



TOWN BOARD WORK SESSION

June 1, 2020 - 4:00 PM

Zoom Meeting, Click on the link <https://windsorgov.zoom.us/j/98122481787> OR call in at 888-788-0099 or 877-853-5247 Webinar ID: 981 2248 1787

GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.

Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board

AGENDA

1. Small Wireless Facilities
2. Future Meetings Agenda

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



MEMORANDUM

Date: June 1, 2020
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: David Eisenbraun
Re: Small Wireless Facilities
Item #: 1.

Background / Discussion:

The Town of Windsor as with communities across the country and around the world, are facing the next wave of communications technology. It has the potential to impact the safety, aesthetic values, and enjoyment of our community in a manner and to a degree that is far more extensive than cellular phones and other types of recent technology. Small cell facilities are the next generation of technology for mobile device coverage and speed which supplement larger cell towers. Small cell facilities are the global trend for wireless infrastructure and they are smaller, more densely placed wireless facilities that can be located on buildings, poles, and other built structures as well as underground. Our current code does not speak to this emerging trend as our last amendments reflected federal updates in 2018, whereas this session will look at the following:

1. What small cell facilities are and their applications;
2. How they are regulated;
3. What Windsor and our neighbors are doing; and
4. How we want to regulate this technology.

Unless specified otherwise in the attached memo, the regulations outlined are state or federal mandates and nothing specific to the Town.

Financial Impact:

None

Relationship to Strategic Plan:

Not applicable at this time.

Recommendation:

This item is for discussion and any direction provided by Town Board or Planning Commission will be incorporated and presented at a future work session.

ATTACHMENTS:

- ▢ Staff Memo
- ▢ Small Wireless Facilities Presentation
- ▢ Statutes and Definitions



MEMORANDUM

Date: June 1, 2020
To: Mayor & Town Board
Planning Commission
From: David Eisenbraun, Senior Planner
Re: Small Cell Facilities
Item #: WKS Item # 1

Background / Discussion

The Town of Windsor as with communities across the country and around the world, are facing the next wave of communications technology. It has the potential to impact the safety, aesthetic values, and enjoyment of our community in a manner and to a degree that is far more extensive than cellular phones and other types of recent technology. Small cell facilities are the next generation of technology for mobile device coverage and speed which supplement larger cell towers. Small cell facilities are the global trend for wireless infrastructure and they are smaller, more densely placed wireless facilities that can be located on buildings, poles, and other built structures as well as underground. Our current code does not speak to this emerging trend as our last amendments reflected federal updates in 2018, whereas this session will look at the following:

1. What small cell facilities are and their applications;
2. How they are regulated;
3. What Windsor and our neighbors are doing; and
4. How we want to regulate this technology.

Unless specified otherwise in this memo, the regulations below are state or federal mandates and nothing specific to the Town.

Small Cell Facilities

Small cell is an overarching term for wireless network sites with a low radio frequency power output, footprint, and range. Small cells can transfer data using the low-, mid-, and high-band spectrum, either licensed or unlicensed. Small cells work in tandem to create a macro network to increase one or any combination of capacity, density, and coverage for wireless services, like 5G. Because small cells typically service smaller geographic areas, more are needed to complete a network necessitating a dense infrastructure. Typically, small cells are placed 600 feet apart. Mobile carriers use small cells to extend their service coverage and/or to increase their network capacity.

Examples of technologies that may take advantage of small cell facilities include autonomous vehicles, smart cities, the internet of things, higher speed cellular downloads, and other emerging telecommunication innovations.

Existing Regulations

Small cell infrastructure is regulated under both state and federal law. Colorado state law was amended in 2017 by House Bill 1193 to create a use-by-right for small cell facilities in any zone district and shortens the timeframe within which the Town must act on an application for a small cell facility to 60 or 90 days. It

also gives providers the right to locate or collocate small cell facilities on a Town's light poles, traffic signals and similar infrastructure within the Town's rights-of-way.

The Federal Communications Commission (FCC) has numerous regulations that local governments must follow, leaving very little room for municipalities to regulate the wireless carriers on where they install the technology, how dense the small towers are, and how long we have to respond to an application for installation. FCC rules allow for very dense deployment of the technology in municipal rights-of-way anywhere in the US.

In September, 2018, the FCC issued a Declaratory Ruling and Third Report that removed regulatory barriers that would have allowed local governments more control over the deployment of necessary small cell infrastructure. (FCC-CIRC1809-02) This Order was intended to:

- Clarify the scope and meaning of the effective prohibition standard set forth in Sections 253 and 332(c)(7) of the Communications Act as they apply to state and local regulation of wireless infrastructure deployment.
- Conclude that Sections 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of their costs for processing applications and for managing deployments in the rights-of-way.
- Identify specific fee levels for small wireless facility deployments that presumably comply with the relevant standard.
- Provide guidance on certain state and local non-fee requirements, including aesthetic and undergrounding requirements.
- Establish two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds) and codify the existing 90 and 150 day shot clocks for non-small wireless facility deployments that were established in the 2009 Declaratory Ruling.
- Make clear that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks.
- Conclude that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services. Accordingly, we would expect local governments to provide all required authorizations without further delay.

