

CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
TUESDAY JANUARY 10, 2023  
CITY HALL COUNCIL CHAMBERS @ 12:00 NOON

1. Call meeting to order
2. Welcome new/reappointed Board members: City Council has reappointed Mat Moss to a 3-year term on the Planning, Zoning, and Adjustment Board. The new Board member is Dan Schein (3-year term). Andrew Murray resigned last week from the Board and is yet to be replaced.
3. Roll Call, excused members
4. Pledge of Allegiance
5. Approval of Agenda for the January 10, 2023 meeting.
6. Elect a Chairman and Vice-Chairman for the 2023 Planning, Zoning, and Adjustment Board.
7. Approval of Minutes from the November 8, 2022 regular meeting.
8. New Business:
  - a) Potential Amendments to the zoning ordinance—Chapter 11, Supplemental Development Standards for Commercial and Industrial Districts.
9. P & Z Board Matters (announcements, comments, etc.)
10. Council Update
11. Staff Items
12. Adjourn

The public is invited to attend all Planning, Zoning and Adjustment Board meetings. If you need special accommodations to participate in the meeting, please call the City office at (307) 527-7511 at least 24 hours in advance of the meeting.

**City of Cody**  
**Planning, Zoning, and Adjustment**  
**Board Regular Meeting**  
**November 8, 2022**

A regular meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the Council Chambers of City Hall in Cody, Wyoming on Tuesday, November 8, 2022 at 12:00 pm.

Carson Rowley called the meeting to order at 12:04 pm, followed by the pledge of allegiance.

Present: Carson Rowley; Mat Moss; Karinthia Herweyer; Cayde O'Brien; City Attorney Sandee Kitchen; Council Liaison Andy Quick; City Planner Todd Stowell; GIS Analyst Utana Dye

Absent: Scott Richard; Andrew Murry, Ian Morrison;

Cayde O'Brien made a motion to approve the agenda for November 8, 2022, seconded by Karinthia Herweyer. Vote on the motion was unanimous, motion passed.

Cayde O'Brien moved to approve the minutes from the October 25, 2022 special meeting, seconded by Mat Moss. Vote on the motion was unanimous, motion passed.

City Planner Todd Stowell reviewed the site plan for the CertainTeed gypsum crushing and shipping facility, located at 88 Road 2AB. CertainTeed Gypsum & Ceiling, a subsidiary of Saint Gobain, has submitted a site plan application to authorize gypsum crushing and shipping operations at 88 Road 2AB. The zoning ordinance classifies rock processing and shipping terminals as separate uses from the wallboard manufacturing use that historically occurred on the property.

The property contains the buildings previously used for wallboard manufacturing and storage, as well as areas containing stockpile locations, a truck scale, and rail spur. The proposed gypsum crushing and shipping operation will initially be conducted entirely outside of the buildings and utilize the stockpile locations, truck scale, and rail spur. Commencing in 2023, they plan to also utilize the mill located within the main building to produce finer gypsum products, such as gypsum powder.

Cayde O'Brien made a motion, seconded by Mat Moss to approve the site plan for the CertainTeed gypsum crushing & shipping facility located at 88 Road 2AB, including the proposed outdoor components and the use of the indoor mill, with conditions 1-4 within the staff report. Vote on the motion was unanimous, motion passed.

P & Z Board Matters: None

Council Updates: County Planning and Zoning to outline final stages of the Land Use Plan. Draft not quite ready yet for public to view.

Staff Items: City Council passed the first reading on the Zoning Ordinance amendments. Council Member Fritz has some concerns with the proposed ADU parking exemption and Todd has followed up with a map the affected area. Otherwise, no other concerns have been raised.

Carson mentioned the Big Horn Avenue study. A survey is open until end of this week for public input.

Mat Moss made a motion, seconded by Cayde O'Brien to adjourn the meeting. Vote on the motion was unanimous. The meeting was adjourned at 12:22 p.m.

