

FIRST READING: August 6, 2019

SECOND READING: August 20, 2019

ORDINANCE NO. 6325

**AN ORDINANCE ADOPTING THE CITY OF LOVELAND WIRELESS
COMMUNICATIONS CODE AS TITLE 14 OF THE LOVELAND MUNICIPAL
CODE**

WHEREAS, in 2017, the Colorado General Assembly passed Senate Bill 17-1193 in order to facilitate the deployment of small cell wireless facilities in the public rights-of-way. Such legislation was enacted in C.R.S. § 29-28-401 to 404 and C.R.S. § 38-5.5-102 to 109 (“State Statutes”); and

WHEREAS, the State Statutes require municipalities to permit the deployment of small cell wireless facilities in public rights-of-way, including by attachment to City-owned structures such as utility poles and street light poles, subject to limited regulation by the City; and

WHEREAS, in addition, the Federal Communications Commission (“FCC”) has promulgated certain regulations intended to preempt local regulations regarding the deployment of small cell wireless facilities; and

WHEREAS, the City has determined that certain amendments to the Loveland Municipal Code are necessary to regulate small cell wireless facilities in the public rights-of-way to the extent permitted by the State Statutes and federal law; and

WHEREAS, the Loveland Municipal Code currently addresses wireless communications facilities, including small cell wireless facilities, in two locations: Title 18, which contains the City’s Unified Development Code (“UDC”) and Title 13. The UDC concerns wireless communication facilities on private property, rather than within the public rights-of-way, while Title 13 concerns wired and wireless attachments to City-owned poles; and

WHEREAS, the City Council desires to consolidate the provisions in the UDC and Title 13 regarding wireless communications facilities with new provisions regarding the public rights-of-way into one new Title 14 – Wireless Communications Code creates a more accessible code for the City, its citizens, and the wireless communications industry; and

WHEREAS, the City Council desires to adopt a new Title 14 – Wireless Communications Code and finds that such adoption is in the best interests of the City and its citizens.

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

Section 1. That the City of Loveland Wireless Communications Code is adopted as Title 14 of the Loveland Municipal Code as follows:

TITLE 14 WIRELESS COMMUNICATIONS CODE

14.04 Applicability. This chapter applies to the installation, construction, and modification of wireless communications facilities on structures within the public rights-of-way, including poles, street lights and other structures owned by the City, structures owned by third parties, and structures installed and owned by a wireless communications services provider. This chapter also applies to the installation, construction, and modification of wireless communications facilities on private property in addition to the provisions of the City of Loveland Unified Development Code found at Title 18 of the Loveland Municipal Code.

14.08 Purpose and Intent. The purpose of this chapter is to provide specific regulations in the City's exercise of its police powers for the installation, construction, and modification of wireless communications facilities within the City of Loveland. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of wireless communications services, nor shall the provisions of this chapter be applied in such a manner as to discriminate unreasonably between providers of functionally equivalent wireless communications services. To the extent that any provision or provisions of this chapter are inconsistent or in conflict with any other provision of the Loveland Municipal Code or any ordinance of the City, the provisions of this chapter shall be deemed to control. The goals of this chapter are to:

- encourage the installation and location of wireless communications facilities in a manner that minimizes the visual impact of such installations on the community;
- strongly encourage the joint use of new and existing tower sites or poles by wireless communications services providers;
- encourage the deployment of smaller, less intrusive wireless communications facilities;
- effectively manage wireless communications facilities installed in the public rights-of-way;
- encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;
- to protect the public health, safety and general welfare, including the City's ability to safely operate and maintain its infrastructure in the public rights-of-way; and
- enhance the ability of wireless communications service providers to provide such services throughout the City quickly, effectively, and efficiently.

14.12 Definitions.

"Accessory equipment" means any equipment serving or being used in conjunction with a wireless communications facility, 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.

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

“Antenna” means 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” means any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a wireless communications facility.

“Attachments” means each point of contact between a wireless communications facility or small cell facility and a pole, whether placed directly on the poles or overlashed onto an existing attachment, but does not include a riser or a service drop attached to a single pole where applicant has an existing attachment on such pole. Attachment(s) shall include, without limitation, the following points of strain: down guys, main line attachments, and any other attachment that could shorten the life cycle of the pole.

“Base station” means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower including the defined accessory equipment. Base station includes, 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, 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, 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.” A wireless communications facility is camouflaged or utilizes camouflage design techniques when any measures are used in the design and siting of such facility with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A wireless communications facility site utilizes camouflage design techniques when it (1) is integrated in an outdoor fixture such as a flagpole, or (2) uses a design which mimics and is consistent with the nearby natural or architectural features (such as an artificial tree on private property or a streetlight in the ROW) 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 communications facility is not readily apparent.