New Regulations

The FCC's most recent ruling and order regarding small cell infrastructure became effective January 14, 2019. Among other things, the ruling imposes new "shot clocks" for the processing of small cell applications. For new standalone facilities, a city has 90 days to process the application. For facilities located on city infrastructure, a city has 60 days. The ruling and order limit the permit fees municipalities can charge providers. The new FCC ruling also clarifies that municipalities are prohibited from adopting regulations that "materially inhibit" a particular small wireless facility deployment. Finally, the ruling establishes that aesthetic standards adopted by local governments applicable to small cells must be objective and reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance.

Our Neighbors

Here is a snapshot at how our northern Colorado neighbors are handling these regulations.

City:	Regulation beyond state/ Federal mandates?	How so?	Modification since 2018 updates?	Small Cell or 5G regulations?
City of Greeley	Yes	Design Guidelines/ locations/ height	Yes	Yes
City of Fort Collins	Yes	Design Guidelines/ locations/ height	Yes	Yes
City of Loveland	Yes	Design Guidelines/ locations/ height	Yes	Yes
City of Centennial	Yes	Design Guidelines/ locations/ height	Yes	Yes
City of Broomfield	Yes	Design Guidelines/ locations/ height	Yes	Yes
City of Aspen	Yes	Design Guidelines/ locations/ height	Yes	Yes
Town of Windsor	Yes	Design Guidelines/ locations/ height	Yes	No
Town of Johnstown	Yes	Design Guidelines/ locations/ height	Yes	No
Town of Severance	Yes	Design Guidelines/ locations/ height	Yes	Yes
Town of Frederick	Yes	Design Guidelines/ locations/ height	Yes	Yes
Town of Timnath	No	N/a	No	No
Town of Berthoud	No	N/a	No	No

Windsor Options

Tonight's discussion is aimed at better understanding how Windsor would like to regulate these small wireless facilities in the future based on the federal and state restrictions. For our purposes, here is a table summarizing what we can and cannot regulate.

Guidelines & Requirements:

What we CAN regulate

What we CANNOT regulate

Addresses architectural consistency, protection of view corridors	No regulation may be based on the environmental effects of RF Emissions.
Addresses health and safety of the traveling public by ensuring proper sight-triangles and minimal clutter	Local Governments may not discriminate among providers.
Kept separately from Code; can be updated to keep up with the evolution of the technology	Local Government regulations and fees may not "effectively prohibit" the provision of wireless services, including both coverage and data capacity.
Clarifies the order of preference for location. For example: a. Small cell facilities shall be collocated and attached to existing and previously approved small cell facilities. b. Small cell facilities shall be attached to or replace available existing structure previously approved in the County Right of Way (ROW). c. New freestanding small cell facility poles shall be built in a manner that allows for collocation.	Local Government may not deny and shall approve any eligible facility request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment.
	Local Governments must act on an application within a specified "shot clock" time.

Recommendation

This item is for discussion and any direction provided by Town Board or Planning Commission will be incorporated and presented at future date.

Attachments

Wireless Definitions

PowerPoint Presentation



Small Wireless Facilities

David Eisenbraun, Senior Planner

Town Board & Planning Commission Work Session

June 1, 2020



Goals

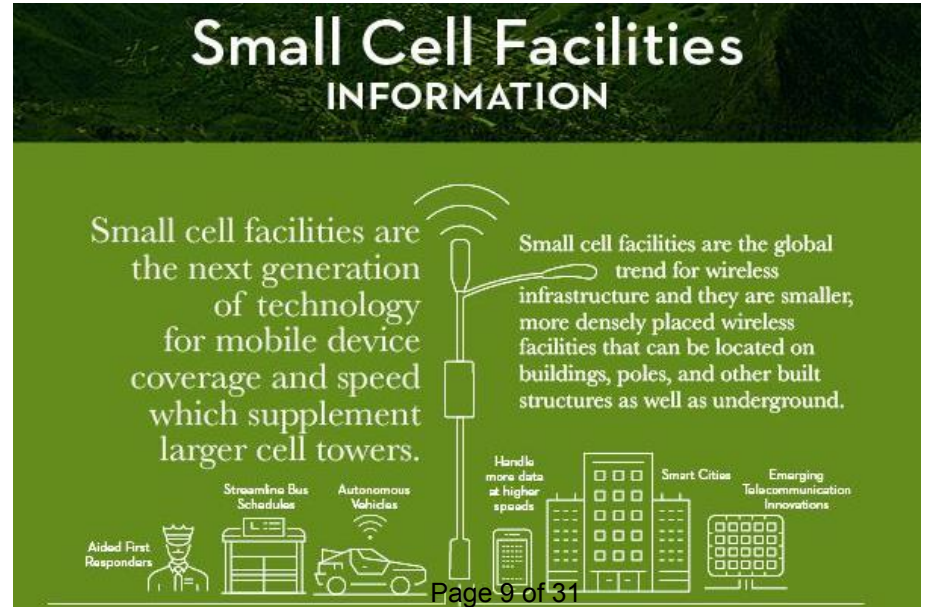
Small cell facilities are the global trend for wireless infrastructure and they are smaller, more densely placed wireless facilities that can be located on buildings, poles, and other built structures as well as underground. Our current code does not speak to this emerging trend and need to determine direction for the following:

1. What small cell facilities are and their applications;
2. How they are regulated;
3. What Windsor and our neighbors are doing; and
4. How we want to regulate this technology.

