

**TOWN OF BERTHOUD ORDINANCE
NUMBER 1325
(SERIES 2023)**

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO TO REPEAL AND
REPLACE THE TOWN OF BERTHOUD WIRELESS COMMUNICATIONS FACILITIES
CODE FOUND IN CHAPTER 30, SECTION 30-3-111 FOUND IN THE MUNICIPAL CODE**

WHEREAS, the Town of Berthoud is a municipal corporation possessing all powers granted to a statutory town by Title 31 of the Colorado Revised Statutes; and

WHEREAS, the Planning Commission, after proper notice, has held a public hearing on September 28, 2023 on this ordinance providing for a recommendation of approval from the Town Board of Trustees; and

WHEREAS, the Board of Trustees, after proper notice has held two public hearings on this ordinance providing for the adoption of said code amendments pursuant to C.R.S. Section 31-16-203; and

WHEREAS, the Development Code and amendments thereto have been submitted to the Board of Trustees in writing and the Board of Trustees has determined that such code and amendments thereto should be adopted as herein set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. That Chapter 30, Section 30-3-111 -116, is hereby repealed and replaced in its entirety as set forth in Exhibit A, attached and is hereby adopted;

Section 2. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.


Section 4. The repeal or modification of any provision of the Municipal Code of the Town of Berthoud by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all property actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. The provisions of this ordinance shall take effect thirty days after publication as required by law, and shall apply to all development and construction permitted after such date.

IREAD, ADOPTED, AND APPROVED on this 28th day of November, 2023.

TOWN OF BERTHOUD


By



William Karspeck, Mayor

ATTEST:

By:



Christian Samora, Town Clerk

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Section 5. The provisions of this ordinance shall take effect thirty days after publication as required by law, and shall apply to all development and construction permitted after such date.

INTRODUCED, READ, AND APPROVED on this 14th day of November, 2023.

TOWN OF BERTHOUD

By _____
William Karspeck, Mayor

ATTEST:

By: _____
Christian Samora, Town Clerk

READ, ADOPTED, AND APPROVED on this 28th day of November, 2023.

TOWN OF BERTHOUD

By _____
William Karspeck, Mayor

ATTEST:

By: _____
Christian Samora, Town Clerk

EXHIBIT A, Ordinance 1325

30-3-111 - Wireless Communication Facilities (WCFs)

- A. Purpose and Goals.** The purpose of these provisions is to establish requirements for the siting of Wireless Communications Facilities. The goals of these provisions are to:
1. Provide for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the Town with the fewest number of 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.
 2. Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to concealment design techniques and undergrounding of the equipment associated with WCFs.
 3. Encourage the deployment of smaller, less intrusive WCFs where appropriate to supplement existing larger WCFs.
 4. Encourage the use of wall mounted panel antennas.
 5. Encourage roof mounted antennas when wall mounted antennas will not provide adequate service or are not otherwise feasible.
 6. Encourage the location of Towers in non-residential areas, in a manner that minimizes the total number of Towers needed throughout the community.
 7. Encourage strongly the collocation of WCFs on new and existing Sites.
 8. Encourage owners and users of antennas and Towers to locate them, to the extent possible, in areas where the adverse impact on the community is minimized.
 9. Enhance the ability of WCF providers to provide such services to the community quickly, effectively, and efficiently.
 10. Effectively manage WCFs in the Right-of-Way.
- B. Definitions**
1. Alternative Tower Structure: Any man-made clock towers, bell steeples, light poles, water towers, farm silos, or similar alternative design mounting structures approved by the Town, that conceal where technically feasible the presence of WCFs to make them architecturally compatible with the surrounding area pursuant to this Section. A stand-alone pole in the Right-of-Way that accommodates Small Cell Facilities is considered an Alternative Tower Structure provided it meets the concealment standards of this Section. Alternative Tower Structures are not considered Towers, for the purposes of this Section.
 2. 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 devised and configurations.
 3. Antennas, panel: An array of antennas, rectangular in shape, used to transmit and receive telecommunication signals.
 4. Antenna, whip: A single antenna that is cylindrical in shape and omni-directional.
 5. 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:
 - a. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant

application is filed with the Town under this Section, 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.

