

ORDINANCE NO. 3, SERIES 2019

AN ORDINANCE ADOPTING WIRELESS COMMUNICATION FACILITIES REGULATIONS AND PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF UPTON, WESTON COUNTY, WYOMING:

WHEREAS, the Town of Upton desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the Town to promote and manage public streets, highways, rights-of-way and public places in the overall interests of public health, safety and welfare; and

WHEREAS, the Town believes adopting an ordinance providing for a fair and predictable process within the Town of Upton insofar as wireless communication facilities are concerned is necessary.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Town of Upton as follows:

SECTION 1: DEFINITIONS

- a. **Antenna** means communications equipment that transmits and/or receives radio frequency signals used in the provision of wireless services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use or satellite dishes for residential or household purposes.
- b. **Applicant** means any person who submits an application under this Ordinance.
- c. **Application** means a written request, on a form provided by the Town, for a permit.
- d. **Collocation** means the mounting or installation of equipment on an existing tower, building or structure for the purpose of transmitting or receiving radio frequency signals for communications purposes.
- e. **Decorative pole** means a pole that is specially designed and placed for aesthetic purposes.
- f. **Distributed Antenna System** means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.
- g. **FAA** means the Federal Aviation Administration.
- h. **FCC** means the Federal Communications Commission.
- i. **Governing body** means the group of elected officials which is able to make decisions on behalf of the Town (for example, the Town Council).

- j. **Ordinary maintenance and repair** means inspections, testing or repair that maintain functional capacity, aesthetic and structural integrity of a wireless communication facility and the associated structure, pole or tower, and that does not involve impeding, damaging or disturbing any portion of the Public ROW.
- k. **Permit** means a written authorization (in electronic or hard copy format) to install, at a specified location in the Public ROW, a wireless communication facility.
- l. **Permittee** means an applicant that has received a permit under this Ordinance.
- m. **Person** means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization.
- n. **Pole** means a legally constructed pole, such as a utility, lighting or similar pole made of wood, concrete, metal or other material, located or to be located within the Public ROW.
- o. **Provider** means a wireless services provider or wireless infrastructure provider and includes any person that owns or operates wireless communication facilities within the Public ROW.
- p. **Public Right-of-Way or Public ROW** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Ordinance shall include public utility easements, but only to the extent the Town has the authority to permit use of the public utility easement for wireless communication facilities.
- q. **Public utility easement** means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public utility easement does not include an easement dedicated solely for Town use, or where the proposed use by the provider is inconsistent with the terms of any easement granted to the Town.
- r. **Small wireless facilities** encompass facilities that meet the following conditions: (1) the facilities – (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater; (2) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume; (3) all other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty eight (28) cubic feet in volume; (4) the facilities do not require antenna structure registration under federal law; (5) the facilities are not located on Tribal land as defined under federal law; and (6) the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under federal law. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment

elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

- s. **State** means the State of Wyoming.
- t. **Stealth** means a design that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending them into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas or flush-mounted antennas that are either painted to match or enclosed in an architecturally, applicable box.
- u. **Tower** means any structure in the Public ROW built for the sole or primary purpose of supporting a wireless communication facility.
- v. **Tower height** means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten (10) feet in height, shall not be included within tower height.
- w. **Town** means the Town of Upton, Wyoming.
- x. **Transmission Equipment** means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, microwave dishes, coaxial or fiber-optic cable and backup power supplies. The term includes equipment associated with wireless communication 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.
- y. **Wireless Communication Facility or Wireless Communication Facilities** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables wireless communication services, including for example: radio transceivers, support structures, poles, antennas, coaxial, fiber-optic or other cabling, power supplies (including battery backup), and comparable equipment, regardless of technological configuration and small wireless facilities and distributed antenna systems.
- z. **Wireless services** means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.
- aa. **Wireless services provider** means a person who provides wireless services.

SECTION 2: DEPLOYMENT IN THE PUBLIC ROW

Section 2.1 Access to Public ROW

Prior to installing in the Public ROW any wireless communication facility, or any pole built for the sole or primary purpose of supporting a wireless communication facility, or any

tower, a person shall receive a Permit from the Town. The Permit shall only be for attachment to Town owned poles or structures in the Public ROW. No attachment to poles or other structures owned by unrelated third parties shall be authorized by the Permit issued by the Town.