*Utana Dye*

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GIS Analyst

**CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
STAFF REPORT**

<b>MEETING DATE:</b>	JANUARY 10, 2023	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	
<b>SUBJECT:</b>	REVIEW OF PROPOSED AMENDMENTS TO CHAPTER 11 OF THE ZONING ORDINANCE (SUPPLEMENTAL DEVELOPMENT STANDARDS FOR COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS).	RECOMMENDATION TO COUNCIL:	
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	X

**INTRODUCTION:**

The City of Cody just adopted a series of amendments to the zoning ordinance, which were focused on the residential zoning districts. As a quick follow up to those amendments, staff would like the Planning and Zoning Board to consider a few additional related amendments. These additional amendments would occur in Chapter 11, which includes the Supplemental Development Standards for Commercial and Industrial zoning districts. In general, it is proposed that pertinent sections from the supplemental residential standards also be applied in the supplemental commercial and industrial standards.

Specifically, it is proposed that:

- 1) The bed and breakfast and short-term rental sections in the commercial and industrial chapter be updated to reflect corresponding applicable portions of the updated language adopted for the residential zones.
- 2) Add standards for placement of manufactured homes, which standards reflect those applicable to the residential zones.
- 3) Add the multi-family development standards currently found in the residential standards to the commercial and industrial zones, which standards would be applicable to multi-family developments located outside of the downtown architectural district that contain more than four dwelling units. (Note: The Pioneer Village apartments at 2301 Pioneer Avenue were voluntarily built to meet or exceed all of the multi-family standards noted, and give a good visualization of the components mentioned.)
- 4) Clean up the "applicability" language of 10-11-1.

All proposed amendments are shown in the attached document (Exhibit A) using "track changes" in a blue color.

At the January 10<sup>th</sup> meeting, the Board will be introduced to the proposal and is invited to have general discussion as to whether to proceed with the formal public review process. As some of the amendments pertain to short-term rentals and we are approaching the annual renewal process for short-term rentals, staff would like to move these amendments forward as quickly as possible. That would mean getting the P&Z Board okay to advertise a public hearing with City Council; providing an "informal" opportunity for the public to comment on the amendments at the next P&Z Board meeting on January 24<sup>th</sup>; getting a P&Z Board recommendation for approval, or approval as amended, at the January 24<sup>th</sup> meeting; and, proceeding with the formal public hearing before City Council and 1<sup>st</sup> reading of the ordinance at their February 7<sup>th</sup> meeting.

**RECOMMENDED MOTION:**

After making any changes to the proposal that the Board may have, direct staff to proceed as outlined.

**ATTACHMENTS:**

Proposed amendments to Title 10, Chapter 11 Supplemental Development Standards for Commercial and Industrial Zoning districts.

CHAPTER 11

SUPPLEMENTAL DEVELOPMENT STANDARDS FOR COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

10-11-1: APPLICABILITY:

The land uses that are identified herein, when located in a ~~with an asterisk (\*)~~ in the Limited Business (D-1), General Business (D-2), Open Business/Light-Industrial (D-3), High Tech/Data Processing/Light Manufacturing (D-4), Industrial (E), ~~and/or~~ Heavy Industrial (HI) Zoning Districts, are subject to the corresponding regulations of this chapter, which regulations are in addition to other applicable sections of this title and any conditions that may be imposed pursuant to a conditional use permit review. The standards of this chapter shall apply unless waived or altered pursuant to the zoning variance process; provided, those standards identified herein with "(SE)", may be waived or altered pursuant to the special exemption process of section 10-14-2 of this title. In no case shall any of the following standards be waived or modified to the extent that the result is tantamount to a rezone or the use no longer meets the specified definition thereof. (Ord. 2017-10, 4-13-2017)

10-11-2: SUPPLEMENTAL DEVELOPMENT STANDARDS:

The supplemental development standards are listed by use, in alphabetical order:

A. "A" Uses: Reserved. (Ord. 2017-10, 4-13-2017)

B. "B" Uses:

Bed and breakfast inn.