- b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small cell networks) that, at the time the relevant application is filed with the Town under this Section, 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 Town under this Section, does not support or house equipment described in paragraphs A and B above.

6. Camouflage or Camouflage Design Techniques: Measures used in the design and siting of Wireless Communication Facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF Site utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include the use of Concealment design elements so that a facility looks like something other than a wireless Tower or Base Station.
7. Collocation:
 - a. For the purposes of Eligible Facilities Requests, 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.
 - b. For the purposes of facilities subject to shot clocks governed by 47 U.S.C. Sec. 332, means attachment of facilities to existing structures, regardless of whether the structure or location has previously been zoned for wireless facilities.
8. Concealment: Utilization of elements of stealth design in a facility so that the facility looks like something other than a wireless Tower or Base Station. Language such as "stealth," "camouflage," or similar in any permit or other document required by the Town Code is included in this definition to the extent such permit or other document reflects an intent at the time of approval to condition the site's approval on a design that looks like something else. Concealment can further include a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree), or is incorporated into (including without limitation, being attached to the exterior of such facility 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 apparent. This definition does not include conditions that merely minimize visual impact but do not incorporate Concealment design elements so that the facility looks like something other than a wireless Tower or Base Station.

9. Eligible Facilities Request: 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.
- c. Replacement of Transmission Equipment.

A request for modification of an Existing Tower or Base Station that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, or does not comply with any relevant federal requirements, is not an Eligible Facilities Request.

10. 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 Town under this Section.

11. Equipment Cabinets: A cabinet or building used to house equipment used by wireless communications providers at a Wireless Communications Facility. This definition does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted behind antennas, if they are not used as physical containers for smaller, distinct devices.

12. Existing: For purposes of this Section, 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 of an Eligible Facilities Request, provided that a Tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

13. OTARD Antenna:

- a. An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter; or
- b. An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or
- c. An antenna that is designed to receive television broadcast signals.

14. OTARD antenna structure: Any pole, Tower, or other structure designed and intended to support an OTARD Antenna.

15. Related Accessory Equipment: The Transmission Equipment customarily used with, and incidental to Wireless Communication Facilities antennas, including by way of example, coaxial or fiber-optic cable, regular and backup power supply and remote radio units.

16. Right-of-Way: In the context of this Section, any public street or road that is dedicated to public use for vehicular traffic except for those rights-of-way owned by the Colorado Department of Transportation within the Town limits.

17. Site: In the context of this Section, for Towers and Eligible Support Structures, a Site means 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. For Alternative Tower Structures, Base Stations and Small Cell Facilities in the Right-of-Way, a Site is further restricted to that area comprising the base of the structure and to other Related Accessory Equipment already installed on the ground.
18. Small Cell Facility: A WCF where each antenna is located inside an enclosure of no more than three (3) 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 (3) cubic feet; and primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.
19. Substantial Change: A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:
 - a. For Towers, it increases the height of the Tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna; for other Eligible Support Structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;
 - b. For Towers, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of 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 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 (6) feet;
 - c. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the Eligible Support Structure but not to exceed four cabinets per application; or for Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
 - d. It entails any excavation or deployment outside of the current site, except that, for Towers other than Towers in the Public Rights-of-Way, it entails any excavation or deployment of Transmission Equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
 - e. For any Eligible Support Structure, it would defeat the Concealment elements of the Eligible Support Structure by causing a reasonable person to view the structure's intended stealth design as no longer effective;

- f. For any Eligible Support Structure, it does not comply with record evidence of conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs a, b, and c of this definition.

