

**TOWN OF RIDGWAY, COLORADO
ORDINANCE NO. 04-2020**

**AN ORDINANCE OF THE TOWN OF RIDGWAY, COLORADO
ADOPTING A NEW CHAPTER 14-7 OF TITLE 14 OF THE RIDGWAY
MUNICIPAL CODE ESTABLISHING SMALL CELL REGULATIONS**

WHEREAS, the Town of Ridgway, Colorado (“Town”) is a home rule municipality existing pursuant to the laws of the Colorado Constitution, the Colorado Revised Statutes and the Town’s Home Rule Charter; and

WHEREAS, the Town Council finds that the passage of House Bill 17-1193 requires an expedited permitting process for small cell facilities and small cell networks within local government right-of-ways, such as the Town’s, for telecommunications providers, including broadband providers; and

WHEREAS, the Town Council desires to adopt “Small Cell Regulations” implementing House Bill 17-1193; and

WHEREAS, the Town has the power to adopt this ordinance pursuant to the powers contained in the Ridgway Town Charter, House Bill 17-1193, and its general police power; and

WHEREAS, the Town Council finds that the adoption of Small Cell Regulations will promote the health, safety and general welfare of the Ridgway community; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Addition of Chapter 14-7 to Title 14 of the Ridgway Municipal Code. Title 14 of the Ridgway Municipal Code is hereby amended with the addition of a new Chapter 14-7, to read as set forth in Exhibit A: Addition of Chapter 14-7 to Title 14 of the Ridgway Municipal Code, attached hereto and incorporated herein.

Section 3. Codification of Amendments. The Town Clerk, as the codifier of the Town’s Municipal Code, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Ridgway Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term

“application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Article 3-7 of the Ridgway Charter.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Ridgway, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 8. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Article 3-7 of the Ridgway Charter.

[Execution Page follows]

INTRODUCED AND REFERRED TO PUBLIC HEARING on October 14, 2020 and setting such public hearing for November 11, 2020 at Ridgway Town Hall, located at 201 N. Railroad Street, Ridgway, Colorado.

BY:

ATTEST:

John Clark, Mayor

Pam Kraft, Town Clerk

ADOPTED on November 11, 2020.

BY:

ATTEST:

John Clark, Mayor

Pam Kraft, Town Clerk

APPROVED AS TO FORM:

Bo James Nerlin, Town Attorney

EXHIBIT A: Chapter 14-7 – Small Cell Regulations

CHAPTER 14

SECTION 7

Small Cell Regulations

Subsections:

14-7-1	PURPOSE AND INTENT
14-7-2	DEFINITIONS
14-7-3	UNLAWFUL ACTS
14-7-4	PERMITTING PROCESS
14-7-5	DESIGN STANDARDS
14-7-6	PERMIT STANDARDS
14-7-7	FEES
14-7-8	APPEAL TO COUNCIL
14-7-9	VIOLATION; PENALTY

14-7-1 PURPOSE AND INTENT.

It is the purpose and intent of this Chapter to adopt Small Cell Regulations, to implement House Bill 17-1193 and revisions to C.R.S. §29-27-401 et. seq., to adopt an expedited permitting process for the installation of small cell facilities; and small cell networks with the Town of Ridgway’s right-of-ways. It is also the purpose and intent of this Chapter to adopt minimum design standards and criteria to ensure that the installation of small cell facilities does not result in visual clutter or detract from the existing and planned aesthetic design of the Town of Ridgway right-of-way streetscapes and that the installation of small cell facilities does not interfere with the existing and future use of Town of Ridgway right-of-ways. This Chapter 14-7 shall be limited to the installation of small cell facilities in Town of Ridgway right-of-ways and shall not restrict installation of small cell facilities on private property and shall not authorize installation of small cell facilities on Town of Ridgway properties which are not within right-of-ways.

14-7-2 DEFINITIONS.

