



**PLANNING COMMISSION
A G E N D A
September 15, 2016**

Notice is hereby given of a Public Meeting to be held before the City of Wheat Ridge Planning Commission on September 15, 2016 at 7:00 p.m., in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

**Agenda packets and minutes are available online at <http://www.ci.wheatridge.co.us/95/Planning-Commission>*

- 1. CALL THE MEETING TO ORDER**
- 2. ROLL CALL OF MEMBERS**
- 3. PLEDGE OF ALLEGIANCE**
- 4. APPROVE THE ORDER OF THE AGENDA (Items of new and old business may be recommended for placement on the agenda.)**
- 5. APPROVAL OF MINUTES – September 1, 2016**
- 6. PUBLIC FORUM (This is the time for any person to speak on any subject not appearing on the agenda. Public comments may be limited to 3 minutes.)**
- 7. PUBLIC HEARING**
 - A. ZOA-16-05: An ordinance amending Section 26-711 of the Wheat Ridge Code of Laws, concerning billboards, to establish a billboard vacancy process.**
 - B. ZOA-16-04: An ordinance repealing and reenacting Section 26-615 of the Wheat Ridge Code of Laws concerning Commercial Mobile Radio Service and making conforming amendments in connection herewith.**
- 8. OTHER ITEMS**
 - A. **Discussion:** Residential Development Standards and Bulk Plane**
- 9. ADJOURNMENT**

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Carly Lorentz, Assistant to the City Manager at 303-235-2867 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.



**PLANNING COMMISSION
Minutes of Meeting
September 1, 2016**

1. CALL THE MEETING TO ORDER

The meeting was called to order by Chair OHM at 7:01 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL OF MEMBERS

Commission Members Present: Dirk Boden
Emery Dorsey
Donna Kimsey
Janet Leo
Scott Ohm

Commission Members Absent: Alan Bucknam
Steve Timms
Amanda Weaver

Staff Members Present: Lauren Mikulak, Senior Planner
Zack Wallace, Planning Technician
Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. APPROVE ORDER OF THE AGENDA

It was moved by Commissioner DORSEY and seconded by Commissioner LEO to approve the order of the agenda. Motion carried 5-0.

5. APPROVAL OF MINUTES – August 18, 2016

It was moved by Commissioner DORSEY and seconded by Commissioner KIMSEY to approve the minutes of August 18, 2016, as written. Motion carried 5-0.

6. PUBLIC FORUM (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. PUBLIC HEARING

- A. **Case No. MS-16-03:** an application filed by Robert Schwinn for approval of a plat consolidating 4 lots into 3 lots for the property located at 3275 Ames Street.

Mr. Wallace gave a short presentation regarding the Minor subdivision to consolidate four lots into three lots and the application. He entered into the record the contents of the case file, packet materials, the zoning ordinance, and the contents of the digital presentation. He stated the public notice and posting requirements have been met, therefore the Planning Commission has jurisdiction to hear this case.

Mr. Wallace explained the property is zoned Residential-Three (R-3) which allows single-family, duplexes and multi-family dwellings depending on the lot size. The site is surrounded by Residential-One C zoning. The lots in this area were previously platted in the late 1800s as part of the Columbia Heights Subdivision and the lots were platted as 25'x125' with alley access. Most of the properties consist of two lots, with 3275 Ames St. consisting of 4 lots, thus measuring 100'x125'. The purpose of the subdivision request is to allow for the redevelopment of the site into 3 attached townhomes which can be sold separately. This site as a whole will meet the development standards for multi-family structures in the R-3 zone district. There were no concerns from outside agencies.

Commissioner DORSEY asked if a curb cut will be vacated.

Mr. Wallace stated the curb cut will be vacated and the sidewalk needs to be brought up to City standards or the applicant will pay the fees in lieu.

Chair OHM asked if the units will face the street.

Mr. Wallace explained there is nothing in the Architectural and Site Design Manual that states they have to face the street, but they are attached and the center one will likely face the street.

The applicant did not wish to speak at this time.

Jeff Richards
3255 Ames Street

Mr. Richards explained the neighborhood wants assurance that this project is moving toward owner occupancy and not rental units. He explained the current owner does not reside on the property and does things inexpensively. The neighbors don't want to see the property continuously neglected.

Linda Hillshafer
3245 Ames Street

Ms. Hillshafer asked where the cars for the new development will park.

Mr. Wallace stated the Code requires off-street parking spaces for multi-family residential and the preliminary site plan shows parking provided in alley loaded garages.

Robert Schwinn – Applicant
824 W. Fremont Court

Mr. Schwinn asked to respond to the public comments. He explained that the idea behind this project is to build units that can be sold individually. It will comply with all the building standards in the R-3 zone district. He added that everything on the site will be leveled before construction begins.

Commissioner BODEN asked if the garages being proposed are one or two car.

Mr. Wallace replied they will be two car garages.

Commissioner KIMSEY asked if the center lot will be 22-feet in width.

Ms. Mikulak confirmed the width.

Chair OHM asked if the center lot is narrower than the outside two because they act as buffers.

Ms. Mikulak stated that is correct and with the R-3 development standards the developable area for these three lots is about the same even though the area looks different.

Jim Dent
3235 Ames Street

Mr. Dent asked if the property lines are where they are supposed to be because there has been confusion in the neighborhood.

Mr. Wallace explained that in order to have a plat document the property has to be surveyed and the property lines shown on the plat represent the findings of the survey.

Mr. Richards asked if a title company was hired to research the property lines and where fences sit.