A. Permit Application Requirements. The application shall be submitted by the provider or its duly authorized representative and shall contain the following:

1. The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant.
2. The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant or provider with respect to the filing of the application.
3. A description of the proposed work and wireless communication facility sufficient to demonstrate compliance with the provisions of this Ordinance.
4. If applicable, a copy of the authorization from the owner of the pole, tower or support structure on or in which the wireless communication facility will be placed or attached.
5. Detailed construction drawings and photo simulations regarding the proposed wireless communication facility.
6. To the extent the proposed wireless communication facility involves collocation on a pole, tower or support structure, a structural report performed by a Wyoming licensed professional engineer evidencing that the pole, tower or support structure will support the collocation (or that the pole, tower or support structure will be modified to meet structural requirements) in accordance with applicable codes.
7. For any new above-ground wireless communication facilities, accurate visual depictions or representations, if not included in the construction drawings or photo simulations.
8. Any other submission requirements per published Town policies or regulations.

B. Proprietary or Confidential Information in Application. Applications are public records that may be made publicly available pursuant to the Wyoming Public Records Act, W.S. §16-4-201 through §16-4-205. Notwithstanding the foregoing, the applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the Town shall treat the information as proprietary and confidential, subject to the Wyoming Public Records Act and the Town's determination that the applicant's request for confidential or proprietary treatment of application materials is reasonable and in compliance with such law. The Town shall not be required to incur any costs to protect the application materials from disclosure, other than the Town's routine procedures for complying with the Wyoming Public Records Act.

- C. Ordinary Maintenance and Repair. A permit shall not be required for ordinary maintenance and repair. The provider or other person performing the ordinary maintenance and repair shall obtain any other permits required by applicable laws and shall notify the Town in writing at least forty-eight (48) hours before performing the ordinary maintenance and repair.
- D. Application Fee. All applications pursuant to this Ordinance shall be accompanied by the requisite fee required by the Town as determined from time to time by resolution.
- E. Effect of Permit. A permit from the Town authorizes an applicant to undertake only the activities in the Public ROW specified in the application and permit, and in accordance with this Ordinance and any conditions included in the permit. A permit does not authorize attachment to or use of existing poles, towers, support structures or other structures in the Public ROW. A permittee or provider must obtain all necessary approvals from the owner of any pole, tower, support structure or other structure prior to any attachment or use. A permit does not create a property right for the applicant. The applicant shall not interfere with other uses or users of the Public ROW.
- F. Duration. Any permit for construction issued under this Ordinance shall be valid for a period of one (1) year, provided that the one (1) year period may be extended for up to an additional one (1) year upon approval by the governing body or its designee upon the written request of the applicant (made prior to the end of the initial one (1) year period) if the failure to complete construction is a result of circumstances beyond the reasonable control of the applicant.

Section 2.2 Administrative Review

- A. Design Standards. All poles built for the sole or primary purpose of supporting wireless communication facilities may be approved through administrative review if the following design guidelines are also acceptable to the Town:
 - 1. Height, shape, design and color for poles and related equipment.
 - 2. Number, location and styles of poles that may be installed or used.
 - 3. Aesthetic approach for different types of poles and related equipment.
 - 4. Construction approach per wireless communication facility, including powering and metering.
 - 5. Structural integrity.
 - 6. Set-backs for poles and ground-mounted equipment.
 - 7. Ground-mounted equipment for small wireless facilities may be used only to house equipment in support of the operation of the facilities.
 - 8. Lighting, marking and noise requirements.
 - 9. Fencing/landscaping/screening/signage requirements.

10. Collocation analysis.
11. Use of decorative poles, where necessary.
12. A written report will be prepared, signed and sealed by a Wyoming licensed professional engineer or a qualified employee of the applicant, which assesses whether the proposed small wireless facility demonstrates compliance with the Radio Frequency emissions limits established by the FCC. The qualified employee of the applicant shall submit his or her qualifications with the report.