For purposes of this Chapter, the following terms shall have the following meanings:

Abandonment means discontinuance of use of a small cell facility for a period of twelve (12) months or the failure to repair a small cell facility within three (3) months.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless services.

Broadband facility means any infrastructure used to deliver broadband service or for the provision of broadband service.

Micro wireless facility means a small wireless facility that is no larger in dimensions than twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height and that has an exterior antenna, if any, that is no more than eleven inches (11") in length.

Permittee means the owner of the small cell facility located within the Town of Ridgway right-of-way.

Small cell facility means:

- (a) A personal wireless service facility as defined by the federal "Telecommunications Act of 1996", as amended as of August 6, 2014; or
- (b) A wireless service facility that meets both of the following qualifications:
 - (i) Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
 - (ii) Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch; or
- (c) A micro wireless facility.

Tower means any structure built for the sole or primary purpose of supporting antennas licensed or authorized by the federal communications commission and the antennas' associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services; unlicensed wireless services; fixed wireless services such as backhaul; and the associated site.

Utility pole means any pole within the Ridgway right-of-way which is used for utilities or signage.

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

14-7-3 UNLAWFUL ACTS.

It is unlawful to install or modify a small cell facility on Ridgway right-of-ways without a valid permit for small cell facilities.

14-7-4 PERMITTING PROCESS.

The Town Manager shall review and act upon permit applications for small cell facilities. The Town Manager may create permit application forms, procedures and criteria which are not inconsistent with this Chapter 14-7, which shall include consolidating applications by the same provider for multiple small cell facilities. The Town Manager may refer permit applications for review and comment by other Town staff members, to the Town Planning Commission and/or Town Council, or by third parties where appropriate. The Town Manager shall act to approve or deny an application for a small cell facility within ninety (90) days after receipt of a completed application. The Town Manager may delegate any and all responsibilities under this permitting process.

14-7-5 DESIGN STANDARDS.

- (a) Height: All small cell facilities shall not extend ten feet (10') above the utility pole or a building structure to which they are attached. When new utility poles are proposed as an alternative, the height of such poles shall be similar to existing utility/light poles in the vicinity but shall not exceed ten feet (10') higher than existing utility poles in the vicinity.
- (b) Setback: A new freestanding pole or structure for a small cell facility shall be located a minimum of two hundred and fifty feet (250') from existing or planned detached single family or duplex residential structures, unless such setback would result in a lack of service coverage, in which case new freestanding poles or structures shall be located between properties to minimize impacts to views and shall incorporate a camouflaged design with the equipment completely enclosed within the pole.
- (c) Spacing: No small cell facility shall be located within three hundred feet (300') feet of any other such facility by the same provider unless the applicant can demonstrate that such minimum space will inhibit or degrade the provision of service.
- (d) Design: Small cell facilities shall have a consistent design with the utility pole or structure on which it is installed, including but not limited to; matching paint and color, matching materials, and, enclosure design which is similar to the pole or structure. To the greatest degree possible, support equipment shall be located underground. The design of small cell facilities shall blend with the design of existing poles and structures, to the greatest degree possible, avoid, or minimize, if complete avoidance is not possible, the appearance of the small cell facility and increased visual clutter on utility poles and structures.
- (e) Location: Small cell facilities are permitted in Ridgway right-of-ways, upon existing or new utility poles or structures owned by the Town, or owned by third parties with permission of such third parties, under the following preferences in order of priority:
 - (i) On existing Town owned utility pole, if any, which shall be removed and replaced with a pole designed to contain all antennae and equipment within the utility pole to conceal any ground-based support equipment. The ownership of such new pole must be conveyed to the Town.