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

- 20. Tower: Any structure that is designed and 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. The term includes radio and television transmission towers, self-supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers and the like. Alternative Tower Structures and Small Cell Facilities in the Rights-of-Way are not Towers.
 - 21. 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.
 - 22. 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, including without limitation, directions, omni-directions and parabolic antennas, Base Stations, support equipment, Small Cell Facilities, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Section.
- C. Applicability; Waiver; Exemptions.** The requirements set forth in this Section shall apply to all WCF applications for Base Stations, Alternative Tower Structures, Alternative Tower Structures located within Right-of-Way, and Towers as defined elsewhere herein. The Town,

through an appropriately designated and authorized person, shall have the authority to waive any requirement or standard set forth in this Section as it may be proposed to be applied to a specific WCF, if the Town makes a determination that the specific requirement or standard as proposed to be applied is preempted by federal or state law. Prior to applying the waiver to any pending application, the Town shall, in consultation with the Town Administrator and Town Attorney, make a written preemption determination which written determination shall identify the specific requirement or standard that is being waived and cite to the specific federal or state law provision that preempts the specific Town requirement or standard set forth in this Section. The requirements set forth in this Section shall not apply to:

1. *Amateur Radio Antennas.* Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas, provided that the requirement that the height be no more than the distance from the base of the antenna to the nearest property line is met. The Town or their designee has the authority to approve modifications to the height restriction, if in the reasonable discretion of the Town, modifications are necessary to comply with federal law.
2. *Pre-existing WCFs.* Any WCF for which a permit has been properly issued prior to the effective date of this Section, shall not be required to meet the requirements of this Section, other than the requirements of subparagraphs Section D.1, Section D.5 and Section D.6 below. Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of this Section.
3. *Miscellaneous Antennas.* Antennas used for reception of television, multi-channel video programming and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided that the requirement that the height be no more than the distance from the base to the nearest property line are met. The Town Administrator or their designee has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the Town, modifications are necessary to comply with federal law.

D. Operational Standards.

1. *Federal Requirements.* All WCFs shall meet the current standards and regulations of the 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 governed by this Section shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the owner's expense.
2. *Radio Frequency Standards.* All WCFs shall comply with federal standards for radio frequency emissions. The Town may require that the owner or operator of the WCF provide information demonstrating compliance. If such information is not sufficient, in the reasonable discretion of the Town, to demonstrate compliance, the Town may require the owner or operator of the WCF to submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all Antennas installed at the subject Site, and which compares the results with established federal standards. If, upon review, the Town finds that the facility does not meet federal standards, the Town may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF. Any reasonable costs incurred by the Town, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the applicant.

3. *Signal Interference.* All WCFs shall be designed and sited so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. The Applicant shall provide a written statement (“Signal Interference Letter”) from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems.
4. *Legal Access.* In all applications for WCFs outside of the Right-of-Way, an Applicant shall demonstrate that it owns or has lease rights to the Site.
5. *Operation and Maintenance.* To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes. If upon inspection, the Town determines 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 thirty (30) days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the Town may remove such WCF at the owner's expense. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
6. *Abandonment and Removal.* If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within thirty (30) days of receipt of written notice from the Town. If such WCF is not removed within said thirty (30) days, the Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

E. Design Standards. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Section as specified below; provided, however, that the Town may waive any one or more of these requirements if it determines that the goals of this Section are better served thereby. WCFs shall be designed and located to minimize the impact on surrounding properties and residential neighborhoods and to maintain the character and appearance of the Town, consistent with other provisions of this Code. In addition to the provisions of this Code, applicants shall comply with the Town’s Wireless Communications Design Standards, which may be adopted and amended from time to time by the Town Administrator.

1. *Camouflage/Concealment.* All WCFs and any Related Accessory Equipment shall, to the maximum extent possible, use Concealment Design Techniques, and where not possible utilize Camouflage Design Techniques. Camouflage Design Techniques include, but are not limited to using materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and built environment.
 - a. Where WCFs are located in areas of high public visibility, they shall, where physically possible, be designed to be concealed, and where not possible to be concealed, to minimize the WCF profile through placement of equipment fully or partially underground, or by way of example and not limitation, behind landscape berms.

- b. A Concealment design may include the use of Alternative Tower Structures should the Town determine that such design meets the intent of this Code and the community is better served thereby.
- c. All WCFs, such as antennas, vaults, equipment rooms, equipment enclosures, and Towers shall be constructed of non-reflective materials (visible exterior surfaces only).

2. *Siting.*

- a. No portion of any WCF may extend beyond the property line.
- b. WCFs shall be required to be designed and constructed to permit the facility to accommodate WCFs from at least two wireless communications providers on the same WCF. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or Site.
- c. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Code standards.
- d. WCFs shall not encroach into any sight triangles.
- e. WCFs shall not encroach into recorded/documented easements without permission from the underlying property owner and the easement holder.