“Capacity” means the ability of a pole segment to accommodate an additional attachment based on applicable standards, including space and loading considerations.

“Carrier space” means space on or within the poles that can be used, as defined in the City’s electric standards and all other standards adopted in the Loveland Municipal Code, for the attachment or placement of wires, cables, small cell facilities, and associated equipment for the provision of communications services or electric services. The neutral zone or safety space is not considered carrier space.

“Climbing space” means that portion of a pole’s surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City facilities and equipment.

“Collocation” or “co-location” means (1) mounting or installing a communications facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a communications facility on that structure. Provided that, for purposes of eligible facilities requests, “collocation” or “co-location” 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.

“Common space” means space on the poles that is not used for the placement of wires or cables but which jointly benefits all users of the poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric utility facilities.

“Eligible facilities request” means any request for modification of an existing tower or base station that does not substantially change (as defined below) the physical dimensions of such tower involving:

- (i) collocation of new transmission equipment,
- (ii) removal of transmission equipment, or

(iii) replacement of transmission equipment.

“Eligible support structure” means any tower or base station as defined in this chapter, provided that it is existing at the time the relevant application is filed with the City under this section.

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

“FAA” means the Federal Aviation Administration.

“FCC” means the Federal Communications Commission.

“IEEE-SA” means the Institute of Electrical and Electronics Standards Association.

“Licensee” means any person who holds a license or permits to site, install, construct, collocate, modify, maintain, and/or operate a wireless communications facility in the right-of-way (as defined below).

“Master license agreement” means an agreement entered into between an applicant and the City which governs all of the applicant’s installation, construction, and maintenance of wireless communications facilities in the public right-of-way.

“Micro wireless facility” means a small wireless facility that is no larger in dimensions than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that has an exterior antenna, if any, that is no more than eleven inches in length.

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

“Non-Ionizing Radiation Electromagnetic Radiation Report (NIER)” means a report from the applicant that complies with the City of Loveland Wireless Communications Facilities Development Standards regarding radio frequency emissions certifying that all wireless communications facilities that are the subject of the application shall comply with federal standards for radio frequency emissions.

“Overlash” means to place an additional wire or cable communications facility onto an existing attachment owned by licensee.

“Pole” means a pole owned by the City located within the right-of-way.

“Public property” means real property owned or controlled by the City, excluding the public right-of-way.

“ROW” (right-of-way) means any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

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

“Roof-mounted wireless communications facility” means a wireless communications facility that is mounted on the roof or any rooftop appurtenance of a legally existing building or structure.

“Signal interference letter” means a letter from the applicant certifying that all wireless communication facilities that are the subject of the application shall be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

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

“Site supplement” means a license for an individual wireless communications facility within the ROW.

“Small cell facility” or “small cell wireless facility” means a wireless communications 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 not 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, backup power systems, grounding equipment, power transfer switch, and cut-off switch. For the avoidance of doubt, small cell facilities may be attached to alternative tower structures, monopoles, and pole support structures.

“Substantial change” means a modification to the physical dimensions of an eligible support structure where, after the modification, the structure meets any of the following criteria:

- i. *Height Increase.* For towers, other than alternative tower structures in the right of-way or other towers in the ROW, 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 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;
- ii. *Added Appurtenance.* For towers, other than towers in the ROW, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than twenty 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 side of the structure by more than six feet;
- iii. *Equipment Cabinets.* For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for towers in the ROW and base stations, it involves installation of any new equipment cabinets on the ground if there are no

- pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
- iv. *Excavation or Deployment.* For any eligible support structure, it entails any excavation or deployment outside the current site;
 - v. *Defeating Concealment.* For any eligible support structure, it would defeat the concealment elements of the eligible support structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or
 - vi. *Noncompliance with Existing Approvals.* For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, added appurtenances, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (i), (ii), and (iii) of this definition. For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

“Support structure” means 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.

“Tower” means any structure that is built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. 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” means equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power 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.

“Unified Development Code” means Title 18 of the Loveland Municipal Code.

“Wall-mounted wireless communications facility” means a wireless communication facility that is mounted and supported entirely on the wall of a legally existing building,

including the walls of architectural features such as parapets, but does not include mechanical screens, chimneys, and similar appurtenances.

