of Stealth Design/Technology	and controlling court decisions; and
					Specific standards	DAS and small cells are permitted pursuant to section 18.26.040 of this chapter.



City	Code section	Zones Allowed	Permit required	Criteria	Standards	Extent of regulation
Hayden	Chapter 6 Wireless Communication Facilities	Colocation, or the attachment of facilities to existing structures, DAS and small cells are allowed in all zones,		Different criteria for	Height:	Minimize the visual impact of utility facilities on the community, particularly in and near Residential Zones
		regardless of the siting preferences listed in section 8-5-3 of this title, provided the applicant complies with all Federal laws		Existing tower	design standards	
				Colocation		Ensure City zoning regulations are applied consistently with Federal and State telecommunications laws, rules,
				New Tower		regulations and controlling court decisions; and
			All new towers proposed to be located in a Residential Zone or within two hundred feet (200') of a Residential Zone or in the			
			Central Business District are permitted only after application of the siting priorities			Provide regulations which are specifically not intended to, and shall not be interpreted or applied to: 1) prohibit or
						effectively prohibit the provision of wireless services, 2) unreasonably discriminate among functionally equivalent service
			The applicant for a tower located in a Residential Zone or within two hundred feet (200') of a Residential Zone or in the			providers, or 3) regulate wireless communication facilities and wireless transmission equipment on the basis of the
		Central Business District shall address these preferences in an alternative site analysis			environmental effects of radio frequency emissions to the extent that such emissions	



City	Code section	Zones Allowed	Permit required	Criteria	Standards	Extent of regulation
Sandpoint	Chapter 15 Telecommunication Facilities	All zoning districts for roof mounted structures (not to exceed district height) and host mounted support structures (not to exceed 5 feet above structure)	Conditional Uses Permit	Must show that colocation is not possible	Screening:	Ensures that regulation of telecommunications facilities does not have the effect of prohibiting the provision of
			Telecommunications Facility Development Permit		Visual Impact Mitigation	telecommunications services, does not unreasonably discriminate among functionally equivalent providers of such services, and
			Building Permit		Lighting:	allows the provision of adequate area coverage by such services
					Signage:	
					Noise Reduction	
		Central Business District shall address these preferences in an alternative site analysis				environmental effects of radio frequency emissions to the extent that such emissions



WIRELESS COMMUNICATION FACILITIES

SECTION:

8-6-1: Purpose**8-6-2: Applicability****8-6-3: Preferred Tower Locations****8-6-4: Utilities Compliance Permit Submittal Requirements****8-6-5: Eligible Facilities Request For An Existing Tower Or Base Station Application****8-6-6: Colocation Applications****8-6-7: New Tower Site Applications****8-6-8: Distributed Antenna Systems (DAS) And Small Wireless Facilities (SWFs)****8-6-9: Sharing Of Support Towers And Colocation Of Facilities****8-6-10: Setback Requirements For A Tower****8-6-11: Design Standards****8-6-12: Factors Considered In Granting Utility Compliance Permits****8-6-13: Independent RF Technical And Legal Review****8-6-14: Final Inspection****8-6-15: Compliance****8-6-16: Minor Modification Or Exceptions To Standards****8-6-17: Appeals****8-6-18: Removal Of Abandoned Antennas And Towers****8-6-1: PURPOSE:**

It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facility infrastructure(s). It is further the purpose of these provisions to:

- A. Minimize the visual impact of utility facilities on the community, particularly in and near Residential Zones;
- B. Minimize the impact of aerial facilities and their supporting infrastructure by establishing standards for siting design and screening;
- C. Preserve the opportunity for continued and growing service to accommodate the growing need and demand from the wireless industry;
- D. Establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- E. Ensure City zoning regulations are applied consistently with Federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- F. Provide regulations which are specifically not intended to, and shall not be interpreted or applied to: 1) prohibit or effectively prohibit the provision of wireless services, 2) unreasonably discriminate among functionally equivalent service providers, or 3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission (FCC). (Ord. 596, 5-24-2019)

8-6-2: APPLICABILITY:

- A. All wireless communication facility infrastructure unless expressly noted below requires a utilities compliance permit.
 1. New Towers, Antennas, DAS And SWF: All new towers, antennas, DAS and SWFs in the City are subject to these regulations, except as otherwise provided herein.
 - a. Utilities compliance permits are required for new towers and buildings associated with the utility infrastructure in all zones.
 - b. New antenna arrays meeting the requirements of section 8-6-11 of this chapter may be permitted with a building

permit, but without a utility compliance permit.

c. DAS and SWFs are permitted pursuant to section 8-6-8 of this chapter.

2. Pre-Existing Utility Infrastructure: Pre-existing utility infrastructure (i.e., towers or antennas) shall not be required to be modified to meet the requirements of this chapter.

3. Substantial Changes: A modification to existing infrastructure shall be deemed substantial when it meets the following criteria and shall require permits pursuant to subsection A1 of this section.

a. For towers other than towers in the public rights-of-way, the substantial change increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet (20'), whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten feet (10'), whichever is greater. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 USC 1455 (a)); or

b. For towers other than towers in the public rights-of-way, the substantial change involves adding an appurtenance to the body of the tower that would protrude horizontally from the edge of the tower more than twenty feet (20'), 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 edge of the structure by more than six feet (6'); or

c. For any support structure, the substantial change involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or

d. The substantial change entails any excavation or deployment outside the current approved site; or

e. The substantial change would defeat the concealment elements of the eligible support structure.

4. Exempt Facilities: The following are exempt from this section:

a. FCC licensed amateur (ham) radio facilities;

b. Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one meter (1 m) in diameter;

c. A WCF installed upon the declaration of a state of emergency by the Federal, State or local government, or a written determination of public necessity by the City; except that such facility must comply with all Federal and State requirements. The WCF shall be exempt from the provisions of this chapter for up to one month after the duration of the state of emergency; and

d. A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this chapter for up to one week before and after the duration of the special event not to exceed a maximum of twenty one (21) days.

e. Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to administrative renewals at the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements.

f. Ordinary maintenance and repair of the utility infrastructure.

g. Facilities and equipment, for emergency services including, but not limited to, the Kootenai County Sheriff's Department, Kootenai County Emergency Management System, and Northern Lakes Fire Protection District.

h. City facilities and Hayden Area Regional Sewer Board when doing work related to the City's facilities shall be reviewed according to other permitting processes (i.e., right-of-way encroachment, building, site, etc.).

5. Conflicts With Other Regulations: These wireless communication facility regulations are in addition to other regulations in this Code. In case of a conflict between regulations, the most restrictive will apply. (Ord. 596, 5-24-2019)

8-6-3: PREFERRED TOWER LOCATIONS:

All new towers proposed to be located in a Residential Zone or within two hundred feet (200') of a Residential Zone or in the Central Business District are permitted only after application of the siting priorities, ordered from most preferred (1) to least preferred (6) as identified in section 8-5-3 of this title.

The applicant for a tower located in a Residential Zone or within two hundred feet (200') of a Residential Zone or in the Central Business District shall address these preferences in an alternative site analysis prepared pursuant to subsection 8-6-4A2 of this chapter. (Ord. 596, 5-24-2019)

8-6-4: UTILITIES COMPLIANCE PERMIT SUBMITTAL REQUIREMENTS:

A. In order to have a complete application for consideration the following items must be submitted:

1. Eligibility Facility Request: An Eligibility Facility Request shall be required for all WCF to meet FCC requirements related to timeliness of application reviews and permit issuance. Once the Eligibility Facility Request is determined based on the following:

- a. Existing tower or base station per section 8-6-5 of this chapter; and/or
- b. Colocation Application per section 8-6-6 of this chapter; and/or
- c. New Tower and/or Site Application per section 8-6-7 of this chapter;

then the utility compliance permit may be reviewed.

2. Alternative Sites Analysis:

a. For towers in a Residential Zone or within two hundred feet (200') of a Residential Zone or in the Central Business District, the applicant must address the City's preferred locations with a detailed explanation justifying why a site of higher priority was not selected.

b. A complete alternative sites analysis provided under this subsection shall include three (3) alternative sites unless the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.