Background

The Town of Windsor as with communities across the country and around the world, are facing the next wave of communications technology. It has the potential to impact the safety, aesthetic values, and enjoyment of our community in a manner and to a degree that is far more extensive than cellular phones and other types of recent technology.

- Small cell communications can include 5G
- 5G technology utilize higher frequencies to accommodate more data than 4G/LTE tech.
- Higher frequencies require the transmitters be installed at about 300 feet.
- 4G/LTE is spaced at 2+/- miles or more.



What is a Small Cell Facility?

Small cell is an overarching term for wireless network sites with low radio frequency (RF) power, footprint, and range.

- Small cells work in tandem to create a macro network to increase any combination of capacity, and coverage
- Examples of technologies that may take advantage of small cell facilities include autonomous vehicles, smart cities, the internet of things, higher speed cellular downloads, and other emerging telecommunication innovations.

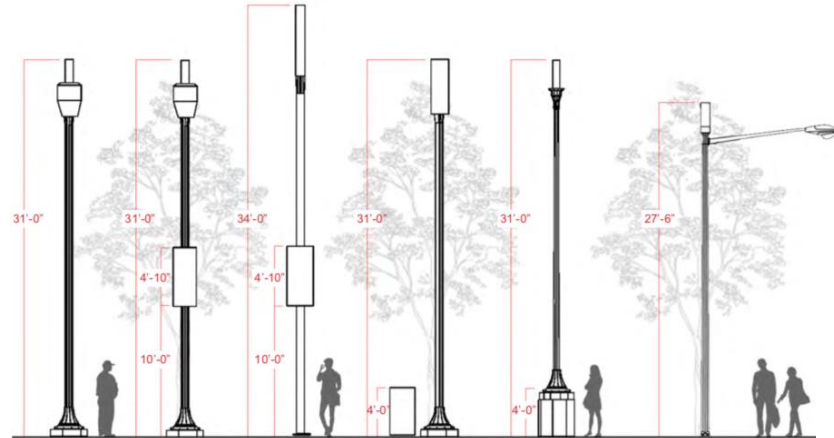


What is a Small Cell Facility?

Towers: Macrocell infrastructure is hard to miss. Towers can reach up to 199 feet in height, and they're rarely shorter than 50 feet.

Small cell: Small cell antennas are typically only a few feet tall, roughly the size of a pizza box. They are also often accompanied by an equipment cabinet the size of a utility box or refrigerator.

Pole Types:





Regulations

Existing:

- Small cell infrastructure is regulated under both state and federal law. Colorado state law was amended in 2017 by House Bill 1193 to create a use-by-right for small cell facilities in any zone district.
- It also shortens the timeframe within which the Town must act on an application for a small cell facility to 60 or 90 days.
- Lastly, it gives providers the right to locate or collocate small cell facilities on the Town's light poles, traffic signals and similar infrastructure within the Town's rights-of-way.



Regulations

Existing:

- The Federal Communications Commission (FCC) has numerous regulations that local governments must follow, leaving very little room for municipalities to regulate the wireless carriers.
- FCC regulates where they install the technology, how dense the small towers are, and how long we have to respond to an application for installation.
- FCC rules allow for very dense deployment of the technology in municipal rights-of-way anywhere in the US.



Regulations

New:

- The FCC's most recent ruling and order regarding small cell infrastructure became effective January 14, 2019.
- Among other things, the ruling imposes new “shot clocks” for the processing of small cell applications.
- For new standalone facilities, a city has 90 days to process the application. For facilities located on city infrastructure, a city has 60 days.



Regulations

New:

- The ruling and order limits the permit fees municipalities can charge providers.
- The new FCC ruling also clarifies that municipalities are prohibited from adopting regulations that “materially inhibit” a particular small wireless facility deployment.
- Finally, the ruling establishes that aesthetic standards adopted by local governments applicable to small cells must be objective and reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance.

Our Neighbors: Fort Collins, March 2020



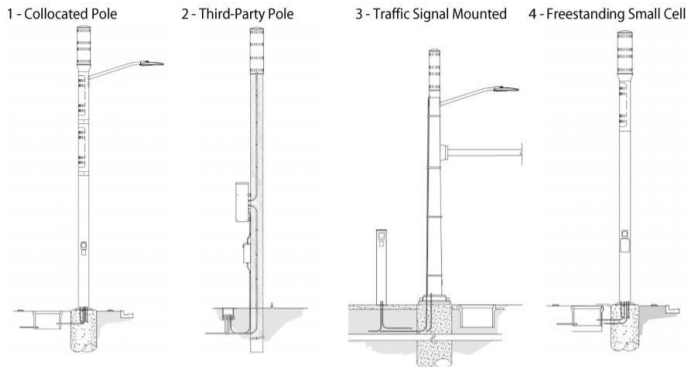
Section 3. Small Cell Placement Criteria

Section 3.1. Small Cell Facility Location Hierarchy

Locations shall be selected per City of Fort Collins Municipal Code, Section 23-174 *Location Standards*. The City shall consider the following tiered preferences when evaluating small cell facility locations, with '1' being the most preferable. A small cell permit may be rejected if a preferred, higher tier location is available within two hundred (200) feet radially of the proposed location.