Section 2.3 Public ROW Construction and Installation Requirements

- A. Color. To the extent feasible, the antennas shall be placed and colored to blend into the architectural detail and coloring of the host structure. Towers shall be painted a color that best allows them to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case shall be evaluated individually.
- B. Signs. No facilities may bear any signage other than that required by law or expressly permitted or required by the Town.
- C. Visual Impact. All wireless communication facilities in residential districts, historic and downtown districts shall be sited and designed with stealth features to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the wireless communication facilities. Such wireless communication facilities and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Stealth and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Such wireless communication facilities shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings or be compatible with the built environment or be consistent with other uses and improvements permitted in the relevant zone.
- D. Building-mounted WCFs.
 1. All transmission equipment shall be concealed within existing architectural features to the extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be as proportional as possible to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.
 2. All roof-mounted transmission equipment shall be set back from all roof edges to the extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.
 3. Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.

E. Placement and Notice.

1. All pole-mounted transmission equipment shall be mounted as close as technically possible to the pole so as to reduce the overall visual profile to the extent feasible subject to applicable safety codes.
2. Prior to the installation or construction of a wireless communication facility within the Public ROW or utility easement, the provider must notify all utilities located within such Public ROW or utility easement regarding its proposed use of the Public ROW or utility easement.

F. Landscaping, Screening and Fencing.

1. Equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with landscaping (except for those in the Public ROW) as required for the zone in which they are located or with another design acceptable to the Town. Alternatively, where technically feasible, the applicant may incorporate the cabinet and other equipment into the base of a new pole (for example, for a small wireless facility) provided there is adequate space in the Public ROW and that Americans with Disabilities Act sidewalk accessibility requirements can be met. All provisions of the Americans With Disabilities Act (including, but not limited to, clear space requirements) shall be met by the provider.
2. Except for locations in the Public Right-of-Way, a site-obscuring fence (for example, wrought iron as opposed to barbed wire) shall be constructed around each tower and around related support or guy anchors at the height specified for the particular zoning district. Access shall only be through a locked gate. Any fence shall comply with the other design guidelines of the Town Code.

G. As-builts and Maps. The provider shall furnish to the Town paper and electronic maps showing the location of its equipment in the Public ROW and as-builts after construction is completed.

Section 2.4 Attachment to and Replacement of Decorative Poles

- A. Notwithstanding anything to the contrary in this Ordinance, an applicant may not install a small wireless facility on a decorative pole, or replace a decorative pole with a new decorative pole unless the Town has determined, in its sole discretion, that each of the following conditions has been met:
1. The application qualifies for issuance of a permit; and
 2. The attachments and replacement pole are in keeping with the aesthetics of the decorative pole.
- B. An applicant may not install a small wireless facility on a decorative pole, replace a decorative pole with a new decorative pole, or install new above-ground facilities in any historic district unless the Town has determined, in its sole discretion, that each of the following conditions has also been met:

1. The application qualifies for issuance of a permit; and
2. The attachment and replacement pole are in keeping with the aesthetics and character of the decorative pole and historic district.

Section 2.5 General Work Requirements

- A. Utility Locates. Before beginning any excavation in the Public ROW, the permittee shall comply with One Call of Wyoming.
- B. Compliance with Permit
 1. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The Town may stop work in order to assure compliance with the provisions of this Ordinance.
 2. In addition to obtaining a permit for installation of a wireless communication facility, an applicant must obtain all other required approvals as required by the Town.

Section 2.6 Additional Submittal Requirements for Macrocell Towers

In addition to the other requirements of this Ordinance, the following shall also accompany applications for macrocell towers:

- A. Site Plan. A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, separation distance, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, parking, utility runs and other information deemed necessary to assess compliance with this Ordinance.

Section 2.7 Location of New Facilities

- A. The Provider shall not locate or maintain its wireless communication facilities so as to interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.
- B. Whenever any existing electric utilities, natural gas, water or sewer lines (or other public improvements) and communications facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its wireless communication facilities underground at its own expense. The Town may, in its sole discretion, approve above-ground placement of equipment cabinets, pedestals and similar equipment. For facilities or equipment such as wireless communication facilities that cannot, by their nature, operate unless

located above-ground, the provider and Town shall work to find a suitable location for such facilities or equipment, which may be outside of the Public ROW.

- C. If the provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement including attorneys' fees and expenses.