3. Colocation Consent: A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

4. Documentation: Applications submitted under this section for towers shall include the following materials:

a. Requirement For FCC/FAA Documentation: The applicant shall provide a copy of the applicant's FCC license or registration. The applicant shall provide a copy of site location approval from the FAA, where applicable.

b. Visual Analysis: A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view, including all equipment and ground wires.

c. Design Justification: A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable design standards under this chapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

d. Noise Study: Verification that the proposed structures and associated equipment meets subsection 11-11-9B of this Code shall be required. A noise study, if the proposal is in or within two hundred feet (200') of Residentially zoned property or in the downtown core, may be required.

e. Additional Information Required: Applicants for a tower shall also submit the following information:

(1) A description of compliance with all applicable Federal, State and local laws.

(2) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Municipality.

(3) A description of the suitability and/or non-suitability of the use of existing towers or other structures to provide the services to be provided through the use of the proposed new tower.

5. Radio Frequency (RF) Emissions Compliance Report: A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. If the report is prepared by an employee of the applicant, who is not an Idaho-licensed professional engineer, the report must be accompanied by documentation establishing the employee's competence to complete the report.

6. Documentation Submitted: Documentation from an Idaho-licensed professional engineer shall be submitted which shall demonstrate the proposed facility's compliance with applicable Building Code standards, and describing the general structural capacity of the proposed facility, including the maximum number and type of devices that can be accommodated and the basis of the calculation of capacity. Additionally, a Non-Ionizing Electromagnetic Radiation Report demonstrating compliance with FCC regulations shall also be submitted.

7. Other Permits Required: The utility compliance permit is reviewed concurrently with a variety of other processes to include but not be limited to a site, building, right-of-way, Eligible Facilities Request, Colocation Request, etc., with their own required submittals. A final permit shall meet the requirements of all permits to be issued.

8. Application Fees: An applicant shall submit an application fee in accordance with the City's then adopted fee schedule. (Ord. 596, 5-24-2019)

8-6-5: ELIGIBLE FACILITIES REQUEST FOR AN EXISTING TOWER OR BASE STATION APPLICATION:

A. Purpose; Application:

1. Purpose: This section implements section 6409(a) of the Spectrum Act (47 USC section 1455(a)), as interpreted by the FCC in its Report and Order No. 18-133 and regulated by 47 CFR section 1.40001, which require a State or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this section and Federal law.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the City to consider whether an application would subsequently require a utilities compliance permit. The City may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.

b. Review: Upon receipt of an application pursuant to this section which required a utilities compliance permit, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within sixty (60) days of the date on which an applicant submits an application seeking approval of a utilities compliance permit under this section, the City shall review and act upon the application, subject to the tolling provisions below.

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 between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will have ten (10) days to notify the applicant 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 this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application for a non-SWF under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted based on the following:

(1) Height: Maximum as established in subsection 8-6-9A4, table 2 of this chapter; and

(2) Minimum design standards; and

(3) Site location preference; and

(4) Right-of-way, building, and site permits must meet City of Hayden, and ADA requirements;

provided the applicant notifies the City in writing after the review period has expired the applicant shall be entitled to pursue all remedies under applicable law. (Ord. 596, 5-24-2019)

8-6-6: COLOCATION APPLICATIONS:

A. For the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within ninety (90) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 90-day review period begins to run when the application is filed, and

may be tolled only by mutual agreement between the City and the applicant, or in cases where the City 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 begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling); based on the following:

(1) Height: Maximum as established in subsection 8-6-9A4, table 2 of this chapter; and

(2) Minimum design standards; and

(3) Site location preference; and

(4) Right-of-way, building, and site permits must meet City of Hayden, and ADA requirements;

provided the applicant notifies the City in writing after the review period has expired the applicant shall be entitled to pursue all remedies under applicable law. (Ord. 596, 5-24-2019)

8-6-7: NEW TOWER SITE APPLICATIONS:

A. Procedure:

1. Purpose: This section also implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request for a new site or tower.

b. Review: Upon receipt of an application for a request for a new site or tower pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within one hundred fifty (150) days of the date on which an applicant submits an application seeking approval of a request for a new site or tower under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 150-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City 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 begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that has not been delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), based on the following:

(1) Height: Maximum as established in subsection 8-6-9A4, table 2 of this chapter; and

(2) Minimum design standards; and

(3) Site location preference; and

(4) Right-of-way, building, and site permits must meet City of Hayden, and ADA requirements;

provided the applicant notifies the City in writing after the review period has expired the applicant shall be entitled to pursue all remedies under applicable law. (Ord. 596, 5-24-2019)

8-6-8: DISTRIBUTED ANTENNA SYSTEMS (DAS) AND SMALL WIRELESS FACILITIES (SWFs):

A. Regulations:

1. Colocation, or the attachment of facilities to existing structures, DAS and small cells are allowed in all zones, regardless of the siting preferences listed in section 8-5-3 of this title, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act) and State laws and requirements.
2. DAS and SWF in all zones are subject to approval via utilities compliance permit, right-of-way encroachment permits, building permits and/or site permits unless their installation requires the construction of a new tower or building.
3. A utilities compliance permit shall not be required for replacement of utility support structures, so long as the height of a replacement structure, including antennas, is no more than the greater of:
 - a. Fifteen feet (15') taller than the existing utility support structure; or
 - b. The minimum height necessary to provide the required safety clearances from transmission or distribution lines.
4. A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple SWFs. A single license agreement may be used for multiple node locations in DAS and/or SWF networks. In no case may a single permit or license be used for more than five (5) distributed antennas, SWFs, or node locations. An application is a request for colocation if it does not involve a substantial increase in the size of a tower as defined as above. (Ord. 596, 5-24-2019)

8-6-9: SHARING OF SUPPORT TOWERS AND COLOCATION OF FACILITIES:

A. Sharing And Colocation:

1. Policy: Whereas the City understands the importance of critical deployments of utility infrastructure (i.e., SWFs, cable, telecommunications, fiber-optics, etc.), it is the policy of the City to minimize the number of support towers and/or utility poles, and to encourage the colocation of utilities of more than one service provider on a single utility infrastructure (i.e., water storage, support tower and/or utility pole).
2. Provisions: No new tower may be constructed within one-half ($\frac{1}{2}$) mile of an existing tower, unless it can be demonstrated that the existing tower is not available or feasible for colocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant. Factors to be considered in determining whether an applicant has made this demonstration include those listed in subsection A3 of this section.
3. Factors Considered In Granting Utility Compliance Permits For Towers: The following criteria in determining whether to issue a permit shall be used:
 - a. Height of the proposed tower.
 - (1) Towers exceeding a height of seventy five feet (75') shall be able to accommodate colocation of at least one additional service provider.
 - (2) Additional height to accommodate additional colocation may be approved if the applicant submits information certifying the tower has capacity for at least two (2) additional service providers.
 - (3) The applicant shall provide a letter indicating their good faith intent to encourage colocation on the tower.
 - b. Proximity of the utility infrastructure to residential structures and Residential District boundaries.
 - c. Surrounding topography, tree coverage and foliage, nature of uses on adjacent and nearby properties.
 - d. Design of the utility infrastructure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - e. No existing structures are located within the geographic area which meet applicant's engineering requirements.
 - f. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - g. 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.
 - h. 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 sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - i. The applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
4. Placement Provisions - Towers: Towers shall be located only in those areas described in table 2 of this subsection, provided that towers that are proposed to be located in a Residential Zone or within two hundred feet (200') of a Residential Zone shall be subject to the siting priorities set forth for preferred tower locations in section 8-5-3 of this title.

NEW WIRELESS COMMUNICATION TOWER CRITERIA

Zone Category	May Be Located In Public Right-Of-Way (ROW) ⁵	Maximum Tower Height	Stealth (Camouflage) Design	Setback From Property Lines (Does Not Apply Within ROW)
R-1, R-S, R-M/F	Yes	75' ¹	Required	25', subject to section 8-6-10 of this chapter
C	Yes	90' ²	Optional ²	20', subject to section 8-6-10 of this chapter
CBD	Yes	90' ²	Required ³	
L-I, A	Yes	120' ⁴	Optional ⁴	20'; 25', subject to section 8-6-10 of this chapter

Notes:

1. If an applicant wants to construct a tower in a Residential Zone or within 200 feet of a Residential Zone, then stealth design shall be required.
2. An additional 20 feet in height is allowed if applicant uses stealth design.
3. CBD Zone shall require stealth design. Preferred location shall be on top of existing structure.
4. An additional 30 feet in height is allowed if applicant uses stealth design.
5. Location to be approved per title 7, chapter 2, "Right-Of-Way Encroachments", of this Code.