“Wireless Communications Facilities Development Standards” or “Standards” means the aesthetic, technical, and physical standards adopted by the City that wireless communications facilities in the ROW must meet as part of the master license agreement.

“Wireless communications facility” or “WCF” means a communications 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, directional, omni-directional, and parabolic antennas, support equipment, 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 hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this chapter.

14.16 Applications and Review Procedures.

14.16.010 Application 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 is reviewed and approved by the City in accordance with this chapter and the Loveland Municipal Code. All applications, except eligible facilities requests, shall be submitted and reviewed pursuant to the procedures described below.

14.16.020 Submittal Requirements.

A. WCF in the Right-of-Way. The applicant shall submit a small cell wireless site supplement application on the form provided by the City through its Building Division and provide all information required by the City, including but not limited to the signed master license agreement with current certificate of insurance, electrical service worksheet, complete construction plans, NIER report, permits, submittal fees, and other information deemed by the City Manager or his or her designee to be necessary to determine compliance with this chapter, the master license agreement, and the Standards. Such application shall be processed through the City’s building permit process.

B. WCF on Private Property. The applicant shall submit an application on the form provided by the City through its Current Planning Division and provide all information required by the City. Such application shall be processed through the City’s development review process.

14.16.030 Use by Right. In all zoning districts, applications for small cell facilities shall be reviewed as a use by right, without public hearing, in conformance to this chapter and the Loveland Municipal Code, including the Unified Development Code.

14.16.040 Time for Review and Approval. The City shall review and approve applications for WCF in the manner necessary to comply with applicable state and federal law.

14.16.050 Consolidated Applications. The City shall allow an applicant to file a consolidated application for up to ten (10) small cell facilities to be located within the ROW. The City may deny all or a portion of a consolidated application to the extent the application or portion thereof does not confirm to the applicable City requirements. A consolidated application must not include any WCF to be located on private property.

14.16.060 Approval or Denial. The City will approve or deny an application in writing. The approval of an application shall specify all design elements intended to conceal the WCF. The denial of an application shall specify the reasons for denial, including reference to substantial evidence in the record that supports the City's denial.

14.20 Permits Required. For all activities relating to a WCF in the City, the applicant shall be responsible for obtaining from the City and any other applicable entities all necessary permits and authorizations for the construction, modification, repair, or removal of such WCF, which permits may include but not be limited to a ROW work permit, building permit, and electric metering. The applicant shall be required to comply with all requirements and conditions of such permits.

14.24 Specifications. An applicant shall install and maintain its WCF in accordance with all applicable City standards, including the Loveland Municipal Code, local building and safety codes, the master license agreement, and the Standards.

14.28 Non-interference. All WCF shall be designed and sited in accordance with FCC standards so as not to cause interference with the normal operation of licensed radio, television, telephone and utility, City, or other communications services on adjacent properties; nor shall any such WCF interfere with any public safety communications.

14.32 Maintenance and Inspection. The licensee shall maintain its facilities in a good and safe condition and in a manner that complies with all applicable federal, state, and local requirements. The site and the WCF, including all landscaping and fencing, as applicable, and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans and specifications. Graffiti and damage must be timely removed or repaired by the licensee after notification from the City.

14.36 WCF in the ROW.

14.36.010 Design and Location Standards Adopted. The Standards are hereby adopted by reference. The Standards shall be published on the City of Loveland internet site and made available to the public. Every installation, construction, and modification of WCF within the

City's ROW shall be designed and located in accordance with the Standards and applicable sections of the Loveland Municipal Code. Notwithstanding anything in the Loveland Municipal Code to the contrary, any revisions to the Standards, including revisions that adopt codes by reference, shall be made by the City in accordance with the process set forth in the Standards.

14.36.020 Variation from Standards. Modifications to the Standards for a site supplement may be proposed by the applicant by the submission of an alternative design drawing or illustration to the Director of the Department of Water and Power or his or her designee ("Director"). The drawing or illustration shall clearly identify the differences between the Standards and the proposed alternative design. Where the Director finds such submitted alternative design presents a de minimis or nominal visual impact when compared to the Standards, the Director may approve such alternative design, which approval shall be evidenced by written acknowledgment signed by the Director and affixed to the particular site supplement. The Director shall retain the discretion to deny a proposed alternative design where the Director finds the proposed design to be more visually or aesthetically impactful than the Standards. At the Director's discretion, the Director may submit the proposed alternative design illustrations to the City Manager for an administrative determination that the proposed design is, or is not, more visually or aesthetically impactful than the Standards.