1. The bed and breakfast inn must meet the definition set forth in chapter 2 of this title.
2. The owner must be living on the property at the time the bed and breakfast is in operation.
3. Total guest occupancy of a bed and breakfast inn property is limited to no more than ten (10) persons. (Establishments exceeding 10 persons fall within the zoning classification of "hotel".) The Planning and Zoning Board may further limit total guest occupancy (e.g., beds and/or guest rooms) of a proposed bed and breakfast inn based on lack of parking and other neighborhood impacts identified in the review process.
4. Vehicle access must comply with the requirements of the International Fire Code, appendix D, or other established standard acceptable to the Fire Marshal.
5. Cooking facilities in guest rooms are not permitted.
6. The facility must pass a fire and life safety inspection before it may be used as a bed and breakfast inn, which inspection includes verification of the following.
  - a. ~~At a minimum, the bed and breakfast inn shall be equipped with functional s~~Smoke detectors located where required by code and operable;
  - b. ~~a~~A fire extinguisher (minimum rating 2A:10BC) located in a visible or clearly labeled location; ~~and~~
  - c. ~~a~~eCarbon monoxide alarm(s) where required by code and operable if applicable.
  - d. The address number is posted and visible using 4" tall or large numbers on a contrasting background;
  - e. Access in/out of the facility complies with applicable codes (e.g. stairs, handrails);
  - f. Proper access to the electrical panel is provided;

g. No fire hazards are observed (e.g. combustibles are kept away from heat sources, extension cords and outlet strips are used in a compliant manner, dryer vent is free from obstruction, no exposed electrical wiring);

h. Each sleeping room ~~is~~ shall be provided with Code-compliant means of egress an emergency escape and rescue opening that complies with sections R310.1, R310.2, R310.3, and R310.4 of the International Residential code, or corresponding provisions of the International Building Code if applicable; and,-

i. Emergency contact numbers are clearly posted (manager and 911).

7. The facility is to be inspected for the above items at least annually. Upon any change of ownership and on every third year after the initial inspection, the facility must be reinspected by the City and pass inspection. In the other years, the owner or manager is to perform the inspection. The authority having jurisdiction (i.e., Fire Marshal and/or building official) may have additional requirements pursuant to the adopted Fire and/or Building Code.

8. ~~7.~~ Individual guest occupancy is limited to temporary periods of less than one hundred twenty (120) consecutive days, and less than one hundred twenty (120) days in any one-year period.

9. ~~8.~~ Bed and breakfast inns shall not be used as "reception facilities" as defined in this title, unless such use is otherwise permitted in the zoning district in which the property is located and authorization for such has been granted by the reviewing official.

10. ~~9.~~ The bed and breakfast inn must maintain compliance with the WY Department of Revenue licensing requirements, including payment of Lodging Taxes.

11. ~~10.~~ All bed and breakfast inns must maintain compliance with the Wyoming Food Safety Rule (WY Department of Agriculture) and related licensing requirements.

12. ~~11.~~ Unless otherwise exempted or authorized by this title, one off-street guest parking space shall be provided for every two (2) lodging units or fraction thereof. The guest parking shall be in addition to the two (2) spaces required for the owners/manager. (SE)

13. ~~12.~~ Prior to initial operation and annually by May 1<sup>st</sup> thereafter, All bed and breakfast inns, whether existing or proposed, shall register with the City of Cody, pass the fire and life safety inspection, and provide evidence of compliance with the Wyoming Food Safety Rule. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce these provisions, both for the initial authorization and for ongoing compliance. Payment of an application fee is required pursuant to the City's adopted fee schedule. A late fee, also as specified in the adopted fee schedule, may also be assessed to owners of bed and breakfast inns that fail to register before making the inn available for initial use, or that do not complete their annual renewal by May 1<sup>st</sup> of each year. Authorized bed and breakfast facilities shall post a certificate issued by the City of Cody identifying such authorization. The certificate shall expire at the end of May 1<sup>st</sup> following the year in which the certificate was issued. Authorized bed and breakfast inns shall post a document issued by the City identifying such authorization in a visible location. (Ord. 2018-04, 4-17-2018)

