

**CITY OF EDGEWATER
ORDINANCE NO. 2016-18
SERIES 2016**

AN ORDINANCE AMENDING CHAPTER 16 OF THE EDGEWATER MUNICIPAL CODE, CONCERNING ZONING, BY ADOPTING A NEW ARTICLE 33 THEREOF TO COMPREHENSIVELY REGULATE THE LOCATION OF WIRELESS COMMUNICATION FACILITIES WITHIN THE CITY, INCLUDING CERTAIN OPERATIONAL AND DESIGN STANDARDS AND REVIEW PROCEDURES AND REQUIREMENTS; AND DELETING THE RESULTING INCONSISTENT AND OBSOLETE REFERENCES TO SUCH FACILITIES IN THE ZONE DISTRICT-SPECIFIC REGULATIONS, IN SUBSECTIONS 16-5-10(C), CONCERNING CONDITIONAL USES IN THE R-1 DISTRICT; 16-6-10(C), CONCERNING CONDITIONAL USES IN THE R-2 DISTRICT; 16-7-10(C), CONCERNING CONDITIONAL USES IN THE R-3 DISTRICT; 16-8-10(C), CONCERNING CONDITIONAL USES IN THE RC-1 DISTRICT; SUBSECTION 16-10-10(5), CONCERNING “TELEPHONE EXCHANGE FACILITIES” IN THE R-4 DISTRICT; AND 16-11-10(C), CONCERNING CONDITIONAL USES IN THE R-PD DISTRICT; DECLARING AN EMERGENCY; AND PROVIDING FOR THE IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City of Edgewater, Colorado (“City”) is a home rule municipality, duly organized and existing under Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S. and Part 3 of Article 23 of Title 31, C.R.S., the City is authorized to adopt planning and zoning regulations; and

WHEREAS, acting under this authority, the Edgewater City Council (“City Council”) previously adopted zoning regulations, codified as Chapter 16 of the Edgewater Municipal Code (“Code”); and

WHEREAS, said Chapter 16 does not currently regulate wireless communications facilities in a very robust manner; and

WHEREAS, the City Council finds that the City’s existing wireless communications facility regulations must be amended in response to recent changes in the federal laws, rules and regulations that govern the location of such facilities and establish some parameters on the authority of local jurisdictions to address the same locally; and

WHEREAS, the City Council further finds that consumer demand for and use of wireless communication facilities and technologies related thereto is likely to steadily increase over the foreseeable future; and

WHEREAS, in response to both the need to react to changes in federal law as well as the projected increase in the likelihood that wireless communication providers will want to locate additional facilities within the City, the City Council finds that it is necessary and desirable to adopt a new comprehensive scheme of zoning requirements applicable to wireless communications facilities, as further set forth herein.

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

Section 1. Chapter 16 of the Edgewater Municipal Code, concerning zoning, is hereby amended by the addition of a new Article 33, to address wireless communications facilities, to read as follows:

ARTICLE 33

WIRELESS COMMUNICATIONS FACILITIES

Sec. 16-33-10. - Purpose, intent and goals.

(a) The purpose and intent 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 City 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 camouflage design techniques and undergrounding of WCFs and the equipment associated therewith.
- (3) Encourage the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs.
- (4) Encourage the use of wall mounted panel antennas.
- (5) Encourage roof mounted antennas only 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 wireless communications service providers to provide such services to the community quickly, effectively, and efficiently.
- (10) Effectively manage WCFs in the public Right-of-Way.

(11) Manage Amateur Radio Facilities and Over-the-Air Receiving Devices in the City.

Sec. 16-33-20. Definitions.

(a) The following words and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Alternative Tower Structure means any man-made trees, clock towers, bell steeples, light poles, water towers, farm silos, and or similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers so as to make them architecturally compatible with the surrounding area pursuant to Article 33 of Chapter 16.

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 devised and configurations. Exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

Antenna, Dish means dish (parabolic or cylindrical) antennas used for microwave and satellite transmission and reception for commercial purposes. This definition shall not apply to wireless cable satellite dish antennas or dish antennas less than one meter measured diagonally.

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. 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 City under Article 33 of Chapter 16 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

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 City under Article 33, 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 under Chapter 16, Article 33, does not support or house equipment described in paragraphs A and B above.