(Ord. 596, 5-24-2019)

8-6-10: SETBACK REQUIREMENTS FOR A TOWER:

A. Requirements:

1. Notwithstanding the setbacks provided for in subsection 8-6-9A4, table 2 of this chapter, when a residential structure is located within a 1:1 ratio of the height of the tower on adjacent or nearby property, the support tower structures shall be set back from property lines as required by that zone or a minimum of one foot (1') for every foot of tower height, whichever produces the greater setback, unless:

- a. The setback is waived by the owner(s) of the residence(s) within the setback area and this waiver is recorded with the property; or
- b. The tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a one hundred foot (100') tall monopole with a breakpoint at eighty feet (80'), the minimum setback distance would be twenty two feet (22') (110 percent of 20 feet, the distance from the top of the monopole to the breakpoint) or the minimum side yard setback requirements for that zone, whichever is greater. Provided, that if an applicant proposes to use breakpoint design technology to reduce the required setback from a residence(s), the issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer.

2. All equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located. (Ord. 596, 5-24-2019)

8-6-11: DESIGN STANDARDS:

A. Standards:

1. Color: The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
2. Lighting: For support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is also permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site. All such lighting shall be fully shielded, and all lighting shall be contained on the lot. When lighting is proposed a photometric plan shall be submitted which demonstrates compliance with these standards. "Fully shielded" lighting shall meet the definition of subsection 11-18-5J of this Code.
3. State Or Federal Requirements: All towers and antennas must meet or exceed current standards and regulations of

the FAA, the FCC, and any other agency of the State or Federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and if WCF equipment is added either through colocation or replacement, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

4. **Site Development And Building Permit:** All utility infrastructures shall be required to obtain a permit and shall be subject to the site development standards identified in subsection 8-5-5A3 of this title.

5. **Building Codes; Safety Standards:** 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 State or local Building Codes and the applicable industry standards for towers, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon written 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 and/or identify a plan to bring the infrastructure into compliance that is acceptable to the City. Should the City determine that imminent failure or public safety is at risk or in jeopardy; the City shall remove the tower at the owner's expense. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower at the owner's expense. Compliance with this subsection is also subject to the City's Code enforcement pursuant to the International Building Code, regarding unsafe building and related provisions.

6. **Signs:** No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the City.

7. **Visual Impact:** All utility infrastructures shall be sited and designed to meet the site development standards identified in subsection 8-5-5A6 of this title.

8. **Use Of Stealth Design/Technology:** Aesthetic requirements shall be: a) reasonable and b) no more burdensome than those applied to other types of infrastructure deployments. The applicant shall provide justification why it is not employing stealth technology for all above ground utility infrastructure. Stealth design is required for macrocell facilities in Residential Zones, and to the extent shown in subsection 8-6-9A4, table 2 of this chapter and elsewhere as provided in this chapter, concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communication facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the North Idaho region.

9. **Building-Mounted Transmission Equipment:**

a. All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

b. All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.

c. Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.

10. **Antenna Arrays:** Antenna arrays are permitted in any zone as long as they are located upon an existing structure (except on single family houses, duplexes, or signage or a building less than 30 feet in height), that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet (15') above the structure. Installation on City property and/or right-of-way requires a right-of-way encroachment permit as defined in title 7, chapter 2 of this Code. However, if any support tower is required to achieve the necessary elevation, then a utilities compliance permit shall be required. If a new equipment cabinet is to be installed, it must be screened if it is higher than the existing screened facility.

11. **WCFs In The Public Rights-Of-Way:**

a. **Utility Support Structure - Mounted Equipment:** All pole-mounted transmission equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible.

b. **License Or Agreement:** For all WCFs to be located within the right-of-way, the applicant must have a valid utility compliance permit, license, franchise agreement, right-of-way agreement, encroachment permit or exemption otherwise granted by applicable law. If the applicant is willing to install its ancillary facilities underground, that determination shall be subject to utilities compliance review.

12. **Accessory Uses:**

a. Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicle or equipment storage, or other uses not essential to the

transmission or reception functions.

b. All accessory buildings shall be subject to applicable building, site, and right-of-way permits.

c. No equipment shall be stored or parked on the site of a tower, unless used in direct support of the antennas or the tower that is being repaired.

13. Accessory Equipment: In Residential Zones, all accessory equipment shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is: a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and b) located so as to be unobtrusive as possible consistent with the proper functioning of the equipment.

14. Site Design Flexibility: Individual sites vary in the location of adjacent buildings, existing trees, topography and other local variables. Therefore, the utility infrastructure and supporting equipment shall be installed so as to best camouflage, disguise, or conceal them, to be more closely compatible with and blend into the setting or host structure, as determined by the City.

15. General Standards And Construction Provisions: The general standards and construction provisions shall meet those identified for major and minor utilities in subsection 8-5-5A12 of this title in addition to all structures shall conform to FCC and FAA regulations, if applicable. A description of compliance with all applicable Federal, State and local laws may be required. (Ord. 596, 5-24-2019)

8-6-12: FACTORS CONSIDERED IN GRANTING UTILITY COMPLIANCE PERMITS:

Unless otherwise noted in this section the factors considered in granting utility compliance permits shall be in accordance with section 8-5-6 of this title. (Ord. 596, 5-24-2019)

8-6-13: INDEPENDENT RF TECHNICAL AND LEGAL REVIEW:

Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of independent RF and legal experts of its choice to provide technical and legal evaluations of permit applications. The third party experts shall have recognized qualifications in their fields. The expert's review may include, but is not limited to:

- A. The accuracy and completeness of the items submitted with the application;
- B. The applicability of analysis and techniques and methodologies proposed by the applicant;
- C. The validity of conclusions reached by the applicant; and
- D. Whether the proposal complies with the applicable approval criteria set forth in this chapter.

The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is released. (Ord. 596, 5-24-2019)

8-6-14: FINAL INSPECTION:

A. A certificate of completion will only be granted upon satisfactory evidence that the facilities were installed in substantial compliance with the approved plans and photo simulations. Additionally, all site improvements, right-of-way encroachment permit requirements, and other building permit requirements must be completed and approved prior to a certificate of completion.

B. A certificate of occupancy shall be granted upon satisfactory evidence that the building structure has been constructed in compliance with the approved plans and all other State and local agency final inspections have been approved for buildings to be occupied.

C. If it is found that the facilities installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required bringing the installation into compliance promptly and in any event prior to operation. (Ord. 596, 5-24-2019)

8-6-15: COMPLIANCE:

A. All communication facilities must comply with all standards and regulations of the FCC and any State or other Federal government agency with the authority to regulate wireless communication facilities.

B. The site and utility facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on utility facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator. The graffiti must be removed within fourteen (14) days after notification by the City.

D. All stealth materials (to include paint, artist wraps, etc.) must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

E. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the

revocation within thirty (30) days of receiving notice of such revocation. (Ord. 596, 5-24-2019)

8-6-16: MINOR MODIFICATION OR EXCEPTIONS TO STANDARDS:

A. Regulations:

1. **Applicability:** Application for a minor modification or an administrative exception from a particular provision, regulation or standard of this chapter may be made in writing to the Community Development Director or his/her designee.

2. **Minor Modifications:** Modifications that are considered to be minor in nature, as determined by the Community Development Director or his/her designee shall not require application or payment of fees.

3. **Exceptions:** Exceptions may be considered for various aspects of the site, landscaping, parking and loading, and height of the wireless communication facility. Exception requests for up to twenty percent (20%) of the required standard shall be considered a minor modification and follow subsection A2 of this section.