C. "C" Uses: Reserved.

D. "D" Uses: Reserved.

E. "E" Uses: Reserved.

F. "F" Uses: Reserved.

G. "G" Uses: Reserved.

H. "H" Uses: Reserved.

I. "I" Uses: Reserved.

- J. "J" Uses: Reserved.
- K. "K" Uses: Reserved.
- L. "L" Uses: Reserved.
- M. "M" Uses: ~~Reserved.~~

#### Manufactured home.

In addition to any restriction of a specific zoning district, no more than two (2) manufactured homes shall be placed on a single lot, unless the property is developed in accordance with the mobile home park/manufactured home park standards of this Code. Manufactured homes shall also comply with the following requirements, except when displayed on a commercial sales lot, or stored in a commercial manufactured home production or storage facility. The manufactured home must:

1. Be placed and anchored per the manufacturer's installation instructions or per the design of a professional engineer or architect licensed in Wyoming;
2. Maintain a minimum crawl space of eighteen inches (18") under the entire unit, or twenty-four inches (24") if mechanical equipment is located or accessed in the crawl space;
3. Have the axle(s) removed;
4. Have skirting or sidewalls installed to enclose all areas between the lower edge of the outside walls and the ground;
5. Have steps or inclined ramps affixed to all entrances.
6. If the manufactured home is to be "attached" to the property so as to be taxed as real property (i.e., title elimination process pursuant to WY Statute 31-2-502), it shall be placed on a permanent foundation as defined by HUD (see HUD publication "Permanent Foundations Guide for Manufactured Housing (4930.3G)").

Multi-family development. This section shall apply to all multi-family developments containing more than four (4) dwelling units that are located outside of the downtown architectural district. A multi-family development project that includes multiple lots shall be considered as one (1) property or development for purposes of implementing the standards set forth in this use.

#### 1. Purpose:

- a. To create multi-family housing that is safe and convenient and that enhances the quality of life of its residents.
- b. To create quality buildings and designs for multi-family development that will enhance the visual character of the community.
- c. To create building and site design in multi-family development that is sensitive to, and well-integrated with, the surrounding neighborhoods.
- d. To create open space areas that contribute to the aesthetics of the community, provide an attractive setting for buildings, and provide safe, interesting outdoor spaces for residents.

#### 2. Site Design:

- a. Multi-family housing developments shall be separated from any abutting single-family housing (attached or detached) by a six foot (6') tall fence, of traditional construction (e.g., vinyl, wood, block), that provides a solid visual barrier to a height of at least five feet (5'). Provided, the reviewing official may waive all or part of the fence requirement when the design and characteristics of the multi-family housing development otherwise provide reasonable privacy for abutting single-family housing. (SE)
- b. All waste storage facilities (e.g., dumpsters) shall be located in an area not readily visible from a public street, or shall be screened from view from a public street. (SE)

c. Provide a central mailbox, including provisions for parcel mail, which is located to provide safe pedestrian and/or vehicular access and complies with USPS standards.

d. A minimum of sixty (60) square feet of private, usable open space shall be provided for, and immediately adjacent to, each dwelling unit. This requirement can be satisfied through porches, patios, decks, and/or enclosed yards. Common open space, building entryways, stairs, and parking areas shall not count towards this requirement. (SE)

e. Multi-family developments with twenty (20) units or more shall provide the following:  
(1) A property management office; or signage indicating a phone number for the property manager.

(2) A directory and map of the development at an entrance or convenient location for those entering the development.

### 3. Common Open Space Requirements:

a. A minimum area of outdoor common open space shall be provided and maintained as follows:

(1) One hundred fifty (150) square feet for each dwelling unit containing five hundred (500) square feet or less of living area. (SE)

(2) Two hundred (200) square feet for each dwelling unit containing more than five hundred (500) square feet. (SE)

b. Common open space may be located in multiple areas; provided, each area shall be not less than three hundred (300) square feet in size and shall have minimum length and width dimensions of fifteen feet (15') at all points. (SE)

c. In phased developments, common open space shall be provided in each phase of the development consistent with the requirements for the size and number of dwelling units. (SE)

d. Common open space areas shall not be immediately adjacent to collector or arterial streets, unless separated from the street by a berm or constructed barrier at least four feet (4') in height. (SE)