14.36.030 Unlawful Facilities. It shall be unlawful for a WCF to be placed in any ROW except in compliance with this code. Such unauthorized installation will be subject to immediate removal by the City if the installation is not promptly brought into compliance with this chapter, and the licensee shall be subject to such penalties as authorized by the master license agreement and this chapter.

14.36.050 Master License Agreement Required.

A. Prior to submittal of an application to install WCF within the ROW, the applicant must execute a master license agreement with the City that applies to all facilities of the applicant to be installed within the ROW. Such master license agreement shall be in a form approved by the City Attorney. The City Manager is authorized to execute the master license agreement on behalf of the City.

B. No license granted hereunder shall be effective until the applicant and the City have executed the master license agreement setting forth the particular terms and provisions under which the license to occupy and use the City's ROW will be granted.

C. The master license agreement shall govern each WCF installation for which individual site licenses are issued by the City. The City may withhold further individual site licenses until any ongoing violations or defaults in the licensee's performance under the master license agreement, or of any requirements of this chapter, have been cured.

D. In no circumstance shall the length of the term of any license issued exceed ten (10) years.

E. Nothing contained herein shall prohibit or limit the City and the licensee from modifying the terms and conditions of the master license agreement by mutual agreement. The City Manager, or his or her designee, shall be authorized to execute such amendment.

F. In the case of a conflict between this code, the Standards, and the master license agreement, the provisions of such shall prevail in the following order of priority: the Standards, this code, and the master license agreement, except as federal or state law may preempt or act to modify the code or the Standards, and so long as the terms of this code or Standards do not alter any material rights granted in the master license agreement

14.36.060 Rights Granted. No license granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the City's ROW for delivery of wireless communications services or any other purposes. No license granted under this chapter shall convey any right, title, or interest in the ROW, but shall be deemed a license only to use and occupy the ROW for the limited purposes and term stated in the license; further, no license shall be construed as any warranty of title.

14.36.070 Referral to City Council. Except for WCFs in the ROW that otherwise meet all requirements of this chapter, should the City Manager or his or her designee consider the proposed WCF to have a significant visual impact (i.e. proximity to historical sites) or otherwise be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the City Manager or designee may refer the application to City Council for approval.

14.36.080 Pole Attachments in General.

A. The City is the owner of certain poles located within the ROW, including, but not limited to, utility poles, traffic poles, and street light poles. In accordance with the purposes and intent of this chapter, the City is willing to authorize the attachment of WCFs to City poles in the ROW to the extent that such attachments comply with the Loveland Municipal Code and the master license agreement.

B. A site supplement is authorization for attachment to specific poles, one for each pole or overlash.

C. The City will issue a site supplement for attachment to a pole only when the City determines, in its sole judgment, exercised reasonably, that the pole has sufficient capacity to accommodate the request safely. The City may refuse to issue a license for attachment to a pole where safety concerns cannot be adequately addressed through engineering.

D. Any modifications or additions necessary to make a City-owned structure ready for safe attachment will be the responsibility of the applicant, as well as all associated design and engineering or other costs. The applicant is responsible for payment for all work performed by the City to accommodate the applicant's attachment of WCF.

E. All attachments shall comply with all applicable City standards. Attachments, overlash, or other components must not interfere with the operation of any City facilities.

14.36.090 Fees and Costs.

A. Applicant Responsible for Fees and Costs. The applicant shall pay application fees, annual fees and permit fees as published in the City's rates, charges and fees at the time of submission of an application to install a WCF. The applicant shall also reimburse the City for any actual, identified direct or indirect costs reasonably incurred by the City in planning, constructing, installing, repairing, or altering any City facility as a result of the construction or the presence in the ROW of the applicant's WCF. The applicant shall be subject to any other generally applicable fees of the City or other entity.

B. Invoice and Payment. The City shall invoice the applicant annually for the attachment fee, for a period that concludes each December 31. The applicant shall pay any invoices issued by the City within thirty (30) days. Failure to make payment by the deadlines set forth may accrue penalties or interest as described in the master license agreement.

C. No Refund. Except as otherwise provided in the master license agreement, the applicant may remove its WCF from the ROW at any time, subject to the necessary permitting, upon thirty (30) days prior written notice to the City, and may cease paying to the City any applicable recurring fees for such use as of the date of actual removal of the WCF and complete restoration of the ROW. In no event shall an applicant be entitled to a refund of fees paid prior to removal of its WCF.