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

4. *Landscape and Fencing Requirements.*

- a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the lot or parcel, below any applicable Code standards including without limitation, Planned Unit Development standards.
- b. Except for WCFs in the Right-of-Way, the Site of the WCF shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the Site.
- c. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived in whole or in part by the Town.
- d. Existing mature tree growth and natural landforms on the Site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the Site perimeter may be sufficient to buffer.
- e. No trees larger than four (4) inches in diameter measured at 4½ feet high on the tree from grade may be removed, unless authorized by the Town. To obtain such authorization the Applicant shall show that tree removal is necessary, the Applicant's plan minimizes the number of trees to be removed and that any trees removed are replaced at a ratio of 2 to 1 with tree species to be approved by the Town. The applicant shall provide a maintenance plan to ensure the replacement trees shall be irrigated and maintained to the Town for approval prior to the removal of any tree.

5. *Specific Design Requirements.* Additional design requirements shall be applicable to the types of WCFs as specified below:
 - a. *Base Stations –*
 - i. Base Stations shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;
 - ii. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet;
 - iii. Wall mounted WCFs shall not extend above the roofline unless mounted to a penthouse; and
 - iv. Roof mounted WCFs shall be approved only where an Applicant demonstrates a wall mounted WCF is inadequate to provide service and shall be evaluated for approval based upon the following criteria:
 1. Roof mounted whip antennas shall extend no more than twelve (12) feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;
 2. Roof mounted panel antennas shall extend no more than seven (7) feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and
 3. Other roof mounted Related Accessory Equipment shall extend no more than seven (7) feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.
 - b. *Alternative Tower Structures (ATS) and Small Cell Facilities not located in the Right-of-Way –*
 - i. ATS shall be designed and constructed to look like a building, facility, or structure typically found in the area, in order that the WCF is Concealed.
 - ii. Height or size of the proposed ATS or Small Cell Facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, as set forth in The Zoning Section, Chapter 30 of the Town's Municipal Code, as amended.
 - iii. ATS shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
 - iv. ATS should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
 - v. ATS and Small Cell Facilities shall be compatible with the surrounding topography, tree coverage, and foliage;
 - vi. ATS and Small Cell Facilities shall be designed utilizing design characteristics that have the effect of concealing where technically feasible and generally reducing or eliminating visual obtrusiveness; and
 - vii. Visual impacts of the proposed ingress and egress shall be minimized.
 - c. *Alternative Tower Structures and Small Cell Facilities located in the Right-of-Way –*
 - i. No ATS pole shall be higher than thirty-five (35) feet including any cannister or antennas located on top of a pole;
 - ii. No pole or structure shall be more than ten (10) feet higher (as measured from the ground to the top of the pole or structure) than any existing utility or traffic signal within five hundred (500) feet of the pole or structure;

- iii. Any new pole for ATS or Small Cell Facilities shall be separated from any other existing WCF facility by a distance of at least six hundred (600) feet, unless the new pole replaces an existing traffic signal, street light or utility pole;
- iv. With respect to pole-mounted components, Small Cell Facilities shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives;
- v. ATS must be concealed consistent with other existing natural or manmade features in the Right-of-Way near the location where the ATS will be located;
- vi. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS;
- vii. When placed near a residential property, any ATS or Small Cell Facilities must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two intersecting streets;
- viii. Small Cell Facilities shall:
 - (1) be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered; and
 - (2) be designed such that all antennas, mast arms, equipment, and other facilities are sized to minimize visual clutter, and where possible, concealed within the structure; and
 - (3) be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS; and
 - (4) require that any ground mounted equipment be installed in an underground or partially underground equipment vault (projecting not more than thirty-six (36) inches above grade) or the maximum height permissible through the Town's Engineering specifications and standards for ground mounted utility equipment, or co-located within a traffic cabinet of a design approved by the Town, unless a use by special review is obtained subject to the requirements of the Town Code; and
 - (5) not alter vehicular circulation or parking within the Right-of-Way or impede vehicular, bicycle, or pedestrian access or visibility along the Right-of-Way; and
 - (6) comply with the federal Americans With Disabilities Act and all applicable local, state, and federal law and regulations; and
 - (7) not be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the Town, the general public, or other person authorized to use or be present upon the Right-of-Way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the Right-of-Way that disrupts vehicular or pedestrian traffic, any

interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

d. *Towers* -

- i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the Town;
- ii. Tower structures should use existing landforms, vegetation, and structures to aid in concealing the facility from view or blending in with the surrounding built and natural environment;
- iii. Monopole support structures shall taper from the base to the tip;
- iv. All Towers shall be enclosed by security fencing or wall at least six (6) feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material; and
- v. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of sixty (60) feet.
- vi. Towers should be sited in a manner that is least obtrusive to residential structures and residential district boundaries where feasible;
- vii. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the Tower to these uses;
- viii. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- ix. Visual impacts of the proposed ingress and egress shall be minimized;
- x. No new Towers shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Town that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application. Evidence submitted to demonstrate that no existing WCFs can accommodate these needs may consist of the following:
 - (1) No existing WCFs are of sufficient height and are located within the geographic area required to meet the Applicant's engineering requirements;
 - (2) Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
 - (3) The Applicant's proposed WCF would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCFs would cause interference with the Applicant's proposed WCF; or
 - (4) The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
- xi. A Tower shall meet the greater of the following minimum setbacks from all property lines:
 - (1) The setback for a principal building within the applicable zoning;
 - (2) Twenty-five (25) percent of the facility height, including WCFs and Transmission Equipment; or

- (3) The Tower height, including antennas, if the Tower is in or adjacent to a residential district or residential zoned property.
 - (4) For Sites within or adjacent to residential zones, Towers over forty (40) feet in height shall not be located within one-quarter mile from any existing Tower that is over forty (40) feet in height, unless the Applicant has shown to the satisfaction of the Town that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
- xii. No Towers shall be permitted in the Right-of-Way.
- e. *Related Accessory Equipment* - Related Accessory Equipment for all WCFs shall meet the following requirements:
 - i. All buildings, shelters, cabinets, and other accessory components shall be grouped as closely as technically possible;
 - ii. For WCFs outside of the Right-of-Way, the total footprint coverage area of the WCF's Related Accessory Equipment shall not exceed three hundred fifty (350) square feet;
 - iii. No Related Accessory Equipment or accessory structure shall exceed twelve (12) feet in height; and
 - iv. Related Accessory Equipment 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 Related Accessory Equipment shall be concealed where technically feasible or otherwise camouflaged in a manner appropriate for the specific site.

6. **Additional Design Standards.** The Town may adopt administrative regulations addressing additional design standards for WCFs.

F. Review Procedures and Requirements. No new WCF shall be constructed and no collocation or modification to any existing WCF may occur except after a written request from an Applicant, reviewed and approved by the Town in accordance with this Section. In addition to following the procedures and regulations regarding land use approval, the applicant is responsible for coordinating any building permit activities with the Town. All WCFs, except Eligible Facilities Requests, shall be reviewed pursuant to the following procedures:

- 1. *Submittal Requirements.* Each Applicant for a WCF shall be required to submit:
 - a. A Signal Interference Letter
 - b. For new Towers and attachments to buildings, an inventory of Existing Sites
 - c. A stamped report by a state of Colorado registered professional engineer, or a verified statement from a qualified radio frequency engineer, demonstrating or assuring that the site will be in full compliance with federal radio-frequency emissions standards for wireless facilities; and
 - d. A stamped plan or report by a state of Colorado registered professional engineer indicating the structure is structurally sound to support the WCF.
 - e. For all sites except Small Cell Facilities located in the Rights-of-Way, a site plan map prepared in accordance with the Site Plan Map standards as detailed in Chapter 30 of the Berthoud Municipal Code. Applications for Small Cell Facilities located in the Rights-of-Way shall provide a map illustrating the location of the facility.

f. A project narrative detailing the criteria found in either the Site Plan or the Special Use Permit standards as detailed in Chapter 30 of the Berthoud Municipal Code, as applicable. The following additional information shall be described/provided:

- i. How the application meets the Design Standards found in this Chapter.
- ii. Concealment and Camouflage provisions.
- iii. If a freestanding facility is proposed, an analysis of alternatives to a freestanding facility within a one-mile radius of the facility.
- iii. A list of all permits or approvals obtained or anticipated to be obtained from local, state or federal agencies other than the Federal Communications Commission (FCC).
- iv. A statement as to whether the facility can be made available for collocation with other wireless users and if so, under what conditions.
- v. Any other information deemed necessary by the Town to determine compliance with this Section.

