

Chapter 26.505
Wireless Communication Facilities and Equipment

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26.505.010 Purpose

The purpose of this Chapter is to regulate the placement, construction, and modification of towers and wireless communications facilities (WCFs) to protect the health, safety and welfare of the public, provide for managed development, installation, maintenance, modification, and removal of wireless communications infrastructure that is consistent with Aspen's small mountain town character, while at the same time not unreasonably interfering with the development of a competitive wireless communications marketplace in the city.

26.505.020 Adoption of Wireless Communications Facilities Design Guidelines

The City Council hereby adopts design guidelines, hereinafter referred to as the *Wireless Communications Facilities Design Guidelines* ("Design Guidelines"), which are incorporated into the City of Aspen Land Use Code. The Design Guidelines set forth the design parameters to ensure safe and secure installation and minimize negative aesthetic impacts of wireless communications facilities installed on private property or in the public right-of-way. The *Design Guidelines* may be amended, updated, and expanded from time to time by City Council Resolution. At least (1) copy shall be available for public inspection at the Community Development and Engineering Departments and on the City of Aspen's webpage.

26.505.030 Applicability

All applications for the installation or development of WCFs and/or equipment must receive land use approval, building permits, and/or right-of-way permits, as applicable, prior to installation. Concurrent with the issuance of appropriate building and right-of-way permits, WCFs and/or equipment shall be reviewed for approval by the Community Development Director (and when applicable, the City Engineer) in conformance with the provisions and criteria of this Chapter. WCFs and equipment subject to the provisions and criteria of this Chapter include without limitation, WCFs within the Public Rights of Way, cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. These provisions and criteria do not apply to noncommercial satellite dish antennae, radio and television transmitters and antennae incidental to residential use. All references made throughout this Chapter, to any of the devices to which this Chapter is applicable, shall be construed to include all other devices to which this Chapter is applicable

A. Future Amendments to Chapter 26.505.

All future amendments to this Chapter shall be exempt from the requirement of Policy Resolution for code amendments (Section 26.310.020.B.1-2). Future amendments may proceed directly to a First and Second Reading, pursuant to Section 26.310.020.B.3.

26.505.040 Wireless Definitions.

All words used in this Chapter or in the *Wireless Communications Facilities Design Guidelines*, except where specifically defined herein, shall carry their customary meanings when not inconsistent with the context. Definitions contained elsewhere in this Code shall apply to this Section unless modified herein.

Accessory Wireless Equipment. Any equipment serving or being used in conjunction with a Wireless Communications Facility (WCF), including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Alternative Tower Structure. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are intended to be compatible with the natural setting and surrounding structures, and camouflage or concealment design techniques so as to make the presence of antennas or towers compatible with the surrounding area pursuant to this Chapter. This term also includes any antenna or antenna array attached to an Alternative Tower Structure and a Replacement Pole. A stand-alone Monopole in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Chapter.

Antenna. Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations. Any exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

Base Station. A structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the city pursuant to this chapter has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory

review process, even if the structure was not built for the sole or primary purpose of providing such support; and

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the city pursuant to title 26 of the Code has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the application is filed with the city under this chapter, does not support or house equipment described herein in sub-paragraphs 1 and 2 of this definition.

Camouflage, Concealment, Or Camouflage Design Techniques. A Wireless Communication Facility (“WCF”) is camouflaged or utilizes Camouflage Design Techniques when any measures are used in the design and siting of Wireless Communication Facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated in an outdoor fixture such as a flagpole, or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or is integral within, incorporated on or replaces existing permitted facilities or vertical infrastructure located in the right-of-way (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation. (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Request. Any request for modification of an Eligible Support Structure that does not Substantially Change the physical dimensions of such Eligible Support Structure involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement and/or addition of Transmission Equipment.

Eligible Support Structure. Any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the city under this Section.

Existing Tower or Base Station. A constructed Tower or Base Station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning

or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Micro Cell Facility. A small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than eleven inches in length.

Monopole. A single, freestanding pole-type structure supporting one or more Antennas.

Public right-of way. Any public way or public thoroughfare dedicated or devoted to public use, including street, highway, road, alley, lane, court, boulevard, sidewalk, public square, mall or like designation.

Replacement Pole. An Alternative Tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light poles or other similar structure of proportions and of equal height to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or to accommodate collocation and remove the pre-existing pole or structure.

Small Cell Facility. A WCF where each Antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an Antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Pole, and Base Stations.