4. **Exceptions In Residential Zones:** For utility infrastructure proposed to be located in a Residential Zone or within two hundred feet (200') of a Residential Zone, or in the Central Business District, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities, the applicant must also demonstrate that the manner in which it proposes to fill the gap in coverage, meet capacity requirements, or technologies of a service network is the least intrusive on the Residential Zone.

5. Application And Submittal Requirements:

a. A written statement demonstrating how the exception would meet the criteria.

b. A site plan, if different from that included within the utilities compliance permit, that describes the proposed facility's design and dimensions, as it would appear with and without the minor modification or exception. Elevations showing all components should be shown with and without the exception.

c. Color simulations before and after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

6. Findings: Exceptions and minor modifications may only be granted based upon the following findings.

a. The exception is consistent with the purpose of the development standard for which the exception is sought; and

b. The requested exception or minor modification is based upon a unique character or feature of the property or uses, which does not generally apply to other properties or similar uses subject to the requirement from which an exception is sought; and

c. The requested exception or minor modification will not be injurious to the public safety and welfare; and

d. If approved, the requested exception or minor modification will be equally protective of the public interest, and will otherwise achieve the identified purposes of this chapter; and

e. If a reduction in the required parking is requested, the applicant has provided sufficient evidence to demonstrate that the off street parking proposed will be adequate to meet the needs of the present use, and likely future uses; such evidence may include, but is not limited to, a consideration of on street parking available to serve the subject property; and

f. If a reduction in the required setback is requested, the applicant has provided sufficient evidence to demonstrate that the exception or minor modification will not be injurious to the public safety and welfare; and

g. If an increase in the allowed height of the utility infrastructure is requested, the applicant has provided sufficient evidence to demonstrate that the exception or minor modification will not be injurious to the public safety and welfare; and

h. Based on a visual analysis, the design minimizes the visual impacts to Residential Zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping, beyond the adopted standard.

7. **Decisions:** Decisions of the Community Development Director or his/her designee may be appealed to City Council as provided for in section 8-6-17 of this chapter. (Ord. 596, 5-24-2019)

8-6-17: APPEALS:

A. Procedure:

1. Application And Submittal Requirements:

a. Any application for an appeal shall be submitted within twenty one (21) days of the issuance of the approval or disapproval of the utility compliance permit and shall be accompanied by the application and the fees as established by resolution of the City Council.

b. An application shall include:

(1) The applicant's name, address, telephone number and e-mail.

(2) Identification of the application which is the subject of the appeal.

(3) A written statement describing his or her standing to appeal.

(4) The applicant's statement of grounds for the appeal addressing why the appellant believes the decision to be unlawful or inappropriate to the factual circumstances and/or demonstrating how an exception would meet subsection 8-6-16A6 of this chapter.

2. **Setting Of Appeal Hearing:** Upon the timely filing of an appeal, the City shall set the date, time and place for the appeal to be heard by the City Council.

3. **Burden Of Proof:** The appellant shall bear the burden of proving the decision was unlawful or inappropriate to the factual circumstances presented to the Director.

4. **Notice Of Appeal:** Appeals of the utility compliance permit decision, where an applicant requests a reconsideration of the approvals or disapprovals of the permit shall be subject to a public hearing process as follows:

Payment of the applicable appeal fee and the associated noticing fees. At least fifteen (15) days prior to the hearing, notice of the proposal in compliance with section 11-12-4 of this Code, shall be published in the official newspaper of the City. Notice by first class mail, fifteen (15) days prior to the hearing shall also be provided to property owners and purchasers within three hundred feet (300') beyond, excluding streets and alleys, or the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed exception as determined by the City Council. When notice is required of two hundred (200) or more property owners or purchasers of record, notice may be given through a display advertisement at least four inches (4") by two (2) columns in size in the official newspaper of the City at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site, in lieu of mailed notice. The applicant shall bear the responsibility and cost of all legal publications and the public notice.

5. **City Council Decision On Appeal:**

a. After the public hearing, the City Council shall approve, conditionally approve or disapprove the application as presented. If the application is approved or approved with modifications, the Council shall issue a utility compliance permit listing the specific conditions specified by the City Council for approval.

b. Upon granting a utility compliance permit, conditions may be attached to the utility compliance permit, including, but not limited to, those addressing the standards of approval identified in subsection 8-6-16A6 of this chapter.

c. Upon granting or denying an application, the City Council shall specify in writing:

(1) The ordinance and standards used in evaluating the application;

(2) The reasons for approval or denial; and

(3) The actions, if any, that the applicant could take to obtain a permit. (Ord. 596, 5-24-2019)

8-6-18: REMOVAL OF ABANDONED ANTENNAS AND TOWERS:

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Additionally, upon written notice from the City that the antenna or tower has been abandoned by the owner of such infrastructure for a continuous period of more than twelve (12) months, the owner shall remove the same within ninety (90) days. If the removal cannot be accomplished within this timeframe, the owner shall request an extension and provide a plan to remove the same and the associated timelines to accomplish the removal. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between the owner of a facility and the owner of a building or land upon which the facility is located to the contrary, they shall be jointly and severally responsible for the removal of abandoned unused facilities and the facilities foundation, if any. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower. (Ord. 596, 5-24-2019)

WIRELESS COMMUNICATION FACILITIES

SECTION:

18.26.010: Purpose**18.26.020: Definitions****18.26.030: Applicability****18.26.040: Distributed Antenna Systems And Small Cells****18.26.050: General Requirements****18.26.060: Sharing Of Support Towers And Collocation Of Facilities****18.26.070: Setback Requirements****18.26.080: Preferred Tower Locations****18.26.090: Submittal Requirements****18.26.100: Exceptions To Standards****18.26.110: Removal Of Abandoned Antennas And Towers****18.26.120: Independent RF Technical And Legal Review****18.26.130: Final Inspection****18.26.140: Compliance****18.26.150: Indemnification****18.26.160: Eligible Facilities Request****18.26.170: Collocation Applications****18.26.180: New Site Or Tower Applications****18.26.010: PURPOSE:**

The provisions of this chapter are known as the *WIRELESS COMMUNICATION FACILITIES REGULATIONS*. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- A. To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;
- B. To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Post Falls community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and Federal law;
- C. To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;
- D. To preserve the opportunity for continued and growing service from the wireless industry;
- E. To accommodate the growing need and demand for wireless communication services;
- F. To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;
- G. To ensure City zoning regulations are applied consistently with Federal and State telecommunications laws, rules, regulations and controlling court decisions; and
- H. To provide regulations which are specifically not intended to, and shall not be interpreted or applied to: 1) prohibit or effectively prohibit the provision of wireless services, 2) unreasonably discriminate among functionally equivalent service providers, or 3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission. (Ord. 1342, 2018)

18.26.020: DEFINITIONS:

As used in this chapter, the following terms have the meanings set forth below:

ANTENNA: Means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.

ANTENNA ARRAY: Means a single or group of antenna elements, not including small cell antennas, and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.

APPLICANT: Means any person engaged in the business of providing wireless communication services or the wireless communications infrastructure required for wireless communications services and who submits an application.

BACKHAUL NETWORK: Means the lines that connect a provider's towers or cell sites to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.

BASE STATION: Means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.

A. The term includes, but is not limited to, 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.

B. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks).

C. The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in this chapter that has been reviewed and approved under the applicable zoning or siting process, or under State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

D. The term does not include any structure that, at the time the relevant application is filed with the State or the City under this chapter, does not support or house equipment described in this chapter.

COLLOCATION: Means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

DISTRIBUTED ANTENNA SYSTEM OR DAS: Means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

DOWNTOWN: For the purpose of this chapter means that area bounded by Mullan Avenue on the north, Idaho Street on the east, the Spokane River on the south and Chase Road extended on the west.

ELIGIBLE FACILITIES REQUEST: Means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- A. Collocation of new transmission equipment;
- B. Removal of transmission equipment; or
- C. Replacement of transmission equipment.

ELIGIBLE SUPPORT STRUCTURE: Means any tower or base station as defined in this chapter, provided that it is existing at the time the relevant application is filed with the City under this chapter.

EXISTING: Means a tower or base station that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

FAA: Means the Federal Aviation Administration.