Camouflage, Concealment, or Camouflage Design Techniques means a WCF is camouflaged or utilizes Camouflage Design Techniques when any measures are 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 such as a cupola, or (ii) is integrated in an outdoor fixture such as a flagpole, or (iii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation 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.

Eligible Facilities Request means any request for modification of an Existing Tower or Base Station that does not Substantially Change the physical dimensions of such Tower or Base Station involving: (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 Section, provided that it is Existing at the time the relevant application is filed with the City under this Section.

Existing means 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.

OTARD means an Over-the-Air Receiving Device.

OTARD Antenna means (i) 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 (ii) 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 (iii) an antenna that is designed to receive television broadcast signals.

OTARD Antenna Structure means any pole, tower, or other structure designed and intended to support and OTARD Antenna.

Site, for Towers other than Towers in the Right-of-Way and Eligible Support Structures, 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. A Site, for other Towers in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Substantial Change means a modification that Substantially Changes the physical dimensions of an Eligible Support Structure if it meets any of the following criteria: (i) for Towers other than Alternative Tower Structures in the Right-of-Way, it increases the height of the Tower by more than 10 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 10 percent or more than ten feet, whichever is greater; (ii) for Towers other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of 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 edge of the structure by more than six feet; (iii) 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 Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure; (iv) for any Eligible Support Structure, it entails any excavation or deployment outside the current Site; (v) for any Eligible Support Structure, it would impair the concealment elements of the Eligible Support Structure; or (vi) 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 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 (i), (ii), and (iii) of this Definition; and (vii) for any Eligible Support Structure, it 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 it does not comply with any relevant Federal requirements.

Tower. Any structure that is designed and constructed primarily built for the sole or primary purpose of supporting one or more 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. Self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers,

common carrier towers, cellular telephone towers, alternative tower structures and the like.

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

Wireless Communications Facility or WCF. A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directional, omnidirectional and parabolic antennas, base stations, 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 Section.

Sec. 16-33-30. - Applicability.

(a) The requirements set forth in this Article shall apply to all WCF applications for Base Stations, Alternative Tower Structures, Alternative Tower Structures located within Right-of-Way and Towers, as defined in Sec. 16-33-20 and as further addressed herein.

(b) The requirements set forth in this Article shall not apply to:

(1) Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are 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 property line is met.

(2) Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to August 4, 2016, shall not be required to meet the requirements of this Section, other than the requirements of Section 16-33-40 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 16-33-40.

(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 any requirements related to Accessory Uses contained in Chapter 16 of this Code and the requirement that the height be no more than the distance from the base to the property line are met. The City Manager 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 City, modifications are necessary to comply with federal law.

Sec. 16-33-40. - Operational Standards.

(a) 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 changes, 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.

(b) Radio Frequency Standards. All WCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for a WCF have been made to the City, the City may request that the owner or operator of the WCF provide information demonstrating compliance. If such information suggests, in the reasonable discretion of the City, that the WCF may not be in compliance, the City may request and the owner or operator of the WCF shall 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 City finds that the facility does not meet federal standards, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF pursuant to Section 16-33-30(a) above. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner or operator upon demand by the City or, if such costs remain unpaid after demand, the City may recover such costs by the same manner and method authorized to recover nuisance abatement costs under Code Section 7-1-70.

(c) 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 from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems and shall allow the City to monitor interference levels with public safety communications during this process. Additionally, the Applicant shall notify the City at least ten calendar days prior to the introduction of new service or changes in existing service, and

shall allow the City to monitor interference levels with public safety communications during the testing process.

(d) Legal Access. In all Applications for WCFs an Applicant must warrant and represent that it has the written agreement of the owner of the property which is the subject of the application for legal access to and from the WCF and the Applicant must also warrant and represent that it will have legal access to the utilities to operate and maintain the WCF.

(e) 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 City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

(f) Abandonment and Removal. If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The City Manager, in his or her sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

Sec. 16-33-50. - Design Standards.

(a) 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 City Manager may waive these requirements if he or she determines that the goals of this Section are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code.

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

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

b. The camouflage design may include the use of Alternative Tower Structures should the City 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 tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

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

(3) Siting.

a. No portion of any WCF may extend beyond the property line.

b. Collocation. WCFs may be required to be designed and constructed to permit the facility to accommodate WCFs from at least 2 wireless service providers on the same WCF unless the City approves an alternative design. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or location.