2. *Additional Submittal Requirements.* In addition to the information required in Subsection 1 above, find the following requirements below:

- a. In all zoning districts in which Towers are a use by right, applications shall be reviewed and considered for approval by the Town for conformance to this Section, any specific requirements of the zone district in which the proposed Tower is located and the Town's Wireless Communications Design Standards. In zoning districts where applications are permitted by use by special review, the application process shall follow the use by special review process and approved by the Town Board of Trustees. Such Towers shall be reviewed for conformance to this Section using the use by special review procedures set forth in Chapter 30 of the Municipal Code in conjunction with the applicable sections of this Section. Except in zone districts where Towers are a use by right, all applications for Towers shall demonstrate that other alternative design options such as Base Stations or Alternative Tower Structures are not viable options.
- b. In all zoning districts and Planned Unit Developments, each application for a Base Station, Alternative Tower Structure, or Alternative Tower Structure proposed for location within Right-of-Way shall be reviewed and considered for approval by the Town for conformance to this Section and any specific requirements of the zone district in which the proposed Site is located. Except for WCFs in the Right-of-Way that meet all requirements of this Section or Eligible Facilities Requests, the Town may refer the application to Planning Commission for approval if the Town finds the proposed WCF to have a significant visual impact (e.g., proximity to historic or designated view corridors, or on significant community features) or otherwise is substantially incompatible with the structure on which the WCF will be installed, or it does not meet the clear intent of this Section.

3. *Criteria for approval.* The Community Development Director, or their designee, shall determine if the applicant has demonstrated that the proposed WCF meets the following standards, as applicable:

- a. Application materials are complete.

- b. The proposed land use will satisfy all applicable provisions of the zoning code, overlay districts, and subdivision regulations unless a variance is being concurrently requested.
- c. The proposed land use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
- d. The proposed land use will be adequately served with public utilities, services, and facilities (i.e., water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
- e. The proposed land use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.
- f. The proposed land use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
- g. Potential negative impacts of the proposed land use on the rest of the neighborhood or of the neighborhood on the proposed land use have been mitigated through setbacks, architecture, screening, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.
- h. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.
- i. The application addresses camouflage of the facilities from public view as appropriate.
- j. The Signal Interference Letter is found to be satisfactory to the Town.
- k. The radio frequency report is found to be satisfactory to the Town.
- l. The structures proposed are found to be satisfactory to the Town.
- m. If accessory structures are proposed, the application provides information regarding accessory structures that meet the intent of the Accessory Structures standards of this Section and Chapter 30 of the Municipal Code.
- n. Compliance with mitigation co-location standards and requirements established by this Section and Chapter 30 of the Municipal Code.

3. *Timeframes for Review.*

- a. All WCFs, other than those specified below shall be reviewed according to the following timeframes:
 - i. Review of an application to collocate a facility on an Existing Tower or Base Station: 90 days.
 - ii. Review of an application to deploy a Small Cell Facility on a new structure: 90 days.
 - iii. Review of an application to deploy a WCF other than a Small Cell Facility on a new structure: 150 days.
 - iv. Review of an application for a new Tower, Base Station, or Alternative Tower Structure: 150 days.

