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## ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

### 17.10.1: DEFINITIONS

For the purposes of this Chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

**Accessory Equipment:** any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures, including fences and ground-based enclosures as defined in state law.

**Alternative Tower Structure:** man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

**Amateur Radio Towers and Antennae:** Broadcasting and receiving structures or devices used for personal pleasure or as a hobby.

**Antenna:** any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel Antennas, reflecting discs, microwave dishes, whip Antennas, directional and non-directional Antennas consisting of one or more elements, multiple Antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

**Applicant for WCF:** any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

**Base Station:** a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 1 and 2 above.

**Camouflage, Concealment, or Camouflage Design Techniques:** the designing of a WCF to alter its appearance in such a manner as to substantially integrate it into surrounding building designs and/or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A Wireless Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

**Collocation:** (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

**Director:** The person, or that person’s designee, authorized by the City Manager to enforce and interpret this Zoning Ordinance.

**Eligible Facilities Request:** any request for modification of an Existing Tower or Base Station that it is not a Substantial Change.

**Eligible Support Structure:** any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

**Existing Tower or Base Station:** a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was built; for example, a Tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

**FCC:** the Federal Communications Commission.

**Hazardous Substance:** any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

**Interference:** physical interference and radio frequency interference.

**Law or Applicable Law:** any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

**Micro Cell Facility:** a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

**Monopole:** a single, freestanding pole-type structure supporting one or more Antennas.

**Over the Air Receiving Device (OTARD):** an Antenna used to receive direct broadcast satellite services, including home satellite dishes that are 1M or less in diameter, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services or Antennas used as part of a hub to relay signals among multiple locations.

**Owner** means a person with a legal or equitable interest in ownership of real or personal property.

**Permit** means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor's ROW, including ROW use, building, and electrical permits.

**Physical Interference** means where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sight path.

**Pole-Mounted Small Cell Facility:** a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

**Public Right-of-Way (ROW):** any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

**Radio Antenna, Amateur:** a noncommercial device that is used for transmitting and receiving electro-magnetic waves.

**Radio Frequency Emissions Letter:** a letter from the Applicant identifying the FCC's uncontrolled/general population maximum permitted exposure limits for each proposed WCF, identifying the RF emissions from the WCFs that are the subject of the application. The Letter shall identify, at a minimum, any measures required to comply with the FCC standards for predicted exposure levels, and details for any signage, barriers or similar mitigation that is recommended or required. The Letter shall additionally certify that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

**Radio Frequency Interference** means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

**Radio Tower, Amateur:** A structure that supports an antenna.

**Readily Apparent.** For purposes of determining whether a WCF is readily apparent, the phrase means that the facility will be easily recognizable as a WCF, in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

**Replacement Pole:** an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

**Setback:** the minimum distance any building or structure must be separated from a specified point.

**Sign:** any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

**Signal Non-Interference Letter:** a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

**Site for Towers** (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

**Small Cell Facility:** a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility.

**Street:** a public or private thoroughfare for vehicular traffic other than an alley or driveway.

**Substantial Change for Eligible Facilities Request:** a modification that Substantially Changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:

1. For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) additional Antenna array, with separation from the nearest existing Antenna not to exceed twenty feet, 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 (10) feet, whichever is greater;
2. For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for other Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
3. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
4. For Towers in the Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
5. For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
6. For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure; or

7. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

**Support Structure:** a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.).

**Toll and Tolling:** to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

**Tower:** any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

**Wireless Communications Facility or WCF:** a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

**Wireless Communications Provider:** a public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

**Wireless Communications Site:** any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

## **17.10.2: General**

### **17.10.2.1: Purpose and Intent**

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that preserves the aesthetic character and value of the community and complies with Federal and State laws.

The City Council finds that these regulations are necessary to:

- A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
- B. Minimize adverse visual effects of WCFs through thoughtful design and siting, including but not limited to camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever appropriate;
- C. Require the location of Towers in a manner that minimizes the total number of Towers needed throughout the community;
- D. Require the collocation of WCFs wherever feasible;
- E. Require owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;
- F. Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, efficiently, and safely;
- G. Effectively manage WCFs in the Public Right of Way;
- H. Manage amateur radio facilities and over-the-air devices in the City;
- I. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City.

### **17.10.2.2: Applicability**

- A. The standards in this Article shall apply to all Eligible Facilities Requests and WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.
- B. The Requirements set forth in this Article shall not apply to:
  - 1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided that the requirements that the height be no more than the distance from the base of the Antenna to the property lines is met.