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

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

(5) 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 parcel, below Code standards.

b. WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential

property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.

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

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 4 inches in diameter measured at 4 ½ feet high on the tree may be removed, unless authorized by the City Manager. To obtain such authorization the Applicant shall show that tree removal is necessary, the Applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1.

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

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

a. Base Stations. If an antenna is installed on a structure other than a Tower, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

b. Alternative Tower Structures. Alternative Tower Structures shall be designed and constructed to look like a building, facility, or structure typically found in the area.

c. Alternative Tower Structures located in the Right-of-Way. In addition to the other criteria contained in this Section, an Alternative Tower Structure located in the Right-of-Way shall:

i. With respect to its pole-mounted components, be located on an existing utility pole serving another utility; or

ii. Be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Tower Structure will be located; or

iii. With respect to its pole components, be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives, and the Applicant is authorized to construct the new utility poles; or

iv. 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 Alternative Tower Structure.

v. Be sized to minimize the negative aesthetic impacts to the right-of-way;

vi. Be designed such that antenna installations on traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered;

vii. Require that any ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the City Manager, and may, where appropriate, require a flush-to-grade underground equipment vault; and

viii. 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. The Alternative Tower Structure must comply with the Americans With Disabilities Act and every other local, state, and federal law and regulations. No Alternative Tower Structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the City, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

d. Towers.

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 City;

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

- 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 6 feet in height and shall also be equipped with an appropriate anti-climbing device.
- e. Related Accessory Equipment. Accessory equipment for all WCFs shall meet the following requirements:
 - i. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
 - ii. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet;
 - iii. No related accessory equipment or accessory structure shall exceed 15 feet in height;
 - iv. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

Sec. 16-33-60. - Review Procedures and Requirements.

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

(1) Submittal Requirements. In addition to an application form, Signal Interference Letter, and submittal fees, each Applicant shall submit a scaled site plan, photo simulation, scaled elevation view and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate qualified professionals, showing the location and dimension of all improvements, including information concerning topography, radio frequency coverage, tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed by the City Manager to be necessary to assess compliance with this Section.

(2) Inventory of Existing Sites. Each Applicant for a WCF shall provide to the City Manager a narrative and map description of the Applicant's existing or then currently proposed WCFs within the City, and outside of the City within one mile of its boundaries. In addition, the Applicant shall inform the City generally of the areas of the City in which it believes WCFs may need to be located within the next three years. The inventory list should identify the site name, site address, and a general description of the facility (i.e. – rooftop antennas and ground mounted

equipment). This provision is not intended to be a requirement that the Applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. Rather, it is an attempt to provide a mechanism for the City and all Applicants for WCFs to share general information, assist in the City's comprehensive planning process, and promote collocation by identifying areas in which WCFs might be appropriately constructed for multiple users.

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

(3) Applications for Base Stations, Alternative Tower Structures and Alternative Tower Structures within Right-of-Way, shall be reviewed by the City Manager for conformance to this Section and Code using the Site Plan review procedures set forth in Section 17-4-30(d) of this Code. Should the City Manager 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 may refer the application to City Council for approval, after a recommendation by the Planning and Zoning Commission.

(4) All other Towers may be permitted only as a Conditional Use, by City Council, subject to a recommendation by the Planning and Zoning Commission. WCFs shall be reviewed for conformance to this section and Code using the Conditional Use review procedures set forth in Section 16-15-10 *et seq.* of this Code. All applications for Towers shall demonstrate that other alternative design options such as Base Stations or Alternative Tower Structures are not viable options as determined by the City. Notwithstanding anything in this Chapter 16, Article 33, or in Section 16-15-10 *et seq.* to the contrary, no Towers located in the Right-of-Way shall exceed twenty-five (25) in height.

(5) Additional Review Procedures for Collocations.

a. Application. The City 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 City to consider whether an application for collocation is an Eligible Facilities Request. Such information may include, without limitation, whether the project:

- i. Would result in a Substantial Change;
- ii. Violates a generally applicable law, regulations, or other rule reasonably related to public health and safety.