- b. Tolling the Timeframe for Review. Except for WCFs specified below in subsections (F)-(G), the relevant review timeframe begins to run when the application is filed with the Town, and may be tolled only by mutual agreement or where the Town determines that an application is incomplete.
 - i. To toll the timeframe for incompleteness, the Town shall provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - ii. Upon providing the notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
 - ii. Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether 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 subparagraph b of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- 4. *Specific Review Procedures for Collocating Small Cell Facilities on Existing Towers or Base Stations.* Within ten (10) business days of receipt of an application for a Small Cell Facility, the Town shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this subsection.
 - a. To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within ten (10) business days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - b. The timeframe for review resets to zero (0) when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness.
 - c. Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether the supplemental submission provided the information identified in the original notice delineating missing information. If the application remains incomplete, the timeframe is tolled pursuant to the procedures identified in subparagraphs (1) and (2) of this paragraph. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- 5. *Specific Review Procedures for Eligible Facilities Requests.*
 - a. Application. Eligible Facilities Requests for Collocation on or modification of an Existing Tower or Base Station shall be considered a use by right subject to administrative review and determination by the Town. The Town shall prepare, and from time to time revise and make publicly available, an

application form which shall be limited to the information necessary for the Town to consider whether an application for Collocation or modification is an Eligible Facilities Request. Such information may include, without limitation, whether the project:

- i. results in a Substantial Change to the physical dimensions of the Site; or
- ii. violates a generally applicable law, regulation, or other rule reasonably related to public health and safety.

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

b. Time frame for EFR review. Subject to the tolling provisions below, an application for an Eligible Facility Request shall be approved within sixty (60) days of the date of the request unless the Town determines that it does not qualify as an Eligible Facilities Request. Upon receipt of an application for an Eligible Facility Request pursuant to this subsection, the Town shall review such application to determine whether the application so qualifies.

c. Tolling the Timeframe for EFR Review.

i. The sixty (60) calendar day review period begins to run when the application is filed with the Town, and may be tolled only by mutual agreement or where the Town determines that an application is incomplete:

- (1) To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;
- (2) Upon notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
- (3) Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether 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 subparagraphs (i) and (ii) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing documents or information that were not delineated in the original notice of incompleteness.

ii. If the Town fails to approve or deny an Eligible Facility Request within the time frame for review (accounting for any tolling), the request shall be deemed granted; provided that this approval shall become

effective only upon the Town's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

- c. Interaction with Telecommunications Act 47 U.S.C. Section 332(c)(7). If the Town determines that the applicant's request is not an Eligible Facilities Request, the applicant shall be advised as to the relevant provisions of the Town Code that govern the process to consider the request, and whether the Town Code requires any additional information to be submitted in order for the request to be considered complete. If the applicant subsequently indicates an intent for the proposal to be considered under the relevant section of the Town Code and submits all required information, the presumptively reasonable timeframe under 47 U.S.C. Section 332(c)(7), as set forth in applicable federal and state law will begin to run from submittal of the required information under the applicable provision of the Town Code.
- G. **Decision.** Any decision to approve, approve with conditions, or deny an application for a WCF shall be in writing, supported by substantial evidence in a written record, and shall be provided to the Applicant within ten (10) days of the decision. If the approval is for a concealed WCF, the written decision shall specifically identify that the WCF is a concealed facility.
- H. **Compliance with Applicable Law.** Notwithstanding the approval of an application for collocation as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in the Town Code, and any other applicable regulations. In addition, all WCF applications shall comply with the following:
 - a. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
 - b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
 - c. Be maintained in good working condition and to the standards established at the time of application approval or as otherwise required by applicable law; 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 (10) days from the time of notification by the Town or after discovery by the owner or operator of the Site.
- I. **Compliance Report.** Upon request by the Town, the Applicant shall provide a compliance report within forty-five (45) days after installation of a WCF, demonstrating that as installed and in operation, the WCF complies with all conditions of approval, applicable Town requirements and standard regulations.

VII. Standards for Approval. No WCF, including Related Accessory Equipment, shall be approved unless it meets the following approval criteria:

- A. Visual impacts are minimized and view corridors are protected to the greatest extent feasible.
- B. Unless a Tower site, or otherwise waived pursuant to this Section, the WCF utilizes Concealment Design Techniques to avoid adverse impacts on the surrounding area, by ensuring that the facility looks like something other than a Tower or Base Station;
- C. The WCF meets the applicable design standards for the type of WCF in accordance with Section V, Design Standards; and
- D. The WCF is and will be operated at all times in accordance with Section IV.