### 4. Architectural Character:

a. All multi-family building elevations shall have a portion of the elevation devoted to architectural features designed to provide articulation and variety. These features shall include, but are not limited to: windows, bays, offsetting walls, and multiple siding finishes/materials.

b. Main entrances, which are the primary point(s) of entry where the majority of building users will enter and leave, shall be designed as an obvious entrance and focal point of the building through architectural treatment, lighting, and address identification.

c. Roof forms shall include variety and detail when viewed from the street and/or front elevation. Roofs shall have at least one (1) variation in the roof (e.g., gabled wing or overbuild, dormer, pitch break) for every four (4) units, or fraction thereof, in the building.

d. All roof mounted mechanical, electrical, communications, and service equipment should be screened from public view from the adjacent public streets and residential properties by the use of parapets, walls, enclosures, or other suitable means.

### 5. Landscaping:

a. All street-facing building elevations shall have landscaping along their foundation. The foundation landscaping shall meet the following minimum standards:

(1) The landscaped area shall be at least three feet (3') wide.

(2) For every six (6) linear feet of foundation, a shrub, perennial, or tree having a minimum mature height of twenty-four inches (24") shall be planted.

(3) Ground cover (plants or decorative rock) shall cover the remainder of the landscaped area.



- N. "N" Uses: Reserved.
- O. "O" Uses: Reserved.
- P. "P" Uses: Reserved.
- Q. "Q" Uses: Reserved.
- R. "R" Uses: Reserved. (Ord. 2017-10, 4-13-2017)
- S. "S" Uses:

Short-term rental.

1. Within the commercial zoning districts, a short-term rental may be operated out of any form of a dwelling with a permanent foundation, except a multi-family dwelling.
2. Short-term rental shall not be offered by a renter of the property - i.e., a sublet situation.
3. Occupancy of a dwelling used for short-term rental is limited based on the number of bedrooms available for guests as follows: rentals with one guest bedroom are limited to four (4) guests; rentals with two guest bedrooms are limited to six (6) guests; rentals with three guest bedrooms are limited to eight (8) guests, and rentals with four or more guest bedrooms are limited to ten (10) guests. Guests sleeping in a living room, family room, or sun room is not prohibited by this requirement (e.g. use of sofa bed or air mattress), so long as required emergency escape openings are provided, but guest occupancy is based on number of bedrooms only to the lesser of 2.6 guests per guest sleeping room (total rounded to nearest whole number) or a total of ten (10) guests. (Note: Facilities exceeding 10 guests are to be classified as hotels/motels and may be considered pursuant to that classification.)
4. Within the D-1 Zoning District, the following restrictions apply:
  - a. No more than four (4) short-term rentals may be located on any one property.
  - b. Each short-term rental may only be rented to one group at any one time (i.e., a single booking).
5. Within the D-2 and D-3 Zoning Districts, sleeping rooms may be rented individually when authorized for such through the short-term rental registration and inspection process; provided, in no case shall more than five (5) sleeping rooms be individually rented in a dwelling.
6. Each short-term rental that is rented to only one group at any time shall require one off-street guest parking space meeting the requirements of chapter 16, "Off Street Parking", ~~of this title for every two (2) guest sleeping rooms or fraction thereof~~, unless otherwise exempted or authorized by this title (e.g., nonconforming provisions). If individual bedrooms are to be separately rented, one off-street space for every two guest sleeping rooms or fraction thereof, shall be provided, unless otherwise exempted or authorized by this title. (SE)
7. Prior to use of the dwelling as a short-term rental, the dwelling shall be inspected for fire and life safety items, which inspection includes verification of the following.
  - a. ~~At a minimum, the short-term rental shall be equipped with functional s~~Smoke detectors located where required by code and operable;
  - b. ~~a~~A fire extinguisher (minimum rating 2A:10-BC) located in a clearly visible or labeled location; ~~and a~~
  - c. ~~e~~Carbon monoxide alarm(s) where required by code and operable; if applicable;
  - d. The address number is posted and visible using 4" tall or larger numbers on a contrasting background;
  - e. Access in/out of the facility complies with applicable codes (e.g. stairs, handrails);
  - f. Proper access to the electrical panel is provided;