Substantial Change to a WCF. A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:

- (1) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than ten percent (10%) or by the height of one (1) 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 ten percent (10%) or more than ten (10) feet, whichever is greater;
- (2) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding

an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;

(3) For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or

(4) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinets associated with the structure;

(5) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;

(6) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or

(7) For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (i), (ii), (iii) and (iv) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Tower. Any structure that is designed and constructed for the sole or primary purpose of supporting one or more any FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

Transmission Equipment. Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services

including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility Or WCF. A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or Smart City, Internet of Things, wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, including without limitation, direction, omni-directional and parabolic antennas, support equipment, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this Chapter.

26.505.050 Operational Standards.

A. Federal Requirements. All WCFs 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 WCFs, including, without limitation, the requirement that WCFs shall not present a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the WCF owner's expense.

B. Radio Frequency Standards. All WCFs shall comply with federal standards for radio frequency emissions. Applicants for WCFs shall submit a letter certifying that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions. The owner or operator of an approved WCF shall also provide the City with the FCC license for the WCF at the time the license is issued for the facility.

C. Signal Interference. All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. 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 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.

D. License to Use. The Applicant may execute a license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing traffic signal, streetlight pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.

E. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building, safety, and engineering codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

F. Abandonment and Removal. If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall commence removal of the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the City, in its sole discretion, shall not approve any new WCF application until the Applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the City.

G. Hazardous Materials. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

H. Collocation. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Community Development Department, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

I. Compliance with Applicable Law.

Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, engineering, electrical,

and safety requirements as set forth in the Aspen Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
3. Be maintained in good working condition and to the standards established at the time of application approval; and
4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the City.

26.505.060 Procedures for Review.

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the City in accordance with this Chapter.

A. Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Public Rights-of-Way, but excepting Eligible Facilities Requests, and Small Cell Facilities in the Right-of-Way.

In all zone districts, applications for these WCF facilities shall be reviewed by the Community Development Department for conformance to this Section and using the *Wireless Communications Facilities Design Guidelines*. For WCFs in the rights-of-way, except for Small Cell Facilities in the Right-of-Way, that are found to have a significant visual impact (e.g. proximity to historical sites, obstructing views), be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Community Development Department may refer the application to Planning and Zoning Commission or Historic Preservation Commission, as applicable, for a Special Review determination.

B. Review Procedures for Towers.

In all zone districts, Towers, other than those defined or excepted in (A) above, must apply for Special Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 26.505.050.L. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

C. Review Procedures for Eligible Facilities Requests.

1. In all zone districts, Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible

Facilities Request. Such required information may include, without limitation, whether the project:

- a. Constitutes a Substantial Change; or
- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

The application shall not require the applicant to demonstrate a need or business case for the proposed modification or Collocation.

2. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Community Development Department shall review such application to determine whether the application so qualifies.
3. **Timeframe for Review.** Subject to the tolling provisions of subparagraph 4 below, within 60 calendar days of the date on which an applicant submits a complete application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.
4. **Tolling of the Timeframe for Review.** The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the applicant, or in cases where the Community Development Department determines that the application is incomplete:
 - a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - b. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - c. Following a supplemental submission, the City will notify the applicant within ten (10) days that if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
5. **Failure to Act.** In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

6. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7) of the Telecommunication Act, as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

D. Review Procedures for Small Cell Facilities in the Public Right-of-Way.

1. Small Cell Facilities in the Public Right-of-Way may be approved pursuant to a Master License Agreement or similar form of authorization or individually in accordance with the provisions of this subsection.
2. Within ten (10) days of receipt of the application, the Director shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Chapter.
3. The Director shall review the completed application for conformance with the provisions in this Chapter and may approve or deny an application within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on city infrastructure.
 - a. To toll the timeframe for incompleteness, the City must provide written notice to the Applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application;
 - b. The timeframe for review resets to zero (0) when the Applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
 - c. Following a supplemental submission, the City will notify the Applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
4. Consolidated applications. The City shall allow a wireless provider to file a consolidated application for up to six (6) small cell facilities and receive a single approval for the consolidated application. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell

facility incorporated within the consolidated application.

E. General.

Except for applications under subsections C and D above, pursuant to Section 26.304.020, the applicant shall conduct a pre-application conference with staff of the Community Development Department. The planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

F. Administrative review.

Except for applications under subsections C and D above, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by staff and the Community Development Director, respectively. In order to proceed with additional land use reviews or obtain a development order, the Community Development Director shall find the submitted development application consistent with the provisions, requirements and standards of this Chapter and the *Wireless Communications Facilities Design Guidelines*.

G. Decision.

Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.

H. Appeal of Director's determination.

The Community Development Director may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria in the *Wireless Communications Facilities Design Guidelines*. If the Community Development Director determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Community Development Director, the applicant may apply for special review (Chapter 26.430) by the Planning and Zoning Commission or, if applicable, by the Historic Preservation Commission, and such application must be made within fifteen (15) calendar days of the day on which the Community Development Director's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Paragraphs 26.304.060.E.3.a, b and c of this Code.