Section 2.8 Removal, Relocation and Abandonment

- A. Within thirty (30) days following written notice from the Town, the provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its wireless communication facilities within the Public ROW, including relocation of above-ground wireless communication facilities underground (consistent with the provisions of this Ordinance), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or otherwise is in the public interest. The provider shall be responsible to the Town for any damages the Town may incur as a result of the provider's failure to remove or relocate its wireless communication facilities.
- B. The Town retains the right and privilege to cut or move any wireless communication facility located within the Public ROW of the Town, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the provider and give the provider an opportunity to move its own facilities prior to cutting or removing the wireless communication facilities. In all cases the Town shall notify the provider after cutting or removing the wireless communication facility as promptly as reasonably possible.
- C. If the provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its wireless communication facilities or remove any of its abandoned wireless communication facilities, the Town or its contractor may do so and the provider shall pay all costs and expenses related to such work, including any damages the Town incurs arising from the delay and attorneys' fees and expenses.

Section 2.9 Indemnification

The applicant and provider shall defend, indemnify, and hold harmless the Town, its agents, officers, officials and employees from any and all damages, liabilities, injuries, losses, attorneys' fees, costs, and expenses, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the applicant or provider. In the event the Town becomes aware of any actions or claims, the Town shall promptly notify the applicant and provider and reasonably cooperate in the defense. It is expressly agreed that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the applicant and the provider, as applicable, shall reimburse the Town for any costs, expenses and attorneys' fees directly and necessarily incurred by the Town in the course of the defense.

Section 2.10 Venue

Venue for any judicial dispute between the Town and provider shall be in the Sixth Judicial District Court in Weston County, Wyoming.

Section 2.11 Insurance

No person shall own or operate a wireless communication facility within the Town without having secured and at all times maintained in place insurance coverage which conforms to the following:

- A. Comprehensive general liability, automobile, workers compensation, employers liability and umbrella insurance in amounts satisfactory to the Town;
- B. For a wireless communication facility in the Public ROW or on Town property, the commercial general liability insurance policy shall specifically include the Town and its officers, officials, employees, and agents as additional insureds;
- C. All insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State;
- D. Such policies shall not be modified or cancelled without thirty (30) days prior written notice being given to the Town and the insurance must be replaced by the owner of the wireless communication facility up to its original amounts.

Section 2.12 Independent RF Technical and Legal Review

Although the Town intends for Town staff to review applications to the extent feasible, the Town may retain the services of an independent consultant and attorney of its choice to provide technical and legal evaluations of permit applications. The consultant shall have recognized qualifications in the field of Radio Frequency engineering and the attorney in the field of wireless communication facilities regulations and approval processes. The review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed small wireless facilities comply with the applicable approval criteria set forth in this Ordinance. The applicant shall pay the cost for any independent consultant and attorneys' fees through a deposit, estimated by the Town, within ten (10) business days of the Town's request. When the Town requests such payment, the application shall be deemed incomplete for purposes of application processing time lines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the Town shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the Town receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the Town before the permit is issued. The consultant and attorney shall provide an itemized description of the services provided and related fees and costs. The fees shall be limited to a reasonable approximation of costs and the costs shall be reasonable.

Section 2.13 Time Limitations and Federal Requirements

The Town shall comply, as much as possible, with federal guidelines regarding Rules of Facilities Requests or location of small wireless facilities on existing structures and/or applications for new structures.

Section 2.14 Other Review and Approvals

All other proposed installations within the Public ROW involving wireless communication facilities (for example, where the facilities do not qualify as small wireless facilities), shall require the issuance of a conditional use permit or special use permit from the Town.

Section 2.15 Violation of this Ordinance

Violation of any of the provisions of this Ordinance shall be punishable with a fine of up to \$750.00 for each violation. Each day a violation occurs or is allowed to exist by the applicant or provider may constitute a separate offense.

Section 2.16 Effective Date

This ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED, ADOPTED AND APPROVED this 9TH day of JULY, 2019.

TOWN OF UPTON

BY: _____
TRAVIS BECK, MAYOR

ATTEST:

TOWN CLERK

(SEAL)

1st reading 5/14/2019
2nd reading 6/11/2019
3rd reading 7/09/2019

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