1. Replace an existing streetlight pole and install a new collocated streetlight and small cell pole.
2. Replace an existing third-party pole and install a new combination pole that includes both the small cell and third-party equipment. This may include, but is not limited to, privately controlled cable or telecommunication company facilities.
3. Replace an existing traffic signal pole with a new small cell mounted on the new traffic signal pole.
4. Install a new freestanding small cell pole.

To the maximum extent feasible, small cell equipment shall be located on main corridors and arterials, and not on residential local streets.

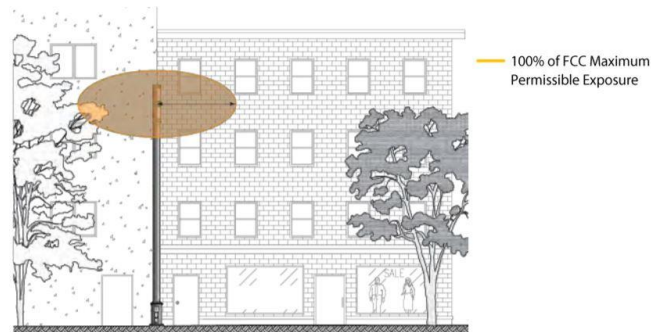


Section 6. Radio Frequency Compliance Report

Radio frequency (RF) exposure shall meet the uncontrolled environment limits specified in the Federal Communications Commission *FCC 96-326*. An RF emissions compliance report shall be submitted at the time of application for each construction permit listing:

- o List of all equipment and equipment frequencies;
- o Maximum equipment power density for both controlled and uncontrolled exposure for each frequency, percent of maximum permissible exposure (MPE), watts of effective radiated power (W ERP), antenna height, antenna orientation, along with vertical and horizontal distance of reported MPE from structure(s);
- o Maximum power density at ground level and at the height of the antenna;
- o Highest percentage of MPE; and
- o Exhibits that document the location and orientation of the antennas with color coded areas of RF exposures within the controlled and uncontrolled population limit. The exhibits shall show both an elevation of the structure and a plan view at the elevation of the antennas.

Figure 2: Maximum Permissible Exposure



The RF emissions compliance report shall be signed and sealed by a licensed professional engineer.

The Applicant may be required by the City to show compliance with the submitted RF emissions compliance report after the small cell equipment has been installed.

Our Neighbors: Aspen, April 2020

3. SCF Pole Design Guidelines

The following Design Guidelines are only for small cell facilities (SCF) in the public right-of-way. The Design Guidelines for all other wireless communications facilities (WCF), including SCFs not in the public right-of-way, can be found in other sections of this document.

3.1 General Pole Design Standards

Every small cell facility (SCF) in the public right-of-way shall comply with the following standards:

1. All SCF equipment and appurtenances shall be housed internally with regard to the pole or alternative tower structure which hosts the SCF antennas.
2. Top-mounted antennas and their enclosures shall not extend the diameter of the utility pole or wireless support structure at the level of the antenna attachment. SCFs shall be contained in a pole with a base diameter of no more than 18 inches. The maximum diameter indicated shall extend no more than five (5) feet from ground level. Above the base, the diameter of the pole shall be a maximum of 12" and tapered to a diameter of 8" at the top.
3. Side-mounted SCF antennas are not allowed.
4. SCFs located on street light poles or traffic control devices shall not block light emanating from the street light fixture or otherwise interfere with the purpose of the street light fixture or traffic control device.
5. All WCFs shall be installed in accordance with all applicable City Codes. No wiring or cabling shall interfere with any existing wiring or cabling installed by the City, a utility or a wireless services provider.
6. No guy or other support wires will be used in connection with a SCF unless the SCF is to be attached to an existing utility pole or wireless support structure that incorporates guy wires prior to the date the applicant has applied for a permit.
7. The SCF, including the antenna, and all related equipment when attached to a new pole or wireless support structure, must be designed to withstand a wind force and ice loads in accordance with the applicable standards established in Chapter 25 of the National Electric Safety Code for utility poles, Rule 250-B and 250-C standards governing wind, ice, and loading forces on utility poles, in the American National Standards Institute (ANSI) in TIA/EIA Section 222-G established by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA) for steel wireless support structures and the applicable industry standard for other existing structures. The evaluation must be prepared by a professional structural engineer licensed in the State of Colorado.
8. The minimum distance between SCFs that contain the same wireless provider's equipment is 600 feet.
9. Ground mounted enclosures, including backup power supply, and electric meters must be concealed within existing above-ground cabinets, or placed in a flush-to-grade underground equipment vault or within approved design standard treatments adopted by the City.
10. SCFs shall be located in a manner that meets the Americans with Disabilities Act (ADA) and does not obstruct, impede or hinder the usual bike, pedestrian or vehicular path of travel.
11. SCFs collocated on City-owned poles may not use the same power or communication source providing power and/or communication for the existing infrastructure. The City may permit a new SCF to use unused fibers within the same fiber cable if available. The wireless provider shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.
12. SCF poles and associated equipment must meet minimum clearances from all utility infrastructure as specified in Title 25 – Utilities and Title 29 – Engineering Standards.