I. Historic Preservation Commission review.

With the exception of Eligible Facilities Requests and Small Cell Facilities in the ROW, proposals for the location of WCFs or equipment on any historic site or structure, shall be reviewed by the Historic Preservation Commission (HPC). Review of applications for WCFs and/or equipment by the HPC shall replace the need for review by the Community Development Director. Likewise, if the Historic Preservation Commission determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Historic Preservation Commission, the applicant may appeal the decision to the City Council, and such appeal must be filed within fifteen (15)

calendar days of the day on which the Historic Preservation Commission's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Paragraphs 26.304.060.E.3.a, b and c of this Code.

J. Building Permit.

A Building Permit, shall be submitted concurrently with the Land Use Application. Depending on the nature of project, a full Building Permit may be necessary, or, as would be the case for most Eligible Facilities Requests, an Electrical Permit. A contractor for the proposed work must be identified with the submitted application. A Building or Electrical Permit without an identified contractor will be deemed incomplete – and the application will be tolled until the contractor is identified.

K. Right of Way Permit.

For all facilities located in the public right-of-way, a Right of Way Permit shall be submitted concurrently with the Land Use Application. For WCFs in the right-of-way, Applicants should review the checklist included in the Appendix of the *Design Guidelines* – that describes in detail the submittal requirements. A contractor for the proposed work must be identified with the submitted application. A Right-of-Way permit without an identified contractor will be deemed incomplete – and the application will be tolled until the contractor is identified. Additionally, an Electrical Permit shall be required for any installation that involves line voltage.

L. Special review.

An application requesting a variance from the review standards as set forth in this chapter and the *Wireless Communications Facilities Design Guidelines* (except for Eligible Facilities Requests) or an appeal of a determination made by the Community Development Director, shall be processed as a special review in accordance with the common development review procedures set forth in Chapter 26.304, and the Special Review Chapter, 26.430. The special review shall be considered at a public hearing for which notice has been posted and mailed, pursuant to Paragraphs 26.304.060.E.3.b and c.

1. Review is by the Planning and Zoning Commission. If the property is listed on the Aspen inventory of historic landmark sites and structures or within a Historic Overlay District and the application has been authorized for consolidation pursuant to Chapter 26.304, the Historic Preservation Commission shall consider the special review. Such special review may be approved, approved with conditions or denied based on conformance with the following criteria:

- a. Conformance with the applicable review standards of *Wireless Communications Facilities Design Guidelines*.
- b. If the facility or equipment is located on property listed on the Aspen inventory of historic landmark sites and structures or within any historic district, then the applicable standards of Chapter 26.415 (Development involving the Aspen inventory of historic landmark sites and structures or development in an "H," Historic Overlay District) shall apply.

- c. If the facility or equipment is located on property that is subject to the Commercial Design Standards of Chapter 26.412, those applicable standards shall apply.
- d. The applicant, in making the case for the variance, shall provide evidence that strict adherence to the standard(s) or guideline(s), shall render the proposed facility technically or practically infeasible.
- e. The applicant in making the case for the variance shall provide evidence that there are no feasible alternatives to the location and/or design of the proposed facility.

26.505.070 Application Contents

An application for approval of new WCFs and modified or additional WCFs, Eligible Facilities Requests, and Small Cell Facilities Requests shall comply with the submittal requirements applicable to all Land Use Reviews pursuant to Chapter 26.304, Common development review. WCFs and equipment applications shall also, depending on their nature contain required materials as described in the checklist contained within the *City of Aspen Wireless Development Application Packet* and *the Wireless Communications Facilities Design Guidelines*. Additionally, depending on their nature, required Building, Electrical, and/or Right-of-Way permits shall be submitted concurrent to the Land Use Application.

26.505.080 Conditions and limitations. The City shall reserve the right to add, modify or delete conditions after the approval of a request in order to advance a legitimate City interest related to health, safety or welfare. Prior to exercising this right, the City shall notify the owner and operator in advance and shall not impose a substantial expense or deprive the affected party of a substantial revenue source in the exercising of such right.

Approval by the Community Development Director for a WCF and/or equipment application shall not be construed to waive any applicable zoning or other regulations; and wherein not otherwise specified, all other requirements of this Code shall apply, including Title 21 (Street, Sidewalks, and other public places, and Title 29 (Engineering Design Standards). All requests for modifications of existing facilities or approvals shall be submitted to the Community Development Director for review under all provisions and requirements of this Section. If other than minor changes are proposed, a new, complete application containing all proposed revisions shall be required.