g. No fire hazards are observed (e.g. combustibles are kept away from heat sources, extension cords and outlet strips are used in a compliant manner, dryer vent is free from obstruction, no exposed electrical wiring);

h. Each sleeping room ~~is~~ shall be provided with Code-compliant means of egress an emergency escape and rescue opening that complies with sections R310.1, R310.2, R310.3, and R310.4 of the International Residential code, or corresponding provisions of the International Building Code if applicable; and,

i. Emergency contact numbers are clearly posted (manager and 911).~~.-The authority having jurisdiction (i.e., Fire Marshal and/or building official) may have additional requirements pursuant to the adopted Fire and/or Building Code. Notwithstanding the above, short-term rentals existing at the date of adoption of this provision shall have until June 30, 2018, to obtain their inspection and until December 31, 2018, to correct any fire and life safety items involving construction or remodeling; no short-term rental activity shall occur if the dwelling is not in compliance with these deadlines.~~

8. The facility is to be inspected for the above items at least annually. Upon any change of ownership and on every third year after the initial inspection, the facility must be reinspected by the City and pass inspection. In the other years, the owner or manager is to perform the inspection.

9. ~~8.~~ Short-term rentals are classified as lodging facilities by the State. As such, the owner or manager of the short-term rental must register the lodging facility business with the WY Department of Revenue and pay Lodging Tax as required.

10. ~~9.~~ Prior to initial operation and annually by May 1<sup>st</sup> thereafter, All short-term rental facilities, ~~whether existing or proposed,~~ shall register with the City of Cody, provide evidence of compliance with these provisions, and pass the fire/ and life safety inspection. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce these provisions, both for the initial authorization and for ongoing compliance. Payment of an application fee is required pursuant to the City's adopted fee schedule. A late fee, also as specified in the adopted fee schedule, may also be assessed to owners of short-term rentals that fail to register before making the short-term rental available for initial use, or that do not complete their annual renewal by May 1<sup>st</sup> of each year that the rental is in operation. Authorized short-term rental facilities shall ~~havepost~~ a ~~certificatedocument~~ issued by the City of Cody identifying such authorization posted within the unit in a visible location, and commencing May 1, 2023 and continuing thereafter, must include the City registration number for the unit in all online listing(s). The certificate expires at the end of May 1<sup>st</sup> following the year in which the certificate was issued. (Ord. 2018-04, 4-17-2018)

T. "T" Uses: Reserved.

U. "U" Uses: Reserved.

V. "V" Uses: Reserved.

W. "W" Uses:

Wireless communication facilities.

1. Purpose/Intent:

a. The City of Cody recognizes the benefits of quality wireless communication services and the need to accommodate facilities that provide such services.

b. The City of Cody desires to protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More

specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in rights-of-way and residential zones.

c. The quality and variety of the scenic viewsheds that are available to the residents and visitors to the area are irreplaceable and warrant protection from unnecessary visual pollution. The City of Cody encourages providers to maximize the use of options that conceal the components of wireless communication facilities (i.e., stealth design) wherever feasible.

d. The natural landforms within and around the City of Cody provide a unique opportunity for the location and design of wireless communication facilities, such that design engineers can utilize those natural features and topographic elevation differences in combination with the built environment to both minimize visual impacts and maximize coverage. Historically, almost all current providers in the area have relied on a primary tower on Carter Mountain (in the County), because such location provides coverage not only to the City, but to areas west of the mountain as well. Coverage and capacity is improved through smaller facilities dispersed throughout the Cody area, where fiber optic and power services are existing or readily available. With LTE and LTE-Advanced technology being implemented, more facilities, serving smaller service areas will be needed. The locations and designs of those facilities must be sensitive to the Cody community.