FCC: Means the Federal Communications Commission.

MACROCELL: Means an antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.

SITE: Means, in relation to a tower that is not in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. In relation to support structures other than towers, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.

SMALL CELLS: Mean compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells.

STEALTH DESIGN: Means technology that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas.

SUBSTANTIAL CHANGE: Means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

A. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet (20'), whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or

more than ten feet (10'), whichever is greater. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 USC 1455(a));

B. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet (20'), 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 edge of the structure by more than six feet (6');

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 (4) cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;

D. It entails any excavation or deployment outside the current site;

E. It would defeat the concealment elements of the eligible support structure; or

F. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections A through D of this definition.

TOWER: Means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, 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.

TOWER HEIGHT: Means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten feet (10') in height, shall not be included within tower height.

TRANSMISSION EQUIPMENT: Means 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 supplies. 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.

UTILITY SUPPORT STRUCTURE: Means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; or pedestrian light standards.

WIRELESS COMMUNICATION FACILITIES OR WCF: Means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies. (Ord. 1342, 2018)

18.26.030: APPLICABILITY:

A. New Towers, Antennas, DAS And Small Cells: All new towers, antennas, DAS and small cells in the City are subject to these regulations, except as otherwise provided herein.

1. New towers and buildings in all zones require a special use permit.
2. New antenna arrays meeting the requirements of subsection 18.26.050K of this chapter are permitted with a building permit.
3. DAS and small cells are permitted pursuant to section 18.26.040 of this chapter.

B. Preexisting Towers Or Antennas: Preexisting towers and preexisting antennas shall not be required to meet the requirements of this chapter.

C. Exempt Facilities: The following are exempt from this chapter:

1. FCC licensed amateur (ham) radio facilities;
2. Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one meter (1 m) in diameter;
3. A WCF installed upon the declaration of a state of emergency by the Federal, State or local government, or a written determination of public necessity by the City; except that such facility must comply with all Federal and State requirements. The WCF shall be exempt from the provisions of this chapter for up to one month after the duration of the state of emergency; and
4. A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this chapter for up to one week before and after the duration of the special event.
5. Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to renewals at the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements.
6. Ordinary maintenance and repair of the WCF.

7. City facilities and equipment and emergency services including, but not limited to, the City's Police Department and Kootenai County Fire and Rescue.

D. Conflicts With Other Zoning Regulations: These wireless communication facilities regulations are in addition to other regulations in this title. In case of a conflict between regulations, the most restrictive will apply. (Ord. 1342, 2018)

18.26.040: DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELLS:

A. Distributed antenna systems and small cells are allowed in all zones, regardless of the siting preferences listed in section 18.26.080 of this chapter, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act) and State laws and requirements.

B. Distributed antenna systems and small cells in all zones are subject to approval via right-of-way encroachment permits and/or building permits and administrative review unless their installation requires the construction of a new tower or building. A special use permit shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, is no more than the greater of:

1. Fifteen feet (15') taller than the existing utility support structure; or
2. The minimum height necessary to provide the required safety clearances from transmission or distribution lines.

C. A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells. A single license agreement may be used for multiple node locations in DAS and/or small cell networks. (Ord. 1342, 2018)

18.26.050: GENERAL REQUIREMENTS:

A. Inventory Of Existing Sites: Each applicant for a tower shall provide to the Zoning Administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within one-half ($\frac{1}{2}$) mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under this section or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

B. Color: The antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.

C. Lighting: For support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is also permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.

D. State Or Federal Requirements: All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the State or Federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

E. Site Development: All wireless communication facilities shall be required to obtain a permit and shall be subject to the site development standards prescribed herein. Site development shall include the following information:

1. Construction drawings showing the proposed method of installation;
2. The manufacturer's recommended installations, if any; and
3. A diagram to scale showing the location of the wireless communication facility, property and setback lines, easements, power lines, all structures, and the required landscaping.

F. Building Codes; Safety Standards: 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 State or local Building Codes and the applicable industry standards for towers, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and 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 shall constitute grounds for the removal of the tower at the owner's expense. Compliance with this subsection is also subject to the City's Code enforcement pursuant to chapter 18.32 of this title and related provisions.

G. Signs: No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the City.

H. Visual Impact: All WCFs in residential zones and within two hundred feet (200') of residential zones shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complementary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.

I. Use Of Stealth Design/Technology: The applicant shall provide justification why it is not employing stealth technology. Stealth design is required for macrocell facilities in residential zones, and to the extent shown in section 18.26.060, table 1 of this chapter and elsewhere as provided in this chapter, concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communication facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the North Idaho region.

J. Building-Mounted WCFs:

1. All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

2. All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.

3. Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.

K. Antenna Arrays: Wireless communication antenna arrays are permitted in any zone as long as they are located upon an existing structure (except on single family houses, duplexes, or signage or a building less than 30 feet in height), that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet (15') above the structure. Installation on City property requires the execution of necessary agreements. However, if any support tower is needed to achieve the needed elevation, then a special use permit is required. If a new equipment cabinet is to be installed, it must be screened if it is higher than the existing screened facility.

L. WCFs In The Public Rights-Of-Way:

1. Utility Support Structure - Mounted Equipment: All pole-mounted transmission equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible.

2. License Or Agreement: For all WCFs to be located within the right-of-way, prior to submitting for a permit, the applicant must have a valid Municipal agreement, license, franchise agreement, right-of-way agreement, encroachment permit or exemption otherwise granted by applicable law. If the applicant is willing to install its ancillary facilities underground, that determination by the City shall be subject to administrative review.

M. Accessory Uses:

1. Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.

2. All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to applicable permits.

3. No equipment shall be stored or parked on the site of the tower, unless used in direct support of the antennas or the tower that is being repaired.

N. Accessory Equipment: In residential zones, all accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is: 1) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and 2) located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

O. Site Design Flexibility: Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval by the City.

P. General Standards And Construction Provisions:

1. Construction And Wind Speed Requirements: All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand the minimum wind speed as required by the City's currently adopted International Building Code, as amended.

2. Meeting Current Adopted Building Code: Structures shall be permitted and constructed to meet current, adopted Building Code requirements.

3. FCC And FAA Requirements: All structures shall conform to FCC and FAA regulations, if applicable.

4. Setbacks Or Buffer Yards: If any setback or buffer yard as prescribed within this Code requires a greater distance than required of this chapter, the greater distance shall apply.

5. Landscaping, Screening And Fencing: In all zoning districts, the following additional landscaping shall be required beyond that which is required for the zone in which it is located:

a. Equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with buffer yard and street

tree landscaping as required for the zone in which located or with another design acceptable to the Zoning Administrator. Artwork may also be used to screen ground equipment. At the City's discretion, as an alternative to general landscaping and screening requirements, the applicant, at its expense, may do an artistic wrap designed by a local artist around the equipment cabinets. Alternatively, where technically feasible, the applicant shall incorporate the cabinet and other equipment into the base of a new pole (for example, for a small cell) provided there is adequate space in the right-of-way and that ADA sidewalk accessibility requirements can be met. All provisions of the ADA (including, but not limited to, clear space requirements) shall be met by the applicant.

b. In particular, the ground level view of towers shall be mitigated by additional landscaping provisions as established through the special use permit process. The use of large trees from the approved urban forestry list of recommended species or native conifers is required at the spacing specified for the specific trees chosen. Alternatively, a landscaping plan may be submitted with the special use permit and, if approved, shall take precedence over the foregoing requirement.

c. Except for locations in the right-of-way, a site-obscuring fence (for example, wrought iron as opposed to barbed wire) no less than six feet (6') in height from the finished grade shall be constructed around each tower and around related support or guy anchors. Access shall only be through a locked gate. The fence must include neutral colored slats. Any fence shall comply with the other design guidelines of this Code.

6. New Poles: To the extent technically feasible, new poles must be designed to match the existing street furniture, light fixtures and other poles, and they shall serve a dual purpose (for example, a new light fixture, flag pole or banner clips).