NOTE: 80 ANTENNAS WILL BE SMALLER THAN THE 40 ANTENNAS



Discussion for Direction

Goals:

1. Understand how Windsor would like to regulate these small wireless facilities in the future based on the federal and state restrictions. For our purposes, here is a table summarizing what we can and cannot regulate:

Guidelines & Requirements:

What we CAN regulate

What we CANNOT regulate

Addresses architectural consistency, protection of view corridors	No regulation may be based on the environmental effects of RF Emissions.
Addresses health and safety of the traveling public by ensuring proper sight-triangles and minimal clutter	Local Governments may not discriminate among providers.
Kept separately from Code; can be updated to keep up with the evolution of the technology	Local Government regulations and fees may not “effectively prohibit” the provision of wireless services, including both coverage and data capacity.
Clarifies the order of preference for location. For example: a. Small cell facilities shall be collocated and attached to existing and previously approved small cell facilities. b. Small cell facilities shall be attached to or replace available existing structure previously approved in the County Right of Way (ROW). c. New freestanding small cell facility poles shall be built in a manner that allows for collocation.	Local Government may not deny and shall approve any eligible facility request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment.
	Local Governments must act on an application within a specified “shot clock” time.

Statutes and Definitions:

17 HB 1193 was codified in *Colorado Revised Statutes* §§ 29-27-401, 402, 403, 404; 38-5.5-102, 103, 104, 104.5, 105, 106, 107, 108.

29-27-401 – Legislative declaration – made the permitting, construction, modification, maintenance, and operation of wireless service facilities and broadband facilities, to be matters of statewide concern and interest. Also found and declared that small cell facilities often may be deployed most effectively in public rights-of-way; and access to local government structures is essential to the construction and maintenance of wireless service facilities or broadband facilities.

29-27-402 – Definitions.

“As used in this part 4, unless the context otherwise requires:

(1) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

(1.5) “Broadband facility” means any infrastructure used to deliver broadband service or for the provision of broadband service.

(2) “Broadband service” has the same meaning as set forth in 7 U.S.C. sec. 950bb(b)(1) as of August 6, 2014, and for the purposes of this section includes:

(a) “Cable service”, as defined in 47 U.S.C. sec. 522(6) as of August 6, 2014;

(b) “Telecommunications service”, as defined in 47 U.S.C. sec. 153 as of August 6, 2014; and

(c) “Wireless service”, which means data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as all of these terms are defined by federal law and regulations.

(3) “Collocation” means the mounting or installation of broadband service equipment on a tower, building, or structure with existing broadband service equipment for the purpose of transmitting or receiving radio frequency signals for communications purposes.

(3.5) “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.

(4) (a) “Small cell facility” means either:

(I) A personal wireless service facility as defined by the federal “Telecommunications Act of 1996”, as amended as of August 6, 2014; or

(II) A wireless service facility that meets both of the following qualifications:

(A) 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

(B) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

(b) "Small cell facility" includes a micro wireless facility.

(5) "Small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service.

(6) "Structure" means any facility, tower, pole, building, or other structure constructed for the sole or primary purpose of supporting broadband facilities or wireless service facilities.

(6.5) "Tower" means any structure built for the sole or primary purpose of supporting antennas licensed or authorized by the federal communications commission and the antennas' associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services;

unlicensed wireless services; fixed wireless services such as backhaul; and the associated site.

(7) "Wireless service facility" means a facility for the provision of wireless services; except that "wireless service facility" does not include coaxial or fiber-optic cable that is not immediately adjacent to, or directly associated with, a particular antenna.

29-27-403 – Permit—approval—deadline—exception

(1) A local government may take up to:

(a) Ninety days to process a complete application for:

(I) Location or collocation of a small cell facility or a small cell network; or

(II) Replacement or modification of a small cell facility or facilities or small cell network.

(b) Ninety days to process a complete application that involves a collocation of a tower, building, structure, or replacement structure other than a small cell facility or small cell network; or

(c) One hundred fifty days to process a complete application that involves a new structure or a new wireless service facility, other than a small cell facility or small cell network and other than a collocation.

(2) The time it takes for an applicant to respond to the first request for additional information will not count toward the applicable deadline set forth in subsection (1) of this section only if the local government notifies the applicant within thirty days after the initial filing that the application is incomplete. All other requests for additional information count toward such deadlines.

(3) An applicant and a local government entity may mutually agree that an application may be processed in a longer period than set forth in subsection (1) of this section.

29-27-404 - Permit process.

(1)(a) For small cell networks involving multiple individual small cell facilities within the jurisdiction of a single local government entity, the local government entity shall allow the applicant, at the applicant's discretion, to file a consolidated application and receive a single permit for the small cell network instead of filing separate applications for each individual small cell facility.

(b) For a consolidated application filed pursuant to subsection (1)(a) of this section, each small cell facility within the consolidated application remains subject to review for compliance with objective requirements and approval as provided in this article 27. The local government's denial of any individual small cell facility is not a basis to deny the consolidated application as a whole or any other small cell facility incorporated within the consolidated application.

(2) If a wireless service provider applies to locate or collocate several wireless service facilities within the jurisdiction of a single local government entity, the local government entity shall:

(a) Allow the applicant, at the applicant's discretion, to file a single set of documents that will apply to all the wireless service facilities to be sited; and

(b) Render a decision regarding all the wireless service facilities in a single administrative proceeding, unless local requirements call for an elected or appointed body to render such decision.