D. Taxes. The applicant shall pay all applicable City, county and state taxes levied, assessed, or imposed on applicant or applicant's WCF related to any of applicant's WCF and/or services provided within the City.

14.36.100 Insurance. The licensee shall maintain current at all times liability and property insurance for each WCF in the ROW as required in the master license agreement. For any work not performed by the City, the licensee shall comply with the insurance requirements set forth in Section 12.16.070.

14.36.110 Indemnification. The licensee shall indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the licensee's operation of WCF in the ROW, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the licensee or any subcontractor of the licensee, or any officer, employee or agent of the licensee or any subcontractor, or any other person for whom the licensee is responsible. The licensee shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses

related thereto, including court costs and attorneys' fees. The licensee shall notify the City and provide a copy of any and all written claims or demands within two (2) business days of receipt. The licensee's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City.

14.36.120 Removal and Relocation.

A. Within ninety (90) days following written notice from the City a licensee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCFs within the ROW whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repair, maintenance, or installation of any City or other public improvement in or upon the ROW.
2. The operations of the City or other governmental entity in or upon the ROW.

B. At its sole expense, the licensee shall remove any of its WCF or any part thereof that become nonfunctional, create a safety hazard, violate any provision of applicable law or violate the licensee's master license agreement. Removal shall occur within thirty (30) days of written notification from the City that an attachment must be removed due to becoming nonfunctional or a safety hazard.

C. If the City desires at any time to abandon, remove, or underground any utility facilities to which licensee's WCF is attached, the City shall provide the licensee notice in writing at least sixty (60) days prior to the date on which it intends to abandon or remove such facilities, and the licensee shall remove its WCF at its sole cost and expense within that time period.

D. Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any telecommunications facilities located within the City's ROW, as the City may determine to be necessary in response to any public health or safety emergency.

14.36.130 Abandonment.

A. Any WCF in the ROW that is not used for a period of six months or more shall be deemed to be abandoned. No licensee or owner of the WCF shall fail to remove a WCF that is abandoned or is unused for a period of six months. If the WCF licensee or owner fails to remove an abandoned facility at the request of the City, the City may remove the WCF and charge the costs to the WCF owner.

B. Failure to pay the annual fee shall be considered abandonment. The City shall issue a notice to remove the attachment(s) if such fee is more than sixty (60) days past due.

C. The licensee may surrender any license for attachment(s) and remove them from affected poles. At least thirty (30) days prior to the commencement of such work, licensee must

notify the City of the plan for removal, including the name of the party performing the work and dates and times when such work will be performed.

D. If licensee abandons a WCF or surrenders its license and fails to remove its attachments, the City shall have the right to remove the licensee's attachments at licensee's expense.

14.40 WCF on Private Property.

14.40.010 Wireless Communications Facilities Standards.

A. Design Criteria. Every WCF outside of the ROW shall comply with the following design criteria:

- 1. Architectural Compatibility.** The WCF shall be architecturally compatible with the surrounding buildings and land uses in the same zone, or otherwise integrated, through location and design, to blend in with the existing characteristics of the subject property to the extent practical. Such WCF will be considered architecturally and visually compatible if they are camouflaged to disguise the WCF.
- 2. Color.** Towers and antennas shall be of a color that generally matches the building, surroundings, or background, and minimizes their visibility, unless a different color is required by the FCC or FAA. Muted colors, earth tones and subdued colors shall be used wherever possible.
- 3. Lights, Signals, and Signs.** No lights, signals, or signs shall be permitted on towers or other structures unless required by the FCC or the FAA.

B. Tower Setbacks. Tower setbacks shall be measured from the base of the tower to the property line of the subject property.

- 1. Residential Zones.** Towers shall be set back from all property lines a distance equal to 300 percent of tower height; provided, however, that a lesser setback may be permitted if the Director determines that:
 - a. There are unusual geographical limitations that justify the reduced setback;
 - b. The setback is not less than a distance equal to 100 percent of tower height; and
 - c. The tower is camouflaged or otherwise adapted to be compatible with the surrounding area.
- 2. All Other Zones.** In all zones that are not residential zones, towers shall comply with the minimum setback requirements of the area in which they are located, except that if property in such non-residential zone is adjacent to property in the residential zone, a tower shall be setback a distance of no less

than 110 percent of the tower height from the property line abutting such residential property.

C. Equipment Structures. Ground level equipment and buildings and the tower base shall be screened. The standards for equipment and buildings are as follows:

1. The maximum floor area is 350 square feet and the maximum height is 12 feet.
2. Equipment mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof mounted antenna may also be located within the building on which the antenna is mounted, subject to generally accepted engineering practices. Equipment, buildings, antennas, and related equipment shall occupy no more than 25 percent of the total roof area of a building.