7. Other Published Materials: All other information or materials that the City may reasonably require, from time to time, make publicly available and designate as part of the application requirements. (Ord. 1342, 2018)

18.26.060: SHARING OF SUPPORT TOWERS AND COLLOCATION OF FACILITIES:

A. Minimizing The Number Of Wireless Communication Support Towers: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.

B. New Tower Placement Exceptions: No new tower may be constructed within one-half (1/2) mile of an existing tower, unless it can be demonstrated that the existing tower is not available or feasible for collocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant. Factors to be considered in determining whether an applicant has made this demonstration include those listed in subsection C of this section.

C. Factors Considered In Granting Special Use Permits For Towers: In addition to any standards for consideration of special use permit applications pursuant to this Code, the Planning and Zoning Commission will also consider the following criteria in determining whether to issue a special use permit:

1. Height Of The Proposed Tower: Towers exceeding a height of seventy five feet (75') shall be able to accommodate collocation of one additional provider. Additional height to accommodate additional collocation may be approved if the applicant submits information certifying the tower has capacity for at least two (2) additional providers. The applicant shall provide a letter indicating their good faith intent to encourage collocation on the tower.

2. Existing Structures In The Area: No existing structures are located within the geographic area which meet applicant's engineering requirements.

3. Existing Towers Or Structures Lacking Strength: Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

4. Electromagnetic Interference: 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.

5. Unreasonable Fees, Costs, Or Contract Provisions: 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 sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

6. Other Limiting Factors: The applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.

D. Placement Provisions - Towers: Towers shall be located only in those areas described in table 1 of this section, provided that towers that are proposed to be located in a residential zone or within two hundred feet (200') of a residential zone shall be subject to the siting priorities set forth for preferred tower locations in section 18.26.080 of this chapter.

TABLE 1

NEW TOWER CRITERIA

Zone Category	May Be Located In Public Right-Of-Way (ROW)	Maximum Tower Height	Stealth Design	Setback From Property Lines (Does Not Apply Within ROW)
---------------	---	----------------------	----------------	---

R1S, R1, R2, R3, RMHP, SC3, SC4, SC5	Yes	75' ¹	Required	50', subject to section 18.26.070 of this chapter
LC, CCS	Yes	76' - 90' ²	Optional ²	50', subject to section 18.26.070 of this chapter
I, HI	Yes	91' - 120' ³	Optional ³	50', subject to section 18.26.070 of this chapter

Notes:

1. If an applicant wants to construct a tower in a residential zone or within 200 feet of a residential zone, then stealth design is required.
2. An additional 20 feet in height is allowed if applicant uses stealth design.
3. An additional 30 feet in height is allowed if applicant uses stealth design.

(Ord. 1342, 2018)

18.26.070: SETBACK REQUIREMENTS:

A. Notwithstanding the setbacks provided for in section 18.26.060, table 1 of this chapter, when a residence is located on an adjacent property, the support tower structures shall be set back from property lines as required by that zone or a minimum of one foot (1') for every foot of tower height, whichever produces the greater setback, unless:

1. The setback is waived by the owner of the residence; or
2. The tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a one hundred foot (100') tall monopole with a breakpoint at eighty feet (80'), the minimum setback distance would be twenty two feet (22') (110 percent of 20 feet, the distance from the top of the monopole to the breakpoint) or the minimum side yard setback requirements for that zone, whichever is greater. Provided, that if an applicant proposes to use breakpoint design technology to reduce the required setback from a residence, the issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer.

B. Except when located in the right-of-way, all equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located. (Ord. 1342, 2018)

18.26.080: PREFERRED TOWER LOCATIONS:

A. All new towers proposed to be located in a residential zone or within two hundred feet (200') of a residential zone or in the downtown core are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (6);

1. City-owned or operated property and facilities not in the downtown or residential zones and not including right-of-way;
2. Industrial zones (I, HI);
3. Commercial zones (LC, CCS);
4. City rights-of-way in residential zones;
5. Parcels of land in residential zones (R1S, R1, R2, R3, SC3, SC4, SC5);
6. Downtown.

B. The applicant for a tower located in a residential zone or within two hundred feet (200') of a residential zone or in the downtown core shall address these preferences in an alternative sites analysis prepared pursuant to section 18.26.090 of this chapter. (Ord. 1342, 2018)

18.26.090: SUBMITTAL REQUIREMENTS:

A. Alternative Sites Analysis:

1. For towers in a residential zone or within two hundred feet (200') of a residential zone or in the downtown core, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

2. A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.

3. For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives the applicant will provide: a) a description of its objective, whether it be to close a gap or address a deficiency

in coverage, capacity, frequency or technology; b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

B. Collocation Consent: A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

C. Documentation: Applications submitted under this section for towers shall include the following materials:

1. Requirement For FCC Documentation: The applicant shall provide a copy of the applicant's FCC license or registration.
2. Visual Analysis: A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view, including all equipment and ground wires.
3. Design Justification: A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable design standards under this chapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
4. Noise Study: A noise study, if the proposal is in or within two hundred feet (200') of residentially zoned property or in the downtown core, for the proposed WCF and all associated equipment.
5. Additional Information Required: Applicants for a special use permit for a tower shall also submit the following information:
 - a. A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities or the County), separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, parking, utility runs and other information deemed by the Zoning Administrator to be necessary to assess compliance with this chapter.
 - b. Legal description of the parent tract and leased parcel (if applicable).
 - c. The setback distance between the proposed tower and the nearest residential unit and residentially zoned properties.
 - d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to this chapter shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - e. A landscape plan showing specific landscape materials.
 - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - g. A description of compliance with all applicable Federal, State and local laws.
 - h. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Municipality.
 - i. A description of the suitability of the use of existing towers or other structures to provide the services to be provided through the use of the proposed new tower.
 - j. A clear and complete written statement of purpose which shall minimally include: 1) a description of the technical objective to be achieved; 2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and 3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by an Idaho-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

D. Radio Frequency (RF) Emissions Compliance Report: A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. If the report is prepared by an employee of the applicant, who is not an Idaho-licensed professional engineer, the report must be accompanied by documentation establishing the employee's competence to complete the report.

E. Application Fees: An applicant shall submit an application fee in accordance with the City's then existing fee schedule or written policy. (Ord. 1342, 2018)

18.26.100: EXCEPTIONS TO STANDARDS:

- A. Applicability: Except as otherwise provided in this chapter (under site design flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and administrative exceptions provisions in this Code; provided this section does not provide an exception from this chapter's visual impact and stealth design.
- B. Procedure: A WCF's exception is subject to approval by the Planning and Zoning Commission.
- C. Submittal Requirements: An application for a wireless communication facility exception shall include:
 1. A written statement demonstrating how the exception would meet the criteria.

2. A site plan that includes:
 - a. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
 - b. Elevations showing all components of the wireless communication facility, as it would appear with and without the exception.
 - c. Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
- D. Criteria: An application for a wireless communication facility exception shall be granted if the following criteria are met:
 1. Exception Is Consistent: The exception is consistent with the purpose of the development standard for which the exception is sought.
 2. Design Minimizes Visual Impact: Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
 3. Requirements: The applicant demonstrates the following:
 - a. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
 - b. The gap can only be filled through an exception to one or more of the standards in this chapter; and
 - c. The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this chapter's standards to the greatest extent possible.
 4. Exceptions In Residential Zones: For a new tower proposed to be located in a residential zone or within two hundred feet (200') of a residential zone, or in the downtown, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this section seeks to protect. (Ord. 1342, 2018)

18.26.110: REMOVAL OF ABANDONED ANTENNAS AND TOWERS:

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between them to the contrary, the owner of such unused facility and the owner of a building or land upon which the WCF is located, shall be jointly and severally responsible for the removal of abandoned WCFs and the WCFs' foundation, if any. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower. (Ord. 1342, 2018)

18.26.120: INDEPENDENT RF TECHNICAL AND LEGAL REVIEW:

Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of independent RF and legal experts of its choice to provide technical and legal evaluations of permit applications for WCFs, when they are subject to special use permits or administrative review. The third party experts shall have recognized qualifications in their fields. The expert's review may include, but is not limited to: a) the accuracy and completeness of the items submitted with the application; b) the applicability of analysis and techniques and methodologies proposed by the applicant; c) the validity of conclusions reached by the applicant; and d) whether the proposed WCF complies with the applicable approval criteria set forth in this chapter. The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued. (Ord. 1342, 2018)

18.26.130: FINAL INSPECTION:

A. A certificate of completion will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations.

B. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation. (Ord. 1342, 2018)

18.26.140: COMPLIANCE:

A. All wireless communication facilities must comply with all standards and regulations of the FCC and any State or other Federal government agency with the authority to regulate wireless communication facilities.