(3) The siting, mounting, placement, construction, and operation of a small cell facility or a small cell network is a permitted use by right in any zone.

CRS 38-5.5-101 et seq. addresses eminent domain powers for telecommunications providers.

38-5.5-101 is the Legislative declaration seeking to reduce barriers to entry for various telecommunications providers, to authorize and encourage competition, to assist all citizens to have access to a wider range of telecommunications services at

reasonably comparable rates, giving telecommunications providers the right to occupy and utilize public rights-of-way for the efficient conduct of their business, and providing that any local government exercise of police power cannot provide any competitive advantage and must be competitively neutral.

38-5.5-102 – Definitions.

As used in this article 5.5, unless the context otherwise requires:

- (1) “Broadband” or “broadband service” has the same meaning as set forth in 7 U.S.C. sec. 950bb(b)(1) as of August 6, 2014, and includes “cable service”, as defined in 47 U.S.C. sec. 522(6) as of August 6, 2014.
- (2) “Broadband facility” means any infrastructure used to deliver broadband service or for the provision of broadband service.
- (3) “Broadband provider” means a person that provides broadband service, and includes a “cable operator”, as defined in 47 U.S.C. sec. 522(5) as of August 6, 2014.
- (4) “Collocation” has the same meaning as set forth in section 29-27-402(3).
- (5) “Political subdivision” or “local government entity” means a county; city and county; city; town; service authority; school district; local improvement district; law enforcement authority; water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district; or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.
- (6) “Public highway” or “highway” for purposes of this article 5.5 includes all roads, streets, and alleys and all other dedicated rights-of-way and utility easements of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.
- (7) “Small cell facility” has the same meaning as set forth in section 29-27-402(4).
- (8) “Small cell network” has the same meaning as set forth in section 29-27-402(5).
- (9) “Telecommunications provider” means a person that provides telecommunications service, as defined in section 40-15-102(29), with the exception of cable services as defined by section 602(5) of the federal “Cable Communications Policy Act of 1984”, 47 U.S.C. sec. 522(6), pursuant to authority granted by the public utilities commission of this state or by the federal communications commission. “Telecommunications provider” does not mean a person or business using antennas, support towers, equipment, and buildings used to transmit high power over-the-air broadcast of AM and FM radio, VHF and UHF television, and advanced television services, including high definition television. The term “telecommunications provider” is synonymous with “telecommunication provider”.

§ 38-5.5-103. Use of public highways--discrimination prohibited--content regulation prohibited

(1)(a) Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, and communications and broadband facilities, including small cell facilities and small cell networks, along, across, upon, above, and under any public highway in this state, subject to this article 5.5 and article 1.5 of title 9.

(b) The construction, maintenance, operation, and regulation of the facilities described in subsection (1)(a) of this section, including the right to occupy and utilize the public rights-of-way, by telecommunications providers and broadband providers are matters of statewide concern. The facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel on a highway.

(2) A political subdivision shall not discriminate among or grant a preference to competing telecommunications providers or broadband providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any unreasonable requirements for entry to the rights-of-way for the providers.

(3) A political subdivision shall not regulate a telecommunications provider or a broadband provider based upon the content or type of signals that are carried or capable of being carried over the provider's facilities; except that nothing in this subsection (3) prevents regulation by a political subdivision when the authority to regulate has been granted to the political subdivision under federal law.

§ 38-5.5-104. Right-of-way across state land

Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate lines of communication, switches, and related facilities, and communications and broadband facilities, including small cell facilities and small cell networks, and obtain a permanent right-of-way for the facilities over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of just compensation and upon compliance with reasonable conditions as the state board of land commissioners may require.

§ 38-5.5-104.5. Use of local government entity structures

(1) Except as provided in subsection (2) of this section and subject to the requirements and limitations of this article 5.5, sections 29-27-403 and 29-27-404, and a local government entity's police powers, a telecommunications provider or a broadband provider has the right to locate or collocate small cell facilities or small cell networks on the light poles, light standards, traffic signals, or utility poles in the rights-of-way owned by the local government entity; except that, a small cell facility or a small cell network

shall not be located or mounted on any apparatus, pole, or signal with tolling collection or enforcement equipment attached.

(2) If, at any time, the construction, installation, operation, or maintenance of a small cell facility on a local government entity's light pole, light standard, traffic signal, or utility pole fails to comply with applicable law, the local government entity, by providing the telecommunications provider or the broadband provider notice and a reasonable opportunity to cure the noncompliance, may:

- (a) Cause the attachment on the affected structure to be removed; and
- (b) Prohibit future, noncompliant use of the light pole, light standard, traffic signal, or utility pole.

(3)(a) Except as provided in subsections (3)(b) and (3)(c) of this section, a local government entity shall not impose any fee or require any application or permit for the installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with national safety codes.

(b) A local government entity with a municipal or county code that requires an application or permit for the installation of micro wireless facilities may, but is not required to, continue the application or permit requirement subsequent to July 1, 2017.

(c) A local government entity may require a single-use right-of-way permit if the installation, placement, operation, maintenance, or replacement of micro wireless facilities:

- (I) Involves working within a highway travel lane or requires the closure of a highway travel lane;
- (II) Disturbs the pavement or a shoulder, roadway, or ditch line;
- (III) Includes placement on limited access rights-of-way; or
- (IV) Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro wireless facility is attached.