D. Structural Design. Towers shall be constructed to the FCC and EIA Standards, as may be amended from time to time, and all applicable construction, building, and safety codes.

E. Fencing for Freestanding Communication Towers. A stucco, masonry, or stone security wall, not less than six feet in height, shall be provided around each freestanding communication tower. Alternative fencing materials may approved by the Director of Development Services if the tower is designed to accommodate co-location. Security walls or fencing shall be colored or designed to visually blend into the character of the existing environment. Access to the tower shall be through a locked gate.

F. Antenna and Tower Height.

1. The applicant shall demonstrate that the antenna is the minimum height required to function satisfactorily. No antenna that is taller than the minimum height required to function shall be approved.
2. Towers shall be no taller than the maximum permitted height as set forth in Table 14.40.F, unless otherwise approved pursuant to conditional use review as set forth in the Unified Development Code. This section shall not apply to eligible facilities requests.

Table 14.40.F Maximum Antenna and Tower Height					
WCF Category	Zones				
	Residential Zones (ER, R1, R1e, R2, R3, R3e, and Residential PUDs)	Non-Residential (DT & B)	Mixed-Use Zones (MAC & E)	Industrial (I)	Parks & Developing Resource (PP & DR)
Freestanding Communications Tower	n/a	50 ft.	50 ft.	50 ft.	50 ft.

Alternative Tower Structure	40 ft.	45 ft.	55 ft.	55 ft.	45 ft.
Small Cell Wireless Facility	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Roof-Mounted or Wall-Mounted Wireless Communications Facility	No more than 5 feet above building ¹				
1. For Wall-mounted WCF, refer to 14.40.I.2					

3. Measurement of height.

- a. *Towers.* The height of a tower shall be measured as the vertical distance from the base of the support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances, and shall be measured from the finished grade of the subject property. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
- b. *Rooftop Facilities.* The height of WCF that are mounted on a rooftop is measured from the plane of the top of the roof upon which the facility is mounted to the highest point on the WCF.
- c. *Wall-Mounted Facilities.* The height of a WCF that is mounted and supported entirely on the wall of a legally existing building is measured from the plane of the top of the roof of the building to the highest point on the WCF.

G. Antenna Support Structure Safety. The applicant shall certify that the tower and all appurtenances comply with TIA-222-G or later and/or other industry standards regarding structural safety. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

H. Site Characteristics. Site location and development shall preserve the pre-existing character of the area in which the WCF site is located as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques shall be evaluated by the City, taking into consideration the site as built.

I. Antenna Design Criteria. Antenna mounted on any tower, building, or other structure shall comply with the following requirements:

1. Wall-mounted WCF and roof-mounted WCF shall be architecturally compatible with the building and wall on which they are mounted so as to minimize any adverse visual impact and shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.
2. Wall-mounted WCF shall be mounted on a wall of an existing building in a configuration as close to flush to the wall as technically possible and shall not project above the wall on which it is mounted unless for technical reasons. In no event shall an antenna project more than ten feet above the height of the building.
3. The antenna and its support structure shall be designed to withstand a wind force of 100 miles per hour without the use of supporting guy wires.
4. No antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing tower to which such antenna, antenna array, or support structure is attached.
5. On buildings that are 30 feet or less in height, the antenna may be mounted on the roof if:
 - a. The City finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.
 - b. The antenna or antennas and related base stations cover no more than an aggregate total of 25 percent of the roof area of a building.
 - c. Roof mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.
 - d. No portion of the antenna extends more than 10 feet above the height of the existing building.

J. Equipment Shelters. If an accessory equipment shelter is present, such building or structure shall blend with the surrounding buildings in architectural character and color.

K. Landscaping and Screening.

1. Landscaping shall be required to screen as much of the support structure as possible. The wall surrounding the support structure and any other ground level features (such as a building), shall be designed to soften the appearance of the WCF site. The Director of Development Services may permit any combination of existing vegetation, berming, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If an antenna is mounted flush on an existing building, and other equipment is

housed inside an existing structure, landscaping shall not be required, except as otherwise required for the existing use.