Ms. Mikulak explained that the city requires title work to be submitted only if right-of-way is going to be acquired. A licensed surveyor will be hired to locate property lines to make sure there are no gaps or overlaps. She also explained that if there are any fence issues, it becomes a civil issue to be resolved between neighbors. Fences are not always right on a property line.

Mr. Schwinn stated the surveyor found the fence on 3275 Ames Street property is correct and the fence on the property to the north can be moved 1 ½ feet to the south if that neighbor wants to. Also, the new garages will not encroach on the alley as they do now.

It was moved by Commissioner LEO and seconded by Commissioner KIMSEY to APPROVE Case No. MS-16-03, a request for approval of a plat consolidating four (4) lots into three (3) lots on property zoned Residential-Three (R-3) and located at 3275 Ames Street, for the following reasons:

- 1. All agencies can provide services to the property with improvements installed at the developer's expense.**
- 2. The requirements of Article IV of the zoning and development code have been met.**

With the following conditions:

- 1. Add note reading "Lots 1, 2 and 3 of Sharman's Place Subdivision may only be developed as attached townhomes."**
- 2. Improvements to the curb, gutter and sidewalk must be constructed with this project, or fees-in-lieu of construction be paid in the amount of \$2,900, collected with the first Building Permit Application.**
- 3. Prior to recordation of the plat, the applicant shall provide a drainage letter and drainage plan with sufficient calculation to address the 100% water quality capture volume for the added impervious surface only. The Drainage Plan must contain sub-basin info, flow arrows and percent grades, and show the water quality facility.**
- 4. Prior to recordation of the plat, a 'STORMWATER DETENTION EASEMENT' shall be shown over the entirety of any proposed detention, and created by Permanent Easement document (the standard templates for which are to be obtained by the Public Works Department) to the benefit of the City.**

8. OTHER ITEMS

1. Next Planning Commission Meeting will be held September 15, 2016.

9. ADJOURNMENT

It was moved by Commissioner DORSEY and seconded by Commissioner BODEN to adjourn the meeting at 7:31 p.m. Motion carried 5-0.

Scott Ohm, Chair

Tammy Odean, Recording Secretary

DRAFT



**PLANNING COMMISSION
LEGISLATIVE ITEM STAFF REPORT**

MEETING DATE: September 15, 2016

TITLE: AN ORDINANCE AMENDING SECTION 26-711 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING BILLBOARDS, TO ESTABLISH A BILLBOARD VACANCY PROCESS

CASE NO. ZOA-16-05

PUBLIC HEARING

CODE CHANGE ORDINANCE

Case Manager: Lisa Ritchie

Date of Preparation: September 7, 2016

SUMMARY:

The City's Billboard Regulations are located in Article VII of Chapter 26 in the City Code, specifically in Sec. 26-711 (Billboards; specifications and regulations). Supporting regulations are located throughout Article VII. Per Section 26-711.C, only 16 billboards are permitted within the City of Wheat Ridge. The enclosed ordinance codifies an existing administrative policy that outlines the process for declaring, advertising, and filling a billboard vacancy.

Notice for this public hearing was provided as required by the Code of Laws.

BACKGROUND:

On June 1, 2015, City Council held a study session to discuss revising the adopted billboard vacancy policy. At that time, City Council supported implementation of an amended administrative policy to handle billboard vacancies. City Council further directed staff to prepare an ordinance to codify the policy. Due to other priorities and work efforts, staff did not complete the ordinance at that time. On August 1, 2016, a study session was held with City Council to confirm their intent to codify the billboard vacancy policy.

The City defines a billboard as:

Any sign in excess of fifty (50) square feet in size oriented to the interstate highway utilized to advertise a product or service that is not produced or conducted on the same property as the sign.

Current billboard regulations were adopted in 1991. In November 2005, in anticipation of a billboard vacancy occurring in December 2005, City staff worked with the City Attorney to draft a policy memorandum establishing protocol for processing billboard applications when the number in existence drops below the maximum of 16.

A lottery was conducted in December 2005 and a billboard permit was awarded to construct a new billboard. Ultimately, the City was sued over the manner in which the lottery was conducted. Generally, the courts upheld the policies and procedures established in the October 17, 2005 memorandum, with some minor exceptions.

Modifications to Chapter 26-711 were considered by City Council in 2008, which, among other things, would have codified a procedure for handling billboard vacancies. That ordinance was not adopted by City Council and no changes were made to the 2005 policy.

More recently, staff proposed changes to the billboard vacancy policy which were discussed with City Council on June 1, 2015 and a new policy was adopted at that time. Comments from billboard companies were received at that time. The adopted approach puts the City in a less reactionary mode, and created a process that is reasonable, systematic and fair for all parties – property owners, sign companies and staff.

STATEMENT OF THE ISSUES:

In summary, the proposed ordinance codifies the policy that staff adopted with City Council support in 2015, and includes provisions for the following:

1. A billboard would be considered abandoned under the following circumstances:
 - a. Billboard removed without first securing a building permit for its removal
 - b. Temporary removal exceeds 180 days (temporary removals would be permitted to allow for upgrades to occur to existing billboards, provided prior City approval is received)
 - c. Property owner notifies the Community Development Department of its intent to abandon a billboard structure
 - d. Failure to notify the Department of an intent to temporarily remove a billboard structure
2. Once a billboard is abandoned, leaving fewer than the maximum of 16 allowable billboards, a vacancy would occur.
3. The City would be the sole entity allowed to determine that a vacancy has occurred.
4. Having made a determination that a vacancy exists, the City would provide a 30-day notice and posting period for preliminary applications to be submitted.
5. In the event more than one application is received, a random drawing would occur and the selected applicant would be given 180 days to file a complete building permit application.
6. If the selected applicant fails to perfect a building permit application within the permitted time, the City would declare the vacancy open and again invite preliminary applications.

