

CITY OF WHEAT RIDGE, COLORADO  
INTRODUCED BY COUNCIL MEMBER MATHEWS  
COUNCIL BILL NO. 22  
ORDINANCE NO. 1612  
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**Section 1.** Section 26-615 of the Code, concerning commercial mobile radio service facilities, is hereby repealed and reenacted in its entirety to read as follows: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 or alternative tower CMRS facilities must receive a special use permit, pursuant to sections 26-114, 26-204 and 26-1111.
    - d. New freestanding or alternative tower 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 or alternative tower 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. 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.
    7. 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. Alternative tower CMRS facilities may be located on a property containing a non-residential use, regardless of underlying zoning.
      - d. 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. Alternative tower structures may be located on a property
- E. *Standards for freestanding and alternative tower CMRS facilities.* Freestanding and alternative tower 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 and alternative tower 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 and alternative tower 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. *Alternative Tower CMRS facility.* An existing or proposed structure that is compatible with the natural setting and surrounding structures and that camouflages or conceals the presence of the antennae and can be used to house or mount CMRS antenna. Examples include manmade trees, clock towers, bell steeples, light poles, silos, existing utility poles, existing utility transmission towers and other similar alternative designed structures.
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;
  - 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 l:

*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.

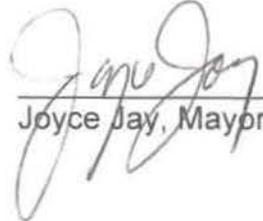
**Section 3. Severability, Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts 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 7 to 0 on this 26<sup>th</sup> 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., continued to November 14, 2016 at 7:00 p.m.** in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 14th day of November, 2016.

SIGNED by the Mayor on this 14th day of November, 2016.

  
Joyce Jay, Mayor

ATTEST:

  
Janelle Shaver, City Clerk



Approved as to Form

  
Gerald E. Dahl, City Attorney

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