§ 38-5.5-105. Power of companies to contract

Any domestic or foreign telecommunications provider or broadband provider has the power to contract with any individual; corporation; or the owner of any lands, franchise, easement, or interest therein over or under which the provider's conduits; cable; switches; communications or broadband facilities, including small cell facilities and small cell networks; or related appurtenances and facilities are proposed to be laid or created

for the right-of-way for the construction, maintenance, and operation of the facilities or for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

§ 38-5.5-106. Consent necessary for use of streets

(1)(a) This article 5.5 does not authorize any telecommunications provider or broadband provider to erect, within a political subdivision, any poles or construct any communications or broadband facilities, including small cell facilities and small cell networks; conduit; cable; switch; or related appurtenances and facilities along, through, in, upon, under, or over any public highway without first obtaining the consent of the authorities having power to give the consent of the political subdivision.

(b) A telecommunications provider or broadband provider that, on or before July 1, 2017, either has obtained consent of the political subdivision having power to give consent or is lawfully occupying a public highway in a political subdivision need not apply for additional or continued consent of the political subdivision under this section.

(c) Notwithstanding any other provision of law, a political subdivision's consent given to a telecommunications provider or a broadband provider to erect or construct any poles, or to locate or collocate communications and broadband facilities on vertical structures in a right-of-way, does not extend to the location of new facilities or to the erection or construction of new poles in a right-of-way not specifically referenced in the grant of consent.

(2)(a) The consent of a political subdivision for the use of a public highway within its jurisdiction shall be based upon a lawful exercise of its police power and shall not be unreasonably withheld.

(b) A political subdivision shall not create any preference or disadvantage through the granting or withholding of its consent. A political subdivision's decision that a vertical structure in the right-of-way, including a vertical structure owned by a municipality, lacks space or load capacity for communications or broadband facilities, or that the number of additional vertical structures in the rights-of-way should be reasonably limited, consistent with protection of public health, safety, and welfare, does not create a preference for or disadvantage any telecommunications provider or broadband provider, provided that such decision does not have the effect of prohibiting a provider's ability to provide service within the service area of the proposed facility.

§ 38-5.5-107. Permissible taxes, fees, and charges

(1)(a) No political subdivision shall levy a tax, fee, or charge for any right or privilege of engaging in a business or for use of a public highway other than:

(l) A license fee or tax authorized under section 31-15-501(1)(c), C.R.S., or article XX of the state constitution; and

(II) A street or public highway construction permit fee, to the extent that such permit fee applies to all persons seeking a construction permit.

(b) All fees and charges levied by a political subdivision shall be reasonably related to the costs directly incurred by the political subdivision in providing services relating to the granting or administration of permits. Such fees and charges also shall be reasonably related in time to the occurrence of such costs. In any controversy concerning the appropriateness of a fee or charge, the political subdivision shall have the burden of proving that the fee or charge is reasonably related to the direct costs incurred by the political subdivision. All costs of construction shall be borne by the telecommunications provider or broadband provider.

(2)(a) Any tax, fee, or charge imposed by a political subdivision shall be competitively neutral among telecommunications providers and broadband providers.

(b) Nothing in this article or in article 32 of title 31, C.R.S., shall invalidate a tax or fee imposed if such tax or fee cannot legally be imposed upon another telecommunications provider, broadband provider, or service because of the requirements of state or federal law or because such other provider is exempt from taxation or lacks a taxable nexus with the political subdivision imposing the tax or fee.

(c) If a political subdivision imposes a tax on a telecommunications provider or broadband provider and such tax does not apply to other providers of comparable telecommunications services or broadband services due to the language of the ordinance or resolution that imposes the tax, then the governing body of the political subdivision shall take one of the following two courses of action:

(I) If it can do so without violating the election requirements of section 20 of article X of the state constitution, the governing body shall amend the ordinance or resolution that imposes the tax so as to extend the tax to providers of comparable telecommunications services or broadband services; or

(II) If an election is required under section 20 of article X of the state constitution, the governing body shall cause an election to be held in accordance with said section 20 to authorize the extension of the tax to providers of comparable telecommunications services or broadband services. If the extension of the tax is not approved by the voters at such election, then the existing tax shall no longer apply to the providers that had been subject to the tax immediately before the election.

(3) Taxes, fees, and charges imposed shall not be collected through the provision of in-kind services by telecommunications providers or broadband providers, nor shall any political subdivision require the provision of in-kind services as a condition of consent to use a highway.

(4) The terms of all agreements between political subdivisions and telecommunications providers or broadband providers regarding use of highways shall be matters of public

record and shall be made available upon request pursuant to article 72 of title 24, C.R.S.

(5) Nothing in this section affects the manner in which the property tax administrator values a public utility under article 4 of title 39, C.R.S.

(6) Nothing in this article affects the ability of a political subdivision to require and grant a cable franchise to a cable operator seeking to provide cable television service within the political subdivision and to obtain any consideration or impose any conditions in a cable franchise, unless otherwise prohibited by federal law.

(7) As used in this section, “public highway” or “highway” as otherwise defined in section 38-5.5-102(6) does not include excess and remainder rights-of-way under the department of transportation's jurisdiction.