RECOMMENDED MOTION:

“I move to recommend approval of the proposed ordinance amending Section 26-711 of the Wheat Ridge Code of Laws, concerning billboards, to establish a billboard vacancy process.”

Exhibits:

1. Proposed Ordinance

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
Council Bill No. ____
Ordinance No. _____
Series 2016

TITLE: AN ORDINANCE AMENDING SECTION 26-711 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING BILLBOARDS, TO ESTABLISH A BILLBOARD VACANCY PROCESS

WHEREAS, the City of Wheat Ridge (“City”) is a home rule municipality operating under a charter adopted pursuant to Article XX of the Colorado Constitution and vested with the authority by that article and the Colorado Revised Statutes to adopt ordinances for the regulation of land use and planning; and

WHEREAS, pursuant to this authority, the Wheat Ridge City Council (“Council”) previously adopted local land use regulations, codified as Chapter 26 of the Wheat Ridge Code of Laws (“Code”); and

WHEREAS, Code Section 26-711 regulates the location and features of billboards within the City; and

WHEREAS, said Section 26-711 imposes a limitation on the maximum number of billboards that may be located in the City, but fails to specify how the City will administer billboard vacancies as they come available; and

WHEREAS, the Council finds and determines that it is necessary and desirable to amend Code Section 26-711 to include a process by which the City will administer billboard vacancies in a manner that is reasonable, equitable and consistent, as further set forth herein.

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

Section 1. Section 26-711 of the Code, concerning billboard specifications and regulations, is hereby amended by the addition of a new subsection D., to read in its entirety as follows:

D. PROCESSING OF BILLBOARD VACANCIES.

1. AN EXISTING BILLBOARD WILL BE CONSIDERED ABANDONED, CREATING A BILLBOARD VACANCY, UNDER THE FOLLOWING CIRCUMSTANCES:

- a. THE OWNER OF THE BILLBOARD OR THE PROPERTY UPON WHICH IT IS LOCATED FILES WRITTEN NOTICE OF ITS INTENT TO ABANDON THE BILLBOARD WITH THE DIRECTOR

OF COMMUNITY DEVELOPMENT. IN THIS EVENT, THE CITY MAY BEGIN TO PROCESS THE PENDING VACANCY, AS SET FORTH IN THIS SUBSECTION D., PRIOR TO THE REMOVAL OF THE BILLBOARD. IT SHALL BE UNLAWFUL FOR AN OWNER TO FAIL TO REMOVE A BILLBOARD AS SPECIFIED IN A NOTICE OF INTENT TO ABANDON FILED HEREUNDER. A BILLBOARD EXISTING AFTER THE DATE OF ITS ABANDONMENT SHALL BE AND IS HEREBY DECLARED A NUISANCE, AS DEFINED BY SECTION 15-4 OF THIS CODE, AND SHALL BE SUBJECT TO THE ABATEMENT AND OTHER ENFORCEMENT REMEDIES AND PENALTIES SET FORTH UNDER ARTICLE II OF CHAPTER 15 OF THIS CODE.

- b. A BILLBOARD IS REMOVED; PROVIDED HOWEVER THAT A BILLBOARD MAY BE TEMPORARILY REMOVED AND RE-LOCATED, UNDER THE FOLLOWING CONDITIONS:
 - i. THE OWNER OF THE BILLBOARD OR THE PROPERTY UPON WHICH IT IS LOCATED HAS FILED WRITTEN NOTICE OF ITS INTENT TO TEMPORARILY REMOVE THE BILLBOARD WITH THE DIRECTOR OF COMMUNITY DEVELOPMENT, WHICH NOTICE SHALL INCLUDE THE PURPOSE FOR THE TEMPORARY REMOVAL AND A PROJECTED TIMELINE TO RE-LOCATE THE BILLBOARD;
 - ii. THE BILLBOARD IS PROPOSED TO BE REMOVED TO PERFORM STRUCTURAL UPGRADES, MODIFICATIONS OR ANOTHER PURPOSE APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR;
 - iii. THE BILLBOARD WILL BE RE-LOCATED ON THE SAME PROPERTY IN SUBSTANTIALLY THE SAME LOCATION, AS DETERMINED BY THE COMMUNITY DEVELOPMENT DIRECTOR IN HIS OR HER SOLE DISCRETION;
 - iv. THE TIME THE BILLBOARD IS REMOVED SHALL NOT EXCEED ONE HUNDRED EIGHTY (180) DAYS;
 - v. THE COMMUNITY DEVELOPMENT DIRECTOR HAS ISSUED PRIOR WRITTEN APPROVAL OF THE TEMPORARY REMOVAL; AND
 - vi. ALL REQUIRED BUILDING PERMITS, LICENSES OR OTHER APPROVALS NECESSARY TO LAWFULLY

REMOVE THE BILLBOARD HAVE BEEN OBTAINED
PRIOR TO REMOVAL.