2. The visual impacts of a tower shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering of towers shall be required around the perimeter of the tower and accessory structures:
 - a. A row of evergreen trees a minimum of ten feet tall at planting and a maximum of six feet apart shall be planted around the perimeter of the fence; and
 - b. A continuous hedge, at least 36 inches high at planting and capable of growing to at least 48 inches in height within eighteen months, shall be planted in front of the tree line referenced above.
3. Landscaping shall be installed on the outside of fences. Landscaping and berming shall be equipped with automatic irrigation systems meeting the water conservation standards of the City. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements. The Director of Development Services may waive or modify landscaping requirements as appropriate to the site conditions.

L. Maintenance and Inspection.

1. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building and safety codes, regulations of the FCC, and the applicable standards for towers that are published by the IEEE-SA, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes, regulations, or standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such codes, regulations, and standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the City may remove such tower at the owner's expense, the costs of which shall constitute a lien against the property.
2. Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the IEEE-SA and FCC standards and, within sixty (60) days of the inspection, file a report with the City building division.

M. Non-Use or Abandonment.

1. In the event the use of any tower has been discontinued for a period of six months, the tower shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City, which shall have the right to request documentation or affidavits from the tower owner or operator

regarding the issue of tower usage. Upon such abandonment, the owner or operator of the tower shall have an additional sixty (60) days within which to complete one of the following:

- a. Reactivate the use of the tower or transfer the tower to another owner or operator who makes actual use of the tower within an additional ninety (90) days. Only one transference of ownership is permitted in a 12 month period under these abandonment provisions.
 - b. Dismantle and remove the tower. In such instance, if such tower is not removed within said sixty (60) days, the City may remove such tower at the owner's expense.
2. If there are two or more users of a single tower, removal of the tower is not required unless all users cease using the tower. However, parts of the tower that are rendered unnecessary by partial abandonment shall be removed.
3. At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the tower shall automatically expire.
 4. If an abandonment of a tower occurs by all of the permittees or licensees and the owner of the tower, the owner of the tower shall remain primarily responsible if the tower ceases to be used for its intended purposes by either it or other permittees or licensees for the transmission or reception of personal wireless services. In the event that the tower ceases to be licensed by the FCC for the transmission of telecommunications or broadband services, the owner of the tower shall maintain the prescribed painting or illumination of such tower until it is dismantled.

14.40.020 Co-location.

A. Co-location in General.

1. To minimize adverse visual impacts associated with the proliferation of towers, the City encourages co-location of antennas by more than one carrier on existing towers or structures.
2. An existing tower or base station may be modified or reconstructed to accommodate the co-location of an additional antenna. Modification of an existing tower or base station that is not an eligible facility structure under section 14.44 to accommodate additional antennas shall be permitted in all zone districts, subject to the requirements of the zone district and the following criteria:

- a. An existing tower may be modified or rebuilt to a taller height, not to exceed twenty feet over the tower's existing height, to accommodate the co-location of an additional antenna. The tower as modified shall comply with the other provisions of this chapter.
 - b. A tower which is being modified to accommodate the co-location of an additional antenna may be moved to a different location on the same property within 50 feet of its existing location so long as it remains within the same zone district. After the tower is rebuilt to accommodate co-location, only one tower shall remain on the property.
 - c. The tower, as modified, shall comply with the provisions of this chapter in all respects.
 - d. The applicant for modification of a tower and co-location of an antenna shall follow the approval process as set forth in this title for the zone district in which the tower is located.
- 3. No WCF owner, operator, lessee, or any officer or employee thereof, shall act to exclude any WCF provider from using the same facility, building, structure or location. WCF owners or lessees or officers or employees thereof shall cooperate in good faith to achieve co-location of WCFs and equipment with other WCF providers. Upon request by the City, the owner or operator shall provide evidence establishing why co-location is not reasonably feasible. The City shall not attempt to affect fee negotiations between private parties concerning co-location. If a personal wireless services provider attempts to co-locate a facility on an existing or approved facility or location and the parties cannot reach agreement concerning the co-location, the City may require a third party technical study at the expense of either or both parties to resolve the dispute.

C. Co-location on Existing Structures.

- 1. A WCF proposed to be co-located on an existing structure shall not be required to submit a site development plan and shall be processed as a use by right subject to the criteria in Section 14.40.
- 2. If the existing structure has been previously approved as an adaptable or conditional use, such WCF co-location shall be approved as a use by right and no amendment of the adaptable or conditional use shall be required so long as the WCF complies with the design criteria in Section 14.40.010(I) above.