e. The size and configuration of the City of Cody is such that a network of tall towers is unnecessary to provide quality coverage to its residents and visitors. The City prefers that the local network system of wireless communication facilities be of a dispersed design - e.g., using two (2) or more smaller facilities instead of one (1) larger tower.

f. If modifications to these regulations are needed to accommodate the seemingly ever-changing provisions of FCC rules and regulations, the context of such consideration shall be as an amendment to this title, as opposed to a special exemption or variance.

g. The City desires to provide regulations which are specifically not intended to, and shall not be interpreted or applied to: 1) prohibit or effectively prohibit the provision of personal wireless services, 2) unreasonably discriminate among functionally equivalent service providers, or 3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

2. Applicability: Every wireless communication facility located within the City limits, whether upon private or public lands, is subject to the standards of this section, except that the following facilities are exempt from the standards:

a. Amateur Radio Station Operator/Receive-Only Antennas: Amateur radio station operator/receive- only antenna if owned and operated by a Federally licensed amateur radio station operator or used exclusively for a receive-only antenna;

b. Satellite Earth Stations, Dishes And/Or Antennas: Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one meter (1 m) in diameter;

c. Existing Towers And Antennas: Any existing tower and antenna, provided a valid building permit was issued for the tower or antenna prior to adoption of this section;

d. Emergency Services: Wireless communication facilities used exclusively for emergency services including police, fire, and operation of the water utility, when not located on a new freestanding antenna support structure (e.g., tower or dedicated pole); and

e. Temporary, Commercial Wireless Communication Facilities: A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the

provisions of this chapter for up to one (1) week before and after the duration of the special event.

### 3. Distributed Antenna Systems And Small Cells:

a. Distributed antenna systems and small cells which comply with the height limit of the zoning district and do not require installation of a new tower, utility support structure or building are allowed in all zones, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act), State laws, and applicable City development regulations.

b. Distributed antenna systems and small cells that do not meet the above requirements, and which are located in a residential zoning district, shall be subject to conditional use permit review. DAS and small cells that do not meet the above requirements and are located in a zone that is not residential, shall be subject to review pursuant to subsection 4 of this use.

c. The City encourages but it does not require the use of DAS and small cells. Each applicant will submit a statement that explains how it arrived at the structure and design being proposed.

4. Classification And Level Of Review: Within the Limited Business (D-1), General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, all wireless communication facilities, except collocation, as addressed herein, shall be subject to review by the Planning and Zoning Board for analysis of the site plan and applicable zoning standards and criteria. The level of review shall be based on the classification of the facility according to the following standards:

a. Permitted Uses In D-1, D-2, D-3, E, And HI Districts: Within the Limited Business (D-1), General Business (D-2), Open Business/Light- Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are permitted uses:

(1) Distributed antenna systems and small cells that do not qualify for review under subsection 3 of this use, when not greater than thirty five feet (35') in total height above existing natural grade, and located no more than twenty feet (20') (SE) from an existing structure or tree that is at least twenty five feet (25') (SE) in total height.

(2) Monopole, when: only small cells or a distributed antenna system is attached; it is not greater than forty feet (40') in total height above existing natural grade, and located no more than twenty feet (20') (SE) from an existing structure or tree that is at least thirty feet (30') (SE) in total height. For purposes of this, monopole is a pole with one (1) or more antennas, on which the antenna panels are narrow and closely spaced with one another atop the pole and extend no more than one foot (1') beyond the circumference of the pole.

(3) Stealth design wireless communication facility, when architecturally integrated into an existing building or structure that was not originally constructed as an antenna support structure, and total height is not more than forty feet (40') or the height limit of the zoning district, whichever is less.

b. Permitted Uses In D-2, D-3, E, And HI Districts: Within the General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are permitted uses:

(1) Roof-top installations on non-residential buildings, so long as they are completely enclosed within an architecturally-compatible approved housing, comply with the height limit of the zoning district in which they are located, and do not extend more than ten feet (10') above the roof or perimeter parapet wall if a parapet wall exists.