- c. FAILURE TO COMPLY WITH ANY OF THE CONDITIONS UNDER WHICH TEMPORARY REMOVAL IS PERMITTED UNDER SUB-PARAGRAPH 1.B. ABOVE.
2. WHENEVER AN ABANDONMENT OR OTHER EVENT RESULTS IN FEWER THAN THE MAXIMUM PERMITTED NUMBER OF BILLBOARDS TO BE LOCATED WITHIN THE CITY, THE CITY SHALL DECLARE THAT A VACANCY EXISTS AND PUBLISH NOTICE OF THE VACANCY ON THE CITY'S WEBSITE AND POST SUCH NOTICE AT THE CITY'S OFFICIAL POSTING PLACES. THE DETERMINATION AND DECLARATION OF A VACANCY SHALL BE IN THE CITY'S SOLE AND ABSOLUTE DISCRETION. THE NOTICE OF VACANCY SHALL PROVIDE THAT INTERESTED PARTIES MUST FILE A PRELIMINARY APPLICATION WITH THE CITY WITHIN THIRTY (30) DAYS OF THE DATE OF NOTICE.
3. THE CITY SHALL ACCEPT PRELIMINARY APPLICATIONS FROM INTERESTED PARTIES FOR THIRTY (30) DAYS FROM THE DATE OF THE NOTICE OF VACANCY. PRELIMINARY APPLICATIONS MUST INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:
 - a. A LETTER OF INTENT FROM THE APPLICANT;
 - b. THE PROPOSED LOCATION OF THE BILLBOARD, INCLUDING EITHER PROPERTY ADDRESS OR ASSESSOR PARCEL ID; AND
 - c. WRITTEN PERMISSION OF THE PROPERTY OWNER TO LOCATE THE BILLBOARD, IF THE PROPERTY OWNER IS NOT THE NAMED APPLICANT.
4. THE COMMUNITY DEVELOPMENT DIRECTOR WILL DETERMINE WHETHER PRELIMINARY APPLICATIONS ARE COMPLETE AND PROPOSED LOCATIONS ARE ELIGIBLE PURSUANT TO CHAPTER 26 OF THE CODE OF LAWS.
5. IN THE EVENT MORE THAN ONE COMPLETE AND ELIGIBLE PRELIMINARY APPLICATION IS TIMELY FILED, THE CITY SHALL SELECT ONE PRELIMINARY APPLICATION TO CONTINUE PROCESSING BY LOTTERY. ALL POTENTIAL APPLICANTS IN THE LOTTERY SHALL BE NOTIFIED OF THE TIME AND PLACE THAT LOTS SHALL BE DRAWN AND MAY ATTEND AND OBSERVE THE PROCESS. IF THE CITY DOES NOT RECEIVE ANY PRELIMINARY

APPLICATIONS WITHIN THE INITIAL THIRTY (30) DAY RESPONSE PERIOD, THE CITY SHALL MAINTAIN THE NOTICE OF VACANCY ON THE CITY'S WEBSITE. THE NOTICE OF VACANCY SHALL BE AMENDED TO REFLECT THAT THE INITIAL RESPONSE PERIOD HAS LAPSED AND THAT PRELIMINARY APPLICATIONS WILL NOW BE ACCEPTED AND PROCESSED BY THE CITY IN THE ORDER RECEIVED. IF MORE THAN ONE PRELIMINARY APPLICATION IS THEREAFTER RECEIVED BY CITY ON THE SAME DATE, THE LOTTERY PROCESS SET FORTH ABOVE SHALL BE USED TO SELECT ONE APPLICATION TO CONTINUE PROCESSING.

6. THE SOLE OR SELECTED APPLICANT MUST FILE A COMPLETE BUILDING PERMIT APPLICATION WITHIN ONE HUNDRED EIGHTY (180) DAYS OF:
 - a. THE DATE THE APPLICANT IS SELECTED BY LOTTERY, IF SO SELECTED;
 - b. THE EXPIRATION OF THE INITIAL THIRTY (30) DAY RESPONSE PERIOD IF THE APPLICANT IS THE ONLY PARTY THAT HAS FILED A TIMELY LETTER OF INTENT; OR
 - c. THE DATE OF THE APPLICANT'S PRELIMINARY APPLICATION IF SUBMITTED AFTER THE INITIAL THIRTY (30) DAY RESPONSE PERIOD;

PROVIDED, HOWEVER, THAT THE COMMUNITY DEVELOPMENT DIRECTOR MAY AUTHORIZE AN EXTENSION OF NOT MORE THAN ONE HUNDRED EIGHTY (180) ADDITIONAL DAYS UPON A SHOWING BY THE APPLICANT THAT IT IS MAKING SUBSTANTIAL PROGRESS TOWARDS FILING A COMPLETE APPLICATION, AS DETERMINED BY THE DIRECTOR IN HIS OR HER SOLE AND ABSOLUTE DISCRETION.

7. AN APPLICANT'S FAILURE TO MEET DEADLINES OR TO TIMELY FILE MATERIALS AND INFORMATION NECESSARY TO COMPLY WITH THE PERMIT PROCESS, AS DETERMINED BY THE COMMUNITY DEVELOPMENT DIRECTOR IN HIS OR HER SOLE AND ABSOLUTE DISCRETION, SHALL RESULT IN THE REJECTION OF HIS OR HER APPLICATION AND THE GENERATION OF A NEW NOTICE OF VACANCY, IN ACCORDANCE WITH PARAGRAPH (2) ABOVE.

Section 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect upon adoption and signature of the Mayor, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this 26th day of September, 2016, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for **October 10, 2016, at 7:00 p.m.**, in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this _____ day of _____, 2016.