D. Co-location on New Towers.

1. In order to reduce the number of towers needed in the City in the future, every new tower shall be designed to accommodate antenna for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons, or unless the Current Planning Manager determines that a tower for only one user is more appropriate at a specified location.
2. Unless the Current Planning Division determines that co-location is not feasible, the site plan for every new tower shall delineate an area near the base of the tower to be used for the placement of additional equipment or buildings for other users. The site plan for towers in excess of 100 feet shall propose space for two or more other comparable tower users, while the site plan for towers under 100 feet shall propose space for one other comparable tower user.
3. The City may deny an application to construct a new tower if the applicant has not demonstrated a good faith effort to co-locate the antenna on an existing structure or tower.

E. Co-Location in All Zones. The applicant shall demonstrate that any new antenna cannot be reasonably co-located on an existing structure.

14.44 FCC Eligible Facilities Co-location.

14.44.010 This section encourages the timely approval of eligible facilities requests for modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

14.44.020 An applicant seeking approval of an eligible facilities request must submit an application to the City's Current Planning Division with the information required by the Current Planning Manager.

14.44.030 An eligible support structure may be modified or reconstructed to accommodate co-location pursuant to the application and review process set forth herein.

A. No co-location or modification to any existing tower or base station may occur except after a written request from an applicant, reviewed and approved by the City in accordance with this section.

B. The City shall prepare, and from time to time revise, and make publicly available an application form that shall be limited to the information necessary for the City to consider whether an application is an eligible facilities request. Such information may include, without limitation, whether the project: would result in a substantial change; or violates a generally applicable law, regulation, or other rule reasonably related to public health and safety. To the extent necessary, the City may request additional information from the applicant to evaluate the

application under 47 U.S.C. § 332(c)(7) pursuant to the limitations applicable therein; however, the City may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

C. Upon receipt of an application for an eligible facilities request pursuant to this section, the City's Current Planning Division shall review such application to determine whether the application qualifies as an eligible facilities request.

D. Subject to the tolling provisions of section 14.44.020(E), within sixty (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 section.

E. The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual written agreement of the City and the applicant, or in cases where the City's Current Planning Division determines that the application is incomplete.

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

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

3. Following a supplemental submission, the Current Planning Division will notify the applicant within ten (10) days if 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 herein. Subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

F. If the City determines that the applicant's request is not covered by the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") as delineated in this section, the presumptively reasonable timeframe under 47 U.S.C § 332(c)(7) of ninety (90) days, 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.

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

H. Applicants and/or the City may bring claims related to this section of the Loveland Municipal Code implementing Section 6409 to any court of competent jurisdiction.

14.44.040 An eligible facilities request shall be permitted in all zone districts, subject to the requirements of the zone district and applicable use standards; provided, however, that such review may be modified or waived by the Current Planning Manager if, in the determination of the Current Planning Manager, such review would unduly delay a decision regarding the application as a covered request and an administrative review is reasonable under the circumstances.

14.44.050 Except as provided in section 14.44.020(F), a request for co-location that the City determines does not qualify as an eligible facilities request shall not be subject to this section.

14.48 Enforcement and Penalties.

14.48.010 Any violation of this chapter shall be subject to the general penalty provision of the Loveland Municipal Code in section 1.12.010. Each day that a violation occurs or is permitted to exist by the licensee constitutes a separate offense.

14.48.020 Nothing in this title shall be construed as limiting any remedies that the City may have in the master license agreement or at law or in equity, for enforcement of this chapter.

14.48.030 A licensee shall not be excused from complying with any of the requirements of this chapter or the master license agreement, or any subsequently adopted amendments to this chapter or master license agreement, by any failure of the City on any one or more occasions to seek, or insist upon, compliance with such requirements or provisions.

14.52 Federal Requirements. All towers, WCF, and antennas shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers, communications facilities, and antennas. If such standards and regulations are changed, then the owners of the towers, communications facilities, and antennas governed by this section shall bring such towers, communications facilities, and antennas into compliance with such revised standards and regulations within three months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers, communications facilities, and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower, WCF, or antenna at the owner's expense.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 20th day of August, 2019.

Jacki Marsh
Jacki Marsh, Mayor

ATTEST:

Patti Garcia
City Clerk




APPROVED AS TO FORM:

Laurie A. [Signature]
Assistant City Attorney

Ordinance 6325

I, Patti Garcia, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on August 6, 2019 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 10, 2019 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on August 24, 2019.

Patti Garcia
City Clerk

The seal is circular with a dotted border. The words "CITY OF LOVELAND" are written in a semi-circle at the top, and "COLORADO" is at the bottom. In the center, the word "SEAL" is written in a large, bold, serif font.

Effective Date: September 3, 2019