2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # O-2020-1 shall not be required to meet the requirements of this Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.
3. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, in the reasonable discretion of the City, in the minimum amount necessary to comply with federal law.
4. A WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of serving the general health, safety, and welfare of residents by the City, or reasonable ability to obtain such written determination within 72 hours.
5. A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.
6. The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

### **17.10.3: Wireless Facilities – By Zone District**

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

### **17.10.4: Operational Standards**

#### **17.10.4.1: Federal Requirements**

All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense. The City may request, and an owner or applicant of a WCF shall provide, periodic confirmation that a WCF remains in compliance with any Federal standards.



**17.10.4.2: Permission to Use Public Right-of-Way or City-owned vertical assets in the Public Right-of-Way**

Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way.

- A. Attachment of WCFs on an existing or replacement traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4.
- B. The Applicant, and if different from the Applicant, the Owner, shall remain responsible for any WCF installed in the ROW.
- C. Prior to, or concurrently with, seeking land use approval for a WCF on City-owned vertical assets in the Public Right-of-Way, the Applicant shall execute a lease agreement with the City.
- D. To the extent feasible in all zoning districts, the preference of the City is for small cell facilities to be located in non-residential areas and not in areas in which residential uses are permitted, unless necessary for network operations.

**17.10.4.3: Operation and Maintenance**

To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official may extend such compliance period not to exceed 60 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

**17.10.4.4: Emergency**

In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.

**17.10.4.5: Non-Interference**

The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

**17.10.4.6: Radio Frequency Interference**

All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.

**17.10.4.7: Existing Uses**

WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.

**17.10.4.8: City Communications**

WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.

**17.10.4.9: Remedies**

If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.

**17.10.4.10: Relocation, Abandonment and Removal**

After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

**17.10.4.11: Hazardous Materials**

No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.

**17.10.4.12: Collocation**

No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

**17.10.4.13: Contact and Site Information**

A WCF Owner or operator shall maintain with the City the following contact and site information and shall notify the City of any changes to such information within thirty (30) days of any change.

- A. Name, physical and email address, telephone number (including emergency 24/7/365 contact), and legal status of the Owner and if different from the Owner, the operator; and
- B. Any official identification numbers and FCC certifications for the WCF.

#### **17.10.4.14: Unauthorized Access**

All WCFs shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, Towers and Alternative Tower Structures shall be made inaccessible to individuals and constructed in such a manner that they cannot be climbed. WCFs shall be accessible only to persons authorized to operate or service them.

### **17.10.5: Review Procedures and Requirements**

#### **17.10.5.1: Permit Required**

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with this Chapter. All WCFs except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the applicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

- A. Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of these provisions, the City may refer the application to Planning Commission for a Special Use Permit Review Determination.
- B. Review Procedures for certain WCFs, including Towers. Towers, other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.6. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.
- C. Review Procedures for Eligible Facilities Requests.
  1. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:
    - a. Constitutes a Substantial Change;

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

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

2. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies.
3. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.
4. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:
  - a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.
  - b. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness;
  - c. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d.)(ii.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
5. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period has expired (accounting for any Tolling) that the application has been deemed granted.
6. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is required under the appropriate provision of the Code under which the application should be considered, the City may request additional information from the Applicant to evaluate the application

under Section 332(c)(7) reviews, and the Shot Clock shall not commence until such information is provided.

- D. Review Procedures for Small Cell Facilities in the Right-of-Way.
1. Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.
  2. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria. The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.
  3. Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.
  4. Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

#### **17.10.5.2: Submittal Requirements**

In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications:

- A. Signal Non-Interference Letter.
- B. Radio Frequency Emissions Letter. To the extent that the WCFs that are the subject of the application require FCC filings to demonstrate compliance with the National Environmental Policy Act, all such filings shall be provided to the City.
- C. Information related to need for environmental assessment. If an applicant is required to submit an environmental assessment to the FCC for the proposed site, it shall submit a copy of that environmental assessment, or alternately, it shall certify to the City in writing that the proposed site is categorically excluded per 47 C.F.R. § 1.1307.
- D. Photo simulations showing before and after conditions excluding applications for small cell facilities.
- E. Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its Equipment.
- F. Inventory of Sites. Each applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. This information will be used to assist in the City's comprehensive planning process, and promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users.