SIGNED by the Mayor on this _____ day of _____, 2016.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

First Publication:
Second Publication:
Wheat Ridge Transcript
Effective Date:

Published:
Wheat Ridge Transcript and www.ci.wheatridge.co.us



**PLANNING COMMISSION
LEGISLATIVE ITEM STAFF REPORT**

MEETING DATE: September 15, 2016

TITLE: AN ORDINANCE REPEALING AND REENACTING SECTION 26-615 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING COMMERCIAL MOBILE RADIO SERVICE AND MAKING CONFORMING AMENDMENTS IN CONNECTION HEREWITH

CASE NO. ZOA-16-04

PUBLIC HEARING

CODE CHANGE ORDINANCE

Case Manager: Lisa Ritchie

Date of Preparation: September 7, 2016

SUMMARY:

The enclosed draft ordinance repeals and reenacts Section 26-615 regarding Commercial Mobile Radio Service (CMRS) regulations, more commonly referred to as cellular communication towers. These towers are permitted throughout the City of Wheat Ridge, but the regulations have not been updated since 2001 and revisions are needed to align the code with current technology and FCC regulations.

Notice for this public hearing was provided by the Code of Laws.

BACKGROUND:

During the March 2, 2015 City Council study session regarding proposed zoning code updates by the Community Development Department, staff identified the City's Commercial Mobile Radio Service regulations, specifically Section 26-615 (Commercial mobile radio service (CMRS) facilities) as needing to be updated. CMRS facilities are commonly known as cellular communications towers, antennas and related support equipment.

Current city regulations are outdated and should be revised to respond to technology improvements, to reflect recently adopted Federal Communications Commission (FCC) rules, and to consider changes to the review and approval process for certain applications, and to update associated development standards. City Council had a study session on the topic on November 23, 2015. Planning Commission had a study session more recently on June 2, 2016. The proposed ordinance was developed with the feedback received during these study sessions.

STATEMENT OF THE ISSUES:

The City’s regulations currently contemplate three general categories of CMRS facilities: freestanding, roof-mounted, and building- or structure-mounted. The proposed ordinance includes updates to development standards, the review and approval process for applications, revisions related to recently adopted federal regulations, as well as other provisions commonly associated with CMRS regulations but previously excluded from the City’s current ordinance. Due to the extent of the amendment, the code section is proposed to be repealed and reenacted. Below is a summary of the changes proposed for each code section.

Definitions

The proposed ordinance includes both updated and new definitions, and proposes to locate all CMRS related definitions within Section 26-615, rather than in Section 26-123. For ease of use, this will consolidate all content related to CMRS into one location in the municipal code.

Purpose and Intent

Currently, there is no Purpose and Intent section for the CRMS regulations, so this section is new. It reflects the City’s desire to accommodate CMRS facilities, but also to minimize visual impacts and encourage colocation.

Applicability

The City’s code currently does not include an applicability section. This type of section is commonly included and provides information regarding which types of facilities and applications the section regulates. Staff recommends that Section 26-615 should apply to all new CMRS facility applications, and that existing approved facilities shall continue to meet provisions related to safety standards, abandonment, and other FCC or other federal regulating authority requirements.

Review and Approval Process

Unlike most zoning code issues, federal law does address local land use authority over wireless facilities. The “Spectrum Act” is part of the Middle Class Tax Relief and Job Creation Act of 2012 (Section 6409(a)), and it requires changes to local governments’ CMRS review and approval procedures. The ruling went into effect in April of 2015, and requires local governments to approve all applications within 60 days for any request that modifies an existing facility and does not substantially change the facility. As defined by the FCC, this includes applications for upgrading or swapping existing equipment, or for adding additional equipment.

The 60-day approval timeline that the City must meet under this regulation may not be possible based on the way applications have historically been processed. The proposed ordinance includes language that is consistent with the federal ruling and should result in compliance with required review and approval processes and timelines.

In addition, with the inclusion of clear and thorough development standards in the new ordinance, staff proposes allowing additional facility types to be processed through a building permit, rather than a Special Use Permit. The following table illustrates the review and approval process for each facility type.

CMRS Facility Type	Review and Approval Process
Freestanding, New	Special Use Permit
Freestanding, New within a Planned Development zone district	Must be shown on ODP, or an amended ODP. In some instances, it may be reviewed through a special use permit at the sole discretion of the Community Development Director
Freestanding, colocation with or without a substantial change	Building Permit
Building or structure-mounted, new or colocation with or without a substantial change	Building Permit
Roof-mounted, new or colocation with or without a substantial change	Building Permit

Standards for all CMRS Facilities

The code currently includes two development standards related to all facilities: that no facility shall exceed the height limit applicable in the underlying zone district and a regulation regarding what constitutes abandonment of a facility. Staff recommends the establishment of the following additional development standards related to all facilities:

- **Colocation:** The ordinance includes language encouraging, and in some cases requiring, colocation on existing facilities in an effort to minimize adverse visual impacts associated with the proliferation of towers. This is typical language in the codes of neighboring jurisdictions. The new regulation will require applicants to demonstrate that no existing facility can accommodate their needs, will prohibit existing facility owners from unreasonably excluding a telecommunication competitor from sharing facilities, and will ensure that new facilities are constructed in a manner that accommodates additional collocated equipment in the future.
- **Federal Requirements:** The ordinance includes provisions that all facilities shall meet current standards and regulations of the FCC, the FAA, and any other agency of the federal government with authority to regulate CMRS facilities.
- **Safety Standards:** The ordinance includes language requiring all facilities to conform to the requirements of the International Building Code, or National Electrical Code, as applicable. Building permits are required for all new installations of or modifications to CMRS facilities.
- **Residential Uses:** The ordinance includes clarifying language regarding CMRS facilities in residential areas. The following is proposed:
 - The city prohibits freestanding CMRS facilities in all residential districts.
 - The city prohibits all CMRS facilities on properties where the principal use is a single or two-family dwelling.
 - Building, structure or roof-mounted CMRS facilities may be located on a property containing a nonresidential or multi-family use in a residential zone district.