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

b. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the City Manager shall review such application to determine whether the application so qualifies.

c. Timeframe for Review. Subject to the tolling provisions of subparagraph d. below, within 60 days of the date on which an applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection (5).

d. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the Applicant, or in cases where the City Manager determines that the application is incomplete:

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

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

iii. Following a supplemental submission, the City will notify the Applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph d.i. In the case of a second or subsequent notice of incompleteness, the City may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant becomes effective when the Applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

f. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

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

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

(8) Compliance with Applicable Law. Notwithstanding the approval of an application for 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 City 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; and

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

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

Sec. 16-33-70. - Standards for Approval.

(a) It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, WCFs utilize appropriate camouflage/concealment design techniques to avoid adverse impacts on the surrounding area, and WCFs are designed, maintained, and operated at all times to comply with the provisions of this Article and all 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 City Code and any other applicable regulations.

WCFs shall be evaluated for approval subject to the following criteria:

(1) Base Stations:

a. Such facilities shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;

b. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be 6 feet;

c. Wall mounted WCFs shall not extend above the roofline unless mounted to a penthouse; and

d. Roof mounted WCFs shall be approved only where an Applicant demonstrates a wall mounted WCF is inadequate to provide service and evaluated for approval based upon the following criteria:

i. Roof mounted whip antennas shall extend no more than 12 feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;

ii. Roof mounted panel antennas shall extend no more than 7 feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and

iii. Other roof mounted Transmission Equipment shall extend no more than 7 feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.

(2) Alternative Tower Structures:

a. Such structures shall be architecturally compatible with the surrounding area;

b. Height or size of the proposed alternative tower structure should be minimized as much as possible;

- c. WCFs shall be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries;
- d. WCFs should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
- e. Compatibility with the surrounding topography;
- f. Compatibility with the surrounding tree coverage and foliage;
- g. Compatibility of the design of the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- h. Impact on the surrounding area of the proposed ingress and egress, if any.

(3) Alternative Tower Structures within Right-of-Way. An Alternative Tower Structure may also include utilization of a traffic signal, street light pole, or similar structure within a public Right-of-Way or freestanding structure within a commercial, office, or industrial area. Such facilities shall remain subject to the Alternative Tower Structures standards of approval noted above and subject to the following criteria below:

- a. The pole or structure is not more than ten feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 500 feet of the pole or structure.
- b. Any such pole shall in no case be higher than 40 feet.
- c. Any such pole shall be separated from any other pole, accessory equipment or similar structure in the Right-of-Way by a distance of at least 600 feet.
- d. Collocations are strongly encouraged and the number of poles within the Right-of-Way should be limited as much as possible.
- e. Equipment enclosures shall be located out of view as much as possible.

(4) All Other Towers. The City shall consider the following factors in determining whether to issue a conditional use approval, although the City may waive or reduce the burden on the Applicant of one or more of these criteria if the City concludes that the goals of this Article are better served thereby.

- a. Height or size of the proposed tower;

- b. Proximity of the tower to residential structures and residential district boundaries;
- c. Nature of uses on adjacent and nearby properties;
- d. Compatibility with the surrounding topography;
- e. Compatibility with the surrounding tree coverage and foliage;
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- g. Proposed ingress and egress;
- h. No new towers shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:
 - i. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
 - iii. The Applicant's proposed WCFs would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF; and
 - iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
- j. Setbacks and Separation. The following minimum setbacks and separation requirements shall apply to all WCFs for which a conditional use approval is required; provided, however, that the City may reduce standard setbacks and separation requirements if the Applicant demonstrates that the goals of this Section can be better met by reduced setback and separation requirements that protect the public health and safety, view corridors, or minimize adverse impact. A Tower shall meet the greater of the following minimum setbacks from all property lines:

- i. The setback for a principal building within the applicable zoning;
- ii. Twenty-five percent of the facility height, including WCFs and Related Accessory Equipment;
- iii. The Tower height, including antennas, if the Tower is in or adjacent to a residential district; and
- iv. Towers over 90 feet in height shall not be located within one-quarter mile from any existing tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

Section 2. Subsection 16-5-10(c) of the Code, concerning conditional uses in the R-1 zone district, is hereby amended as follows:

Sec. 16-5-10 – Purpose and uses.

(c) Conditional uses:

- (1) Public/government facility.
- (2) ~~Wireless telecommunication facility.~~
- (~~3~~) Educational use.
- (3 4) Public libraries, public and private nonprofit museums.
- (4 ~~5~~) Community and religious assembly.
- (5 ~~6~~) Public utility.