§ 38-5.5-108. Pole attachment agreements--limitations on required payments

(1) Neither a local government entity nor a municipally owned utility shall request or receive from a telecommunications provider, broadband provider, or cable television provider, as defined in section 602(5) of the federal “Cable Communications Policy Act of 1984”, in exchange for permission to attach small cell facilities, broadband devices, or telecommunications devices to poles or structures in a right-of-way, any payment in excess of the amount that would be authorized if the local government entity or municipally owned utility were regulated pursuant to 47 U.S.C. sec. 224, as amended.

(2) A municipality shall not request or receive from a telecommunications provider or a broadband provider, in exchange for or as a condition upon a grant of permission to attach telecommunications or broadband devices to poles, any in-kind payment.

§ 38-5.5-109. Notice of trenching--permitted access

(1)(a) The state or a political subdivision shall provide notice on a competitively neutral basis to broadband providers of any utility trenching project that it conducts, but notice is not required for emergency repair projects. The state or political subdivision shall provide the notice a minimum of ten business days prior to the start of the project involving trenching.

(b) The department of transportation shall maintain a public list of all broadband providers that would like to receive notice of a utility trenching project and the providers' addresses on the website it maintains. To be eligible to receive notice under paragraph (a) of this subsection (1), a broadband provider must request the department of transportation to be included in the department list. A political subdivision may rely on the department list when making its notifications, and such notifications may be made by electronic mail.

(2)(a) For any trenching project conducted by the state or a political subdivision, the state or political subdivision shall allow joint trenching by broadband providers on a nonexclusive and nondiscriminatory basis for the placement of broadband facilities,

except as set forth in paragraph (b) of this subsection (2). This subsection (2) does not limit the ability of the state, political subdivision, or any private entity to share the costs of construction related to the trenching project with the broadband provider.

(b) The state or a political subdivision may deny joint trenching by broadband providers if the joint trenching will hinder or obstruct highway safety or the construction, maintenance, operations, or related regulation of highway facilities or if it is not feasible because it will delay the repair or construction of a political subdivision's water, wastewater, electricity, or gas line or because collocation with a political subdivision's water, wastewater, electricity, or gas line will hinder or obstruct the maintenance or operations of a political subdivision's water, wastewater, electricity, or gas facilities.

(3)(a) Nothing in this section is intended to preempt or otherwise replace requirements for joint trenching that may be imposed by a political subdivision.

(b) Nothing in this section requires a private entity undertaking a trenching project to allow a broadband provider to participate in the trenching project.

(c) Any provision in this section that conflicts with federal law is unenforceable.

(d) Nothing in this section shall be construed to prevent or delay commencement or progress of a construction, maintenance, or trenching project.

(4) As used in this section, "trenching" means a construction project in which a highway right-of-way surface is opened or removed for the purpose of laying or installing conduit, fiber, or similar infrastructure in excess of one mile in length. "Trenching" does not mean any other activity or project for the construction or maintenance, including drainage or culvert work, of a highway facility.



MEMORANDUM

Date: June 1, 2020
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From:
Re:
Item #: 2.

ATTACHMENTS:

- ▢ Future Meetings Agenda



FUTURE TOWN BOARD MEETINGS

June 8, 2020 4:00 p.m.	2019 Financial Audit Presentation Harassment Video
June 8, 2020 5:00 p.m.	Town Board Regular Meeting
June 15, 2020 4:00 p.m.	Town Board Work Session District 4 Vacancy Interviews
June 22, 2020 4:00 p.m.	Town Board Work Session
June 22, 2020 5:00 p.m.	Town Board Regular Meeting
June 29, 2020	Fifth Monday – No Meeting
July 6, 2020 6:00 p.m.	Town Board Work Session
July 13, 2020 5:30 p.m.	Town Board Work Session- Board/Manager/Attorney Monthly Meeting
July 13, 2020 7:00 p.m.	Town Board Regular Meeting
July 20, 2020 6:00 p.m.	Town Board Work Session
July 27, 2020 6:00 p.m.	Town Board Work Session
July 27, 2020 7:00 p.m.	Town Board Regular Meeting
August 3, 2020 6:00 p.m.	Town Board Work Session
August 10, 2020 5:30 p.m.	Town Board Work Session- Board/Manager/Attorney Monthly Meeting
August 10, 2020 7:00 p.m.	Town Board Regular Meeting

Additional Events

Postponed to a date undetermined ~~Brycen Zerby Playground Dedication, Windsor Main Park beginning at 8:00 a.m. — attending: Rennemeyer, Jones, Wilson~~

Postponed to a date undetermined ~~Public Services Ribbon Cutting, 922 15th Street, Windsor, CO, 5:00 p.m. — 7:00 p.m. — attending: Rennemeyer, Jones Baker, Wilson~~

Postponed to a date undetermined ~~Kodak Dedication of Windsor Lake, Boardwalk Park, beginning at 0:00 a.m. — attending: Bennett, Jones, Baker, Rennemeyer~~

Postponed to a date undetermined ~~Outgoing Board Member Grove Dedication prior to Board Meeting~~

Future Work Session Topics

- Land Use Code Update meeting with Planning Commission (next code section in series) – Planning
- Economic development/retail needs at 60,000 population
- Clearview Library Presentation (General Update and Strategic Plan)
- Joint Meeting with Town of Windsor, Town of Severance, Fire District and School District – Tentative for Fall of 2020