CMRS Facility Development Standards

The following tables compare the development standards in the City’s current code with those in the proposed ordinance. These regulations are found in subsections E, F, G, and H of the ordinance.

Freestanding		
Development Standard	Current Standard	Proposed Standard
Screening; Base	Necessary when adjacent residential development and public ROW	Same as current
Setbacks	--	Consistent with Accessory Uses in the underlying zone district
Height	Not to exceed maximum height in underlying zone district	Not to exceed permitted height for a principal use
Location on Property	--	Shall not be permitted between the principal structure and the street

Roof-Mounted		
Development Standards	Current Standard	Proposed Standard
Screening	Shall be screened by materials that are architecturally compatible with and colored to match the building or structure to which it is mounted	Same as current
Setback from roof edge	--	Shall be setback to the greatest extent possible so that it is not visible from the street or adjacent residential property
Height – Whip Antenna	No more than 10 feet above the parapet of any flat roof or ridge of a sloped roof to which they are attached	No more than 12 feet, as measured from the roof deck
Height – Panel Antenna	No more than 7 feet above any parapet of a flat roof, not permitted on a sloped roof	No more than 12 feet, as measured from the roof deck
Height – Accessory Equipment	No more than 7 feet above any parapet of a flat roof, not permitted on a sloped roof	No more than 12 feet, as measured from the roof deck, not permitted on a sloped roof

Building- or Structure Mounted		
Development Standards	Current Standard	Proposed Standard
Screening; Color and Texture	Shall be architecturally compatible with and textured and colored to match the building or structure to which they are attached	Same as current
Mounting	Not to exceed 2 feet from face	Shall be mounted as flush as possible, not to exceed 2 feet from face
Height – Whip Antenna	No more than 10 feet above the highest point of the building or structure to which they are attached	Same as current
Height – Panel Antenna	--	Shall not extend above the building wall or parapet to which they are attached

In addition to the three categories above, the ordinance includes an additional set of development standards related to accessory equipment that is placed on the ground or within a separate building on the site. Because accessory equipment can be associated with any type of CMRS facility (freestanding, roof-mounted, or building-mounted) these standards are proposed as a separate section in the ordinance.

Ground Mounted Accessory Equipment		
Development Standards	Current Standard	Proposed Standard
Setbacks	--	Consistent with Accessory Uses in the underlying zone district
Height	--	Shall not exceed 12 feet
Screening - Equipment	Shall be totally screened from view from adjacent property lines	Equipment not contained in a building shall be fully screened from adjacent residential properties and public ROW
Compatibility - Buildings	Shall be compatible with the existing character of the site and adjacent properties	Shall be architecturally compatible with existing structures on the property and character of the neighborhood

RECOMMENDED MOTION:

“I move to recommend approval of the proposed ordinance repealing and reenacting section 26-615 of the Wheat Ridge Code of Laws concerning commercial mobile radio service and making conforming amendments in connection herewith.”

Exhibits:

1. Proposed Ordinance

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. _____
ORDINANCE NO. _____

Series 2016

TITLE: AN ORDINANCE REPEALING AND REENACTING SECTION 26-615 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING COMMERCIAL MOBILE RADIO SERVICE AND MAKING CONFORMING AMENDMENTS IN CONNECTION THEREWITH

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, the City Council is authorized by the Constitution, the Home Rule Charter and CRS 31-23-101 *et seq.* to regulate land use and development within the City; and

WHEREAS, in the exercise of that authority, the City Council of the City of Wheat Ridge has previously enacted Chapter 26 of the Wheat Ridge Code of Laws (the "Code") pertaining to zoning, land use, and development; and

WHEREAS, in the exercise of this authority the Council has previously adopted Section 26-215 of the Wheat Ridge Code of Laws concerning commercial mobile radio service; and

WHEREAS, the Council wishes to repeal and reenact Section 26-615 to better regulate these services, and to make conforming amendments in connection therewith;

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

Section 1. Section 26-615 of the Code, concerning commercial mobile radio service facilities, is hereby repealed and reenacted in its entirety to read as follows:

Sec. 26-615. – Commercial mobile radio service (CMRS) facilities.

A. *Purpose and intent.* The purpose and intent of this section 26-615 is to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community. These regulations are necessary in order to:

1. Facilitate the provision of wireless telecommunication services to the residents and businesses of the city.
2. Minimize adverse impacts of facilities through careful design, siting and screening standards.
3. Encourage and maximize colocation and the use of existing and approved towers, buildings, and other structures to accommodate new wireless

- telecommunication antennas in order to reduce the number of towers needed to serve the community.
4. Provide specific regulations related to the review processes for CMRS facilities.
 5. Align the review and approval process for CMRS facilities with the FCC and any other agency of the federal government with the authority to regulate CMRS facilities.
- B. *Applicability.* The standards contained in this section shall apply to all applications for any CMRS facility. The applicant shall demonstrate in writing that its proposed CMRS facility meets all applicable standards and provisions of the code. Pre-existing CMRS facilities shall not be required to meet the requirements of this section, other than the requirements of subsection E. Changes and additions to pre-existing CMRS facilities must meet the applicable requirements of this section.
- C. *Review and approval process.* Proposed CMRS facilities shall be reviewed pursuant to the following procedures depending upon the facility type and/or proposed change:
1. Review procedure
 - a. Building- or structure-mounted facilities in all zone districts shall be reviewed by the community development department through a building permit application for compliance with the requirements for such facilities.
 - b. Roof-mounted facilities in all zone districts shall be reviewed by the community development department through a building permit application for compliance with the requirements for such facilities.
 - c. New freestanding CMRS facilities must receive a special use permit, pursuant to sections 26-114, 26-204 and 26-1111.
 - d. New freestanding CMRS facilities in all planned development zone districts (including planned residential districts) unless specifically listed or shown as such in the outline development plan, also require amendment of the outline development plan pursuant to Article III. At the sole discretion of the community development director, new freestanding CMRS facilities may be reviewed as a special use pursuant to sections 26-114, 26-204 and 26-309.
 - e. Applications for colocation on any existing facility shall be reviewed by the community development department through a building permit application for compliance with the requirements for such facilities.
 2. Approval process
 - a. The city shall review and act upon the application within the following time periods:
 - i. Within 30 days the city will give written notice of incompleteness if so determined, specifying the code section(s) that requires such missing information. This determination pauses the remaining deadlines until a complete application is filed.