B. The site and wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the WCF. The graffiti must be removed within fourteen (14) days after notification by the City.

D. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days

of receiving notice of such revocation. (Ord. 1342, 2018)

18.26.150: INDEMNIFICATION:

Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF. (Ord. 1342, 2018)

18.26.160: ELIGIBLE FACILITIES REQUEST:

A. Purpose: This section implements section 6409(a) of the Spectrum Act (47 USC section 1455(a)), as interpreted by the FCC in its Report and Order no. 14-153 and regulated by 47 CFR section 1.40001, which require a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible facilities requests shall be governed solely by the provisions in this section and Federal law.

B. Application Review:

1. Application: The City shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the City to consider whether an application is an eligible facilities request. The City may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.

2. Review: Upon receipt of an application for an eligible facilities request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. Timeframe For Review: Within sixty (60) days of the date on which an applicant submits an application seeking approval of an eligible facilities request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

4. Tolling Of The Timeframe For Review: The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. Following a supplemental submission, the City will have ten (10) days to notify the applicant 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 this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired. (Ord. 1342, 2018)

18.26.170: COLLOCATION APPLICATIONS:

A. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order no. 14-153. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to collocation.

B. Application Review:

1. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a collocation request.

2. Review: Upon receipt of an application for a collocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. Timeframe For Review: Within ninety (90) days of the date on which an applicant submits an application seeking approval of a collocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

4. Tolling Of The Timeframe For Review: The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law. (Ord. 1342, 2018)

18.26.180: NEW SITE OR TOWER APPLICATIONS:

A. Purpose: This section also implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order no. 14-153.

B. Application Review:

1. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request for a new site or tower.

2. Review: Upon receipt of an application for a request for a new site or tower pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. Timeframe For Review: Within one hundred fifty (150) days of the date on which an applicant submits an application seeking approval of a request for a new site or tower under this section, the City shall review and act upon the application, subject to the tolling provisions below.

4. Tolling Of The Timeframe For Review: The 150-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

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

5. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law. (Ord. 1342, 2018)

TELECOMMUNICATIONS FACILITIES

SECTION:

9-15-1: Purpose**9-15-2: Provisions****9-15-1: PURPOSE:**

A. The provisions of this chapter are intended to ensure that telecommunications facilities are located, installed, maintained and removed in a manner that:

1. Minimizes the number of antenna towers throughout the community;
2. Encourages the collocation of telecommunications facilities;
3. Encourages the use of existing buildings, light or utility poles, or other structures for antenna mounting and discourages construction of new antenna towers;
4. Ensures that telecommunications facilities are located and designed to minimize visual impact on the surroundings; and
5. Ensures that regulation of telecommunications facilities does not have the effect of prohibiting the provision of telecommunications services, does not unreasonably discriminate among functionally equivalent providers of such services, and allows the provision of adequate area coverage by such services. (Ord. 1342, 1-18-2017)

9-15-2: PROVISIONS:

A. **Conflicting Standards:** In the event that other standards of this title conflict with standards in this chapter, unless otherwise indicated the most restrictive shall prevail.

B. **Definitions:**

ANTENNA: Any device that transmits and/or receives radio waves, microwaves, or other electromagnetic radiation for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications.

ANTENNA ARRAY: A single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

COLLOCATION: The placement of one or more antenna(s) on an antenna support structure or the placement of an antenna on an antenna tower on which one or more antennas are already located.

COMMISSION: The federal communications commission ("FCC").

HOST MOUNTED SUPPORT STRUCTURE: Any structure or building not constructed primarily for the purpose of supporting an antenna but that supports an antenna as a secondary or accessory use (e.g., streetlights; traffic light structures; sign structures; or water towers).

LATTICE TOWER: An antenna tower characterized by a framework of lateral or diagonal cross members that stabilize the tower.

PERSONAL WIRELESS SERVICE: Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

PERSONAL WIRELESS SERVICE FACILITIES: Facilities for the provision of personal wireless services.

ROOF MOUNTED FACILITIES: Any facility installed on either the roof or side of a building.

SMALL CELLS: Compact wireless base stations containing their own transceiver equipment and function like cells in a mobile network but provide a smaller coverage area than traditional macrocells. Small cells will meet the two (2) parameters in subsections 1 and 2 of this definition. For purposes of these definitions, volume is a measure of the exterior displacement, not the interior volume of the enclosures. Antennas or equipment concealed from public view in or behind an otherwise approved structure or concealment are not included in calculating volume.

1. **Small Cell Antenna:** Each antenna shall be no more than three (3) cubic feet in volume.
2. **Small Cell Equipment:** Each equipment enclosure shall be no larger than seventeen (17) cubic feet in volume.

Associated conduit, mounting bracket or extension arm, electric meter, concealment, telecommunications demarcation box, ground based enclosures, battery backup power systems, grounding equipment, power transfer switch, and cutoff switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of equipment volume.

SUPPORT STRUCTURE: A structure that is designed for supporting the installation of one or more antennas (e.g., a tower; roof mount; mounts attached to a utility pole).

TELECOMMUNICATIONS FACILITIES OR FACILITIES: Any antenna towers, support structures, antennas and their ancillary

facilities that are used to provide commercial wireless communications or telecommunications services.

TEMPORARY ANTENNA TOWER: An antenna tower established for the purpose of providing telecommunications services on a temporary basis for a special event or to temporarily replace an antenna tower while it is being repaired.

TOWER: Any structure built for the sole or primary purpose of supporting one or more antennas that are used to provide commercial telecommunications services.

TOWER HEIGHT: The vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna.

VISUAL IMPACT MITIGATION: Technology that minimizes the visual impact of telecommunications facilities by camouflaging, disguising, screening, and/or blending into the surrounding environment. Examples of visual impact mitigation include, but are not limited to, facilities disguised as trees, flagpoles, bell towers, and architecturally screened roof mounted antennas.

C. Applicability:

1. The telecommunications facility regulations of this section apply to all telecommunications facilities used to provide commercial telecommunications services, except those associated solely with the following, which are exempt:

- a. Safety services provided by public agencies (e.g., police and fire); and
- b. Any facilities that state or federal law prohibits local government from regulating (e.g., satellite television receiving dishes).

2. Any public lands and agencies exemption from compliance with zoning in state law does not apply to private entities utilizing publicly owned lands.

D. Prohibited Locations And Support Structure Types:

1. The following locations and support structures are not permitted:

- a. Lattice and guyed tower support structures for telecommunications facilities.

E. Permitted Locations:

1. **Collocation On Nonconforming Existing Support Structures:** Support structures for telecommunications facilities on the effective date hereof that do not comply with the regulations of this section are deemed nonconforming structures.

2. **Collocation On Legal Existing Support Structures:** New telecommunications facilities collocated on support structures in existence on the effective date hereof are permitted in all zoning districts, subject to compliance with other applicable standards of this section.

3. **New Roof Mounted Or Host Mounted Support Structures:** New telecommunications facilities located on roof mounted or host mounted support structures are permitted in all zoning districts, subject to compliance with other applicable standards of this section.

4. **New Ground Mounted Support Structures:** New ground mounted support structures for telecommunications facilities are permitted in IG, IBP, ITP, CA, CB and CC zoning districts, subject to compliance with other applicable standards of this section.

F. Code Compliance: All facilities shall at all times comply with all applicable federal, state and local building codes, electrical codes, fire codes and any other code related to public health and safety.

G. Safety: The structural design for all support structures must be certified by a professional structural engineer licensed to practice in the state of Idaho. The drawings shall meet the currently adopted building codes in accordance with section 8-1-1, "Building Codes Adopted", of this code.