- (ii) On existing Town owned utility poles or third party owned utility pole (with the consent of the third-party owner), with attachment of the small cell facility in a configuration and design approved by the Town.
 - (iii) On a freestanding or ground mounted facility which is located on Town of Ridgway right-of-way at a site which does not interfere with existing or planned utilities and right-of-way uses and which utilizes a design that is consistent and compatible with the design of utility poles and structures in the vicinity. The location of new poles or structures shall be sited to minimize visual impacts to adjacent and nearby property owners.
- (f) Alternative Design: The Town Manager or designee has the authority to approve alternative designs for small cell facilities which do not meet the standards set forth above with the following findings:
- (i) Compliance with the Design Standards is not reasonably possible and would impose a significant financial hardship on the small cell facility operator; and
 - (ii) The proposed alternative design meets the purpose and intent of this Chapter 14-7.

14-7-6 PERMIT STANDARDS.

Permits for small cell facilities in Town of Ridgway right-of-ways shall include the following minimum requirements:

- (a) Indemnification: The permittee shall indemnify the Town from and against all liability and claims arising as a result of that location or attachment, including repair and replacement of damaged utility poles and equipment, in such form approved by the Town.
- (b) Bonding: The permittee shall provide a bond, in a form approved by the Town, to guarantee payment for any damages to real property not owned by the small cell facility owner and to guarantee the removal of the small cell facility or facilities upon abandonment.
- (c) Location and Design: The permittee shall include information to show the proposed location of all facilities and design of such facilities.
- (d) Relocation and Removal: The permittee shall remove and/or relocate small cell facilities at the permittee's expense in the event that the Town of Ridgway's use of the right-of-way conflicts with or precludes the continued location of such small cell facility.
- (e) Expiration: A permit for approval of a small cell facility shall expire twelve (12) months after approval unless construction of the permitted structure has commenced. The Town Manager or designee may grant multiple extensions of a permit approval provided that each such extension shall not exceed twelve (12) months and provided that the permit conforms to any amendments to this Chapter 14-7, including amendments to the design standards and/or permit standards.

- (f) Safety Checks: The permittee shall conduct an annual test of its small cell facilities and report to the Town the results of such tests.
- (g) Non-Ionizing Electromagnetic Radiation Report: The permittee shall enlist a third party to conduct a Non-Ionizing Electromagnetic Radiation Report to ensure compliance with the Federal Communications Commission guidelines for human exposure to radiofrequency electromagnetic fields.
- (h) Consolidated Application: The applicant, at its discretion, may file a consolidated application and receive a single permit for the small cell network.

14-7-7 FEES

There shall be a one-time fee of \$200 for applications for small cell facilities. The fee for right-of-way access for attachment of small cell facilities to Town-owned property in the right-of-way shall be \$270 per small cell facility per year.

14-7-8 APPEAL TO COUNCIL.

Any person whose application for small cell facility is denied or partially approved may appeal such decision to the Town Council in accordance with the procedures and requirements of this Section. The applicant shall file a written appeal in writing with the Town Clerk within thirty (30) days after the date of transmittal of the decision to deny such application. The failure to file a written appeal within thirty (30) days after the date of transmittal of the decision to deny the application shall bar any further consideration of the application, shall bar any appeal to the Town Council and shall bar any judicial review by a Colorado court. The written appeal shall state the reasons for the appeal. An appeal which is filed timely shall be considered and acted upon by the Town Council within forty-five (45) days after the date of receipt. The Town shall provide at least three (3) days prior notice to the applicant stating the date, time and location where the Town Council will consider the appeal. It shall not be necessary for the Town Council to provide written findings or conclusions, except upon request of the Applicant, or other party participating in the hearing. The Town Council shall determine whether to approve, partially approve or deny the application based on compliance with standards set forth in this Chapter 14-7. The failure by the Town Council to hear and decide an appeal within forty-five (45) days after the receipt of the appeal shall not result in the approval of the application.

14-7-9 VIOLATION; PENALTY.

It is unlawful to install or modify small cell facilities without a permit. A person who is convicted of installing or modifying a small cell facility without a permit shall be punished as provided in Chapter 1-1-6 – General Penalty.