- ii. Within 60 days the city will act on applications that are not a substantial change.
 - iii. Within 90 days the city will act on colocation applications that are not a substantial increase in the size of a tower.
 - iv. Within 150 days the city will act on applications for new CMRS facilities, colocation applications that are a substantial increase in the size of the tower or substantial increase of an existing CMRS facility.
- b. The final action of the city on any CMRS application shall be in writing and shall advise the applicant of the reasons for approval, approval with conditions, or denial.

D. *Standards for all CMRS facilities.* The following are standards for all CMRS facilities.

1. Colocation. The shared use of existing freestanding or roof-mounted CMRS facilities shall be preferred to the construction of new facilities in order to minimize adverse visual impacts associated with the proliferation of towers.
 - a. No CMRS application to construct a new freestanding or roof-mounted CMRS facility shall be approved unless the applicant demonstrates to the reasonable satisfaction of the city that no existing CMRS facility within a reasonable distance, regardless of municipal boundaries, can accommodate the applicant's needs. Evidence submitted to demonstrate that no existing facility can accommodate the applicant's proposed CMRS facility shall consist of one or more of the following:
 - i. No existing CMRS facilities are located within the geographic area required to meet the applicant's coverage demands.
 - ii. Existing CMRS facilities or structures are not of sufficient height to meet the applicant's coverage demands and cannot be extended to such height.
 - iii. Existing CMRS facilities or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - iv. Existing CMRS facilities or structures do not have adequate space on which proposed equipment can be placed so it can function effectively and reasonably.
 - v. The applicant's proposed antenna would cause electromagnetic interference with the antennas on the existing CMRS facility, or the antennas on the existing facility would cause interference with the applicant's proposed antenna.
 - vi. The applicant demonstrates that there are other compelling limiting factors, including but not limited to economic factors, that render CMRS facilities or structures unsuitable.
 - b. No CMRS facility owner or operator shall unreasonably exclude a telecommunication competitor from using the same facility or location. Upon request by the city, the owner or operator shall provide evidence

- and a written statement to explain why collocation is not possible at a particular facility or site.
- c. If a telecommunication competitor attempts to collocate a CMRS facility on an existing or approved CMRS facility or location, and the parties cannot reach an agreement, the city may require a third-party technical study to be completed at the applicant's expense to determine the feasibility of collocation.
 - d. Applications for new freestanding CMRS facilities shall provide evidence that the facility can accommodate collocation of additional carriers.
2. Federal requirements. All CMRS facilities 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 CMRS facilities. Failure to meet such revised standards and regulations shall constitute grounds for revocation of city approvals and removal of the facility at the owner's expense.
 3. Safety standards. All CMRS facilities shall conform to the requirements of the international building code, and national electrical code, as applicable.
 4. Abandonment. CMRS facilities which are abandoned by nonuse, disconnection of power service, equipment removal or loss of lease for greater than six (6) months shall be removed by the CMRS facility owner. Should the owner fail to remove the facilities, the city may do so at its option, and the costs thereof shall be a charge against the owner and recovered by certification of the same to the county treasurer for collection as taxes in the manner provided by code section 2-93, or by any other means available under article x of chapter 26.
 5. Third party review.
 - a. CMRS providers use various methodologies and analysis tools, including geographically based computer software, to determine the specific technical parameters of CMRS facilities, such as expected coverage area, antenna configuration and topographic constraints that affect signal paths. In certain instances there may be a need for expert review by a third party of the technical data submitted by the CMRS provider. The city may require such a technical review to be paid for by the applicant for a CMRS facility. The selection of the third party expert may be by mutual agreement between the applicant and the city or at the discretion of the city, with a provision for the applicant and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to be a site-specific review of technical aspects of the CMRS facilities and not a subjective review of the site selection. The expert review of the technical submission shall address the following:
 - i. The accuracy and completeness of the submission;
 - ii. The applicability of analysis techniques and methodologies;
 - iii. The validity of conclusions reached;
 - iv. Any specific technical issues designated by the city.