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

- G. Abandonment and removal Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
- H. Consolidated applications. The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

#### **17.10.5.3: Decision**

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

#### **17.10.5.4: Compliance with Applicable Law**

Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

- A. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF
- B. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
- C. Be maintained in good working condition and to the standards established at the time of application approval; and
- D. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the City.

## **17.10.6: Design Standards**

### **17.10.6.1: Review Requirements**

The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; provided, however, that the City may waive these requirements if it determines and documents that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights of way, which shall govern those types of WCFs, and in the case of residential property, subject to normal variance procedures being followed. The design standards in this section and any design standards promulgated pursuant hereto, shall be employed to avoid or minimize the intangible harm of unsightly deployments or deployments that are not in character with the surrounding area. Design standards shall be applicable to both newly constructed WCFs, to the extent not inconsistent with state law, permitted but not yet constructed WCFs, as well as legal non-conforming WCFs when such sites are sought to be modified. Notwithstanding anything herein to the contrary, any modification of a 600-foot separation standard between stand-alone poles in the public rights of way can only be made by an amendment to this Code.

- A. Camouflage/Concealment. All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.
  - 1. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.
  - 2. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such design meets the intent of this Code and the community is better served thereby.
  - 3. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
- B. Collocation. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.
- C. Lights and other attachments.
  - 1. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the

maximum extent so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

2. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.
  3. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.
  4. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility.
- D. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City.
- E. Landscaping Requirements.
1. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.
  2. WCFs, excluding Small Cell Facilities unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping. All such expense, including the cost of irrigation, shall be borne by the wireless provider
  3. heritage trees and traditional landscaping designs should be preserved in the Rights-of-Way. Existing mature tree growth and natural landforms on the Right-of-Way site shall be preserved.
- F. Screening Requirements.
1. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security.
  2. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection 5, to be visually compatible with uses in the surrounding area.
  3. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet.
  4. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.



- G. WCFs Adjacent to Single Family Residential Uses. WCFs shall be sited in a manner that evaluates the proximity of the facility relative to residential structures, neighborhoods, and residential zoning boundaries in order to minimize the visual impacts of WCFs on residential areas.
1. When placed near residential property, the WCF shall be placed in close proximity to a common property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent and nearby properties.
  2. For a corner lot, the WCF may be placed adjacent to a common property line between adjoining residential properties, or on the corner formed by two intersecting streets.
  3. If these siting requirements are not feasible in good faith from a construction, engineering, or design perspective, the Applicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.
- H. Design requirements specific to various types of WCFs.
1. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.
  2. Alternative Tower Structures, not in the Public Right-of-Way shall:
    - a. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clocktower, typically found in the area.
    - b. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
    - c. Be compatible with the surrounding area, including architecture, topography, natural vegetation, and/or landscaped environment.
    - d. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
    - e. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
    - f. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.

3. Towers.
  - a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
  - b. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
  - c. Monopole support structures shall taper from the base to the tip.
  - d. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.
  - e. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.
4. Roof and Building Façade Mounted WCFs.
  - a. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks. No WCFs can be placed on rooftops or facades in Residential Zone Districts.
  - b. Roof-mounted WCFs may be approved only where an Applicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an Applicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site.
  - c. Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached. Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a building. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall.
  - d. All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.
  - e. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.
  - f. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.
  - g. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade.

5. Related Accessory Equipment.
  - a. Excluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.
  - b. Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.
  - c. No accessory equipment or accessory structure shall exceed 12 feet in height.
  - d. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.
  - e. No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.
  - f. New accessory equipment cannot be placed within 150 feet of existing utility accessory equipment in Rights of Way in residential zones.

### **17.10.7: Standards for Approval.**

It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated at all times to comply with the provisions of this Chapter and all applicable laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.

#### **17.10.7.1: Special Use Permit**

Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.

#### **17.10.7.2: Collocation and Separation Required**

No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

- A. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;

- B. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
- C. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
- D. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
- E. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

**17.10.7.3: Setbacks**

The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through a Variance process. WCFs subject to this subsection shall meet the greater of the following minimum setbacks from all property lines;

- A. The setback for a principal building within the applicable zoning district; or
- B. Twenty-five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or
- C. For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

**17.10.8: Review.**

On or before July 31, 2021, or as soon thereafter as can feasibly be schedule on a City Council agenda, the City Council shall conduct a review of its experience in siting WCFs, and determine whether modifications to the provisions of this Chapter should be considered.