H. Building Permit Required: A building permit, unless waived by the Sandpoint building department, must be obtained prior to the installation of any telecommunications facility.

I. Telecommunications Facility Development Permit: A telecommunications facility development permit shall contain the following information:

- 1. Construction drawings showing the proposed method of installation. Drawings shall be stamped by a licensed engineer and meet the currently adopted building codes in accordance with section 8-1-1, "Building Codes Adopted", of this code;
- 2. The manufacturer's recommended installations, if any; and
- 3. A diagram to scale showing the location of the telecommunications facility, property and setback lines, easements, power lines, all structures, and any required buffering and screening.

J. Development Standards:

1. **Schedule:** The following standards apply to telecommunications facilities:

Support Type	Permitted Zones	Permitted Height	Setback	Screening	Visual Impact Mitigation	CUP
Existing support structures	Existing location	Existing height	Existing setback	n/a	n/a	n/a

Roof mounted support structures	All zoning districts	Not to exceed the zoning district height limit	n/a	Not required	Required ¹	Yes ²
Host mounted support structures	All zoning districts	5 feet above host structure	n/a	Not required	Required	Yes
Ground mounted support structures	IG, IBP, ITP	Not to exceed the zoning district height limit	From property line: building setbacks of zone for both tower and equipment enclosure ³	Required	Required	Yes
	CA, CB, CC	Support structure and antenna together may not exceed 35 feet	From property line: building setbacks of zone for both tower and equipment enclosure ³	Required	Required	Yes

Notes:

1. Antennas under 10 square feet in surface area are allowed on roof mounted support structures without having to meet visual impact mitigation standards for roof mounted facilities, so long as the support structure does not exceed the tallest element of the building to which it is attached.

2. CUP required when total antenna surface area for all antennas exceeds 10 square feet.

3. See subsection M, "Residential Zone Setback", of this section.

2. Screening:

a. Telecommunications facilities located above ground in or directly adjacent to RS, RM, RR-1, RR-2, MUR, CA, CB, CC zones shall be surrounded by a minimum six foot (6') high decorative wall constructed of brick, stone, or textured concrete block. Telecommunications facilities in all other zones shall be surrounded by a minimum six foot (6') high wall or solid or slatted fence.

b. The area around the perimeter of ground telecommunications facilities shall be landscaped unless the planning commission determines otherwise.

3. Visual Impact Mitigation:

a. Antenna Towers:

(1) Antenna towers shall be painted a neutral color consistent with the natural or built environment of the subject site and the surrounding area unless otherwise required by the FAA or any other state or federal agency having such authority.

(2) Antenna towers shall be constructed in a manner that is visually compatible with the surrounding built environment.

b. Roof Mounted Facilities: Facilities mounted on the roof of buildings must be visually incorporated into the building or background by the use of architectural elements, color, screening or other methods.

c. Host Mounted Support Structures:

(1) Telecommunications facilities mounted on other structures not constructed for the primary purpose of supporting telecommunication services must be either fully concealed within the host structure or camouflaged to appear to be an integral part of the host structure.

d. Ground Mounted Equipment Enclosures: Aboveground equipment enclosures that are used in or adjacent to residential and commercial zones must be designed with exterior facade materials of masonry, stucco, or beveled siding and be constructed in a manner that is visually compatible with the surrounding environment.

e. Antennas And Cables: When visible, antennas and cables shall be of a color identical to or closely compatible with that of the structure to which they are attached unless otherwise required by the FAA or any applicable state or federal agency.

K. Lighting: Telecommunications facilities may not be artificially illuminated except as required by FAA regulations. All other outdoor lighting must meet the standards in title 8, chapter 10, "Outdoor Lighting", of this code.

L. Signage: Identification and contact information is permitted on one wall or fence mounted sign not exceeding four (4) square feet in area per site. Other signage may not be located on telecommunications facilities, unless required by the FCC or FAA.

M. Residential Zone Setback:

1. Antenna towers shall be separated from the property line of any adjacent property zoned RS, RM, RR-1, RR-2, or MUR at least a distance equal to the height of the antenna tower or one hundred feet (100'), whichever is greater.

N. Noise Reduction:

1. Noise generating equipment shall be sound buffered by means of baffling, barriers, or other suitable means and shall conform to section 5-2-6, "Noise", of this code.

O. Modification And Removal:

1. Modification Or Removal Of Nonconforming Telecommunications Facilities: Nonconforming telecommunications facilities being demolished or rebuilt must conform to chapter 7, "Nonconforming Buildings And Uses", of this title.

2. Removal Of Telecommunications Facilities:

a. Providers must notify the city in writing when a telecommunications facility is no longer being utilized. Any facilities that are not utilized for the provision of telecommunication services for a continuous period of six (6) months or more will be considered abandoned. All abandoned facilities must be removed within six (6) months of abandonment. If a facility is not removed within six (6) months, the city is authorized to remove the facility at the landowner's expense.

b. Where multiple users share a support structure, the nonoperational antenna and equipment enclosure must be removed. Any necessary shared facilities may be retained until all users have terminated the utilization of the support structure.

P. Third Party Review: Adequate review of applications, particularly for new ground mounted support structures, may require the city to retain consultants or other third party assistance to review an application. In such an event, the applicant must reimburse the city for the reasonable actual costs incurred by the city for retention of consultants or other third parties prior to issuance of any applicable permit. The city must provide a written scope and cost proposal to the provider for approval prior to the city entering into an agreement with a third party.

Q. Exceptions:

1. Applicability: In the event that standards of this section cannot be met by an applicant, and there exists no feasible alternative to providing adequate service by any provider for a particular geographic area, the applicant may apply for conditional use approval in accordance with subsection 9-9-6A, "Conditional Use Permit Procedures", of this title.

2. Review And Submittal Requirements: Prior to submitting an application for conditional use approval in accordance with subsection 9-9-6A of this title, the applicant must request in writing a preapplication conference with the planning department. The purpose of the preapplication conference is to acquaint the participants with the applicable requirements of this section. A conditional use application must provide documentation demonstrating evidence of all the following:

a. Telecommunications services by any provider are not adequate within a specific geographic area, and cannot be made available unless a new telecommunications facility is built or erected in a manner or location contrary to the standards of this section;

b. Location on buildings or other structures is not possible because:

(1) No existing or proposed structures adequate to support the proposed antenna are located within the geographic area required to meet the applicant's engineering and service requirements; or

(2) Property owners or owners of existing structures for smaller scale installations are unwilling to accommodate the applicant's needs; or

(3) The applicant demonstrates that there are other factual and verifiable limiting factors that render rooftops and other sites or monuments unsuitable for location of telecommunications facilities; and

c. Collocation on existing support structures is not possible because:

(1) Existing or approved support structures are not of sufficient height to meet the applicant's engineering and service requirements and a combination of smaller scale facilities will not enable adequate service delivery; or

(2) Existing or approved support structures do not have sufficient structural strength to support the proposed antenna and related equipment and cannot be reinforced to provide sufficient structural strength; or

(3) The proposed antenna would cause electromagnetic interference with antenna on existing or approved support structures, or the antenna on existing or approved support structures would cause interference with the proposed antenna; or

(4) The applicant demonstrates that there are other factual and verifiable limiting factors that render existing or approved structural supports for telecommunications facilities unsuitable for collocation.

R. Affirmative Duty To Keep City Informed: All telecommunications service providers having facilities in the jurisdiction of the city shall file with the zoning administrator an annual written statement due by the end of the calendar year verifying continued use of each of their facilities in the city's jurisdiction as well as continued compliance with the state and federal agency regulations. All telecommunications service providers having telecommunications facilities in the jurisdiction of the city shall be required to report in writing to the zoning administrator any change in the status of their operations. Change in status shall include, but is not limited to, the following:

1. Change in or loss of license from the FCC to operate.

2. Receipt of notice of failure to comply with the regulations of any other authority having jurisdiction over the business or facility.

3. Change in ownership of the company that owns the telecommunications facilities or that provides telecommunications services.

4. Loss or termination of lease with the property owner or the owner of the telecommunications facilities.

5. Abandonment of a facility or nonuse of a facility for a period of six (6) months or longer. (Ord. 1342, 1-18-2017)