- b. Based on the results of the third party review, the city may require changes to the application for the CMRS facility that comply with the recommendation of the expert.
 6. Signal interference. All CMRS facilities shall be designed and sited so as not to cause interference with the normal operation of radio, television, telephone and other telecommunication services utilized by adjacent properties; nor shall any such facilities interfere with any public safety telecommunications. 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 (10) 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.
 7. All CMRS facilities are accessory uses to the structure upon which they are placed or to the primary use of the property on which they are constructed. No CMRS facility shall be located on a vacant lot devoid of any primary or main building.
 8. Siting of CMRS facilities in residential areas. The city encourages the siting of CMRS facilities in nonresidential areas.
 - a. The city prohibits freestanding CMRS facilities in the following zone districts:
 - i. Residential-One (R-1),
 - ii. Residential-One A (R-1A),
 - iii. Residential-One B (R-1B),
 - iv. Residential-One C (R-1C),
 - v. Residential-Two (R-2),
 - vi. Residential-Two A (R-2A),
 - vii. Residential-Three (R-3),
 - viii. Residential-Three A (R-3A),
 - ix. Agricultural-One (A-1),
 - x. Agricultural-Two (A-2), and
 - xi. Mixed Use-Neighborhood (MU-N) zone districts.
 - b. The city prohibits all CMRS facilities on properties where the principal use is a single or two-family dwelling.
 - c. Building, structure or roof-mounted CMRS facilities may be located on a property containing a nonresidential or multi-family use, regardless of underlying zoning.
- E. *Standards for freestanding CMRS facilities.* Freestanding CMRS facilities are subject to the following requirements and shall be evaluated as a special use.
1. Freestanding CMRS facilities shall be visually screened from adjacent residential development and public rights-of-way.

2. Freestanding CMRS facilities shall be permitted only as an accessory use, and are subject to accessory use setback development standards in the applicable zone district.
 3. Freestanding CMRS facilities shall not exceed the permitted height for the principal use on the subject property.
 4. Freestanding CMRS facilities shall not be permitted between the principal structure and the street.
- F. *Standards for building or structure-mounted CMRS facilities.* Building or structure-mounted CMRS facilities are subject to the following requirements and shall be evaluated as part of the community development department's review process.
1. Such facilities shall be architecturally compatible with and textured and colored to match the building or structure to which they are attached.
 2. The antenna shall be mounted as flush to the wall as technically possible. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet.
 3. Panel antennae shall not extend above the building wall or parapet to which they are mounted.
 4. Whip antennae shall extend no more than ten (10) feet above the highest point of the building or structure to which they are attached.
- G. *Standards for roof-mounted CMRS facilities.* Roof-mounted CMRS facilities are subject to the following requirements and shall be evaluated as part of community development department's review process.
1. All roof-mounted CMRS facilities and accessory equipment shall be set back from the roof or parapet edge so that visibility from the street or adjacent residential properties is minimized to the greatest extent possible.
 2. If roof-mounted equipment is visible from the street or adjacent residential properties, CMRS facilities and accessory equipment shall be screened by materials that are architecturally compatible with and colored to match the building or structure to which they are attached.
 3. No roof-mounted facility, including antenna or accessory equipment, shall exceed twelve (12) feet in height, as measured from the roof deck.
 4. Roof-mounted accessory equipment shall not be permitted on a sloped roof, unless it can be demonstrated that it is not visible from the street or adjacent residential areas.
- H. *Standards for ground-mounted accessory equipment.* Ground-mounted accessory equipment that is associated with a freestanding, roof-mounted or building-mounted CMRS facility are subject to the following requirements and shall be evaluated with the associated CMRS facility application.
1. Ground-mounted accessory equipment shall be subject to the accessory structure setback requirements in the underlying zone district.
 2. Ground-mounted accessory equipment or buildings containing accessory equipment shall not exceed 12 feet in height.

3. Ground-mounted accessory equipment not fully enclosed in a building shall be fully screened from adjacent residential properties and public rights-of-way.
4. Buildings containing ground-mounted accessory equipment shall be architecturally compatible with the existing structures on the property and character of the neighborhood.

I. *Definitions.*

1. *Eligible telecommunications facilities request.* Any request for modification of an existing tower or support structure that involves the collocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.
2. *Tower.* Any freestanding structure designed and constructed primarily for the purpose of supporting one (1) or more Federal Communications Commission-licensed or authorized antennae, including self-supporting lattice towers, guy towers and monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and other similar structures. The term also includes any antenna or antenna array attached to the tower structure.
3. *Substantially Change.* A modification which substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria, including a single change or a series of changes over time whether made by a single owner or operator or different owners/operators over time, when viewed against the initial approval for the support structure. The following are considered substantial changes:
 - a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% 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% or more than ten feet, whichever is greater;
 - b. For towers other than towers in the public rights-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 other 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;
 - c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four cabinets; or, for towers in the public rights-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% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site or make the support structure more visible;
 - e. It would defeat the concealment elements of the eligible support structure; or
 - f. It does not comply with conditions associated with the original siting approval for the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs a through e of this definition.

Section 2. The following definitions are hereby deleted from Section 26-123 and inserted within Section 26-615 under a new paragraph I:

Building or structure-mounted commercial mobile radio service facility. A CMRS facility in which antenna are mounted to an existing structure (e.g., water tower, light pole, steeple, etc.) or building face.

Commercial mobile radio service (CMRS) accessory building or cabinet. An unmanned building or cabinet used to house equipment associated with a CMRS facility.

Commercial mobile radio service (CMRS) site. An unmanned facility consisting of equipment for the reception, switching and transmission of wireless telecommunications, including, but not limited to, personal communications service (PCS), enhanced specialized mobile radio (ESMR), paging, cellular telephone and similar technologies.

Freestanding commercial mobile radio service (CMRS) facility. A CMRS facility that consists of a stand-alone support facility (monopole and/or lattice structure), antenna, associated equipment, accessory buildings and equipment cabinets.

Roof-mounted commercial mobile radio service (CMRS) facility. A CMRS facility in which antenna are mounted on an existing building roof.

Section 3. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this 26th day of September 2016, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for **October 10, 2016 at 7:00 p.m.**, in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this _____ day of _____, 2016.

SIGNED by the Mayor on this _____ day of _____, 2016.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

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