Section 3. Subsection 16-6-10(c) of the Code, concerning conditional uses in the R-2 zone district, is hereby amended as follows:

Sec. 16-6-10 – Purpose and uses.

(c) Conditional uses:

- (1) Public/government facility.
- (2) ~~Wireless telecommunication facility.~~
- (~~3~~) Educational use.
- (3 4) Public libraries, public and private nonprofit museums.
- (4 ~~5~~) Community and religious assembly.
- (5 ~~6~~) Public utility.

Section 4. Subsection 16-7-10(c) of the Code, concerning conditional uses in the R-3 zone district, is hereby amended as follows:

Sec. 16-7-10 – Purpose and uses.

(c) Conditional uses:

- (1) Public/government facility.
- (2) ~~Wireless telecommunication facility.~~
- (~~3~~) Educational use.
- (3 4) Public libraries, public and private nonprofit museums.
- (4 ~~5~~) Community and religious assembly.
- (5 ~~6~~) Public utility.
- (6 7) Parking lot and parking garage.

Section 5. Subsection 16-8-10(c) of the Code, concerning conditional uses in the RC-1 zone district, is hereby amended as follows:

Sec. 16-8-10 – Permitted and conditional uses.

(c) Conditional uses:

- (1) Educational use.
- (2) ~~Wireless telecommunication facility.~~
- (~~3~~) Public utility.
- (3 4) Recreational and entertainment facility.
- (4 ~~5~~) Assisted living facility and nursing home.
- (5 ~~6~~) Public libraries; public and private nonprofit museums.
- (6 7) Hospital.
- (7 8) Private club.
- (8 9) Golf course.
- (9 40) Mortuary.

Section 6. Subsection 16-10-10(5) of the Code, concerning a special review use process in the R-4 zone district for “Telephone exchange facilities where no public business office and no repair or storage facilities are maintained” is hereby deleted in its entirety.

Section 7. Subsection 16-11-10(c) of the Code, concerning conditional uses in the R-PD zone district, is hereby amended as follows:

Sec. 16-11-10 – Purpose and uses.

(c) Conditional uses:

- (1) Public/government facility.
- (2) ~~Wireless telecommunication facility.~~
- (~~3~~) Educational use.
- (3 4) Community facility.
- (4 ~~5~~) Public utility.

Section 8. Emergency Declaration.

The City Council of the City of Edgewater hereby finds, determines and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary to prevent the location of wireless communication facilities within the City without adequate controls on the installation methods, construction methods, structural integrity and general safety of such facilities. Under Section 11-2-70 of the Code, the City requires any

person seeking to place an awning, canopy, signs or furniture within the City right-of-way to first obtain a revocable permit from the City Clerk. In association with such a permit, the person seeking to place an item in the City right-of-way must provide information such as contact information for a responsible party, detailed information concerning the location, dimensions and type of construction of the item, and evidence of comprehensive general liability insurance with limits at least equal to the maximum liability limits of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., and naming the City as an additional insured. The City Clerk is authorized to issue a revocable permit in response to such an application only upon a finding that the item proposed to be located in the public right-of-way would neither constitute a safety hazard nor impair or obstruct the use of public property. The requirements of Code Section 11-2-70 do not currently apply to wireless communications facilities, resulting in an immediate threat that such facilities could be located in the City without adequate assurances that they do not pose a threat to the public safety and welfare. Accordingly, the City Council determines that the adoption of this ordinance as an emergency ordinance is in the best interests of the citizens of the City of Edgewater.

Section 9. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining sections or provisions of this Ordinance, it being the intent of the City Council of the City of Edgewater that such invalid or unenforceable provisions are severable.

Section 10. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 11. Effective Date. The City Council of the City of Edgewater finds and concludes that this ordinance is necessary for the immediate preservation of the health, safety, and welfare and protection of the citizens of the City, and, therefore, this ordinance shall be effective immediately upon its approval by the City Council.

INTRODUCED, PASSED AND FINALLY ADOPTED ON FIRST READING AND PUBLICATION IN ACCORDANCE WITH LAW ORDERED THIS 4TH DAY OF AUGUST, 2016.

Kris Teegardin, Mayor

ATTEST:

Pamela Anderson, Interim City Clerk

APPROVED AS TO FORM:

Thad Renaud, City Attorney