(2) Installations on public water tanks and similar structures (e.g., storage tanks) that do not extend more than twelve feet (12') above the tank.

c. Conditional Uses In D-2, D-3, E, And HI Districts: Within the General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are conditional uses:

(1) Stealth design wireless communication facilities that do not meet the limitations of subsection 4a(3) of this use, and which do not exceed the height limit of the zoning district in which located.

(2) Roof-top installations on flat-roofed non- residential buildings, so long as they comply with the following requirements:

(A) Setback: Antennas shall be mounted at least ten feet (10') from the closest exterior or parapet wall of a building or structure. (SE)

(B) Height: The height shall be measured from the top of the antenna to the roofline of the building or structure, or to the top elevation of the closest perimeter parapet wall if a parapet wall exists. The maximum height of the antenna is equal to half ( $\frac{1}{2}$ ) the distance the antenna is set back from such exterior wall or parapet wall, up to a maximum allowable height of twelve feet (12').

(C) Roof Mounted Antennas: Roof mounted antennas shall be constructed and/or colored to either appear white, light grey, or match the color of the wall above which they are located. (SE)

(3) Distributed antenna systems and small cells that do not qualify for review under subsections 3 or 4a of this use.

d. Wireless Communication Facility Overlay Zone: Within the Wireless Communication Facility Overlay Zone, each of the above-listed options (subsections 4a, 4b, and 4c of this use) shall be classified as permitted uses, regardless of the underlying zoning. In addition, the following conditional uses are established within the Wireless Communication Facility Overlay Zone:

(1) Freestanding wireless communication facility that has a total height equal to or less than the height specified for the particular subarea of the overlay. The subarea overlay locations, maximum heights, and method of measuring height are established as follows:

Location	Maximum Height	Height Measured From
Beacon Hill Subarea	80 feet	Existing grade
Beck Lake Subarea	80 feet	Existing grade
Cottonwood Avenue Subarea	70 feet	Elevation of closest portion of Big Horn Avenue
Road 2AB Subarea	110 feet	Elevation of closest portion of Road 2AB
West Strip Subarea	70 feet	Elevation of closest portion of Highway 14-16-20

\* All heights are subject to compliance with title 7, chapter 3, article II, "Airport Obstruction Zoning", of this Code.

In addition to the standard conditional use criteria, the applicant must demonstrate that the proposed wireless communication facility is no taller than necessary to provide the desired coverage; provided, the Planning and Zoning Board may authorize a wireless communication facility taller than the minimum necessary when the facility is specifically designed and made available for collocation at market rates as evidenced by a sworn affidavit, and the additional height does not significantly increase the visual impacts of the facility. The board may require

the applicant to provide visual simulations of the facility to assist them in determining visual impacts, and RF propagation maps to demonstrate coverage areas.

e. Downtown Architectural District: Notwithstanding any language that may be interpreted otherwise, within the Downtown Architectural District only stealth-design wireless communication facilities that are architecturally integrated with buildings and structures may be permitted.

f. Cell On Wheels: Temporary wireless communication facilities (e.g., cell on wheels) shall be subject to the same review procedures and requirements as permanent towers; provided, in the case of failure of an existing wireless communication facility, a temporary facility of the same height as the damaged facility may be erected for up to ninety (90) days at the site while repair/replacement activities are conducted, without the need for Planning and Zoning Board review. Unless otherwise permitted through a conditional use permit process, a temporary wireless communication facility is limited to eight (8) months in duration, during any five (5) year period. The temporary facility shall not be located on the property except during the authorized period.

#### 5. Tower Locations:

a. Preferred Tower Locations: All new towers proposed to be located in any zoning district are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (9):

- (1) City-owned or operated property and facilities not in the Downtown Architectural District or residential zones, and not including right-of-way;
- (2) The Wireless Communication Facility Overlay Zone;
- (3) Industrial Zones (HI, E);
- (4) Commercial Zones (D-3, D-2, D-1 and D-4);
- (5) Other non-residential zones;
- (6) Parcels of land in residential zones that contain non-residential uses (e.g., schools and churches);
- (7) Residential properties in residential zones;
- (8) Designated historic structures or districts;
- (9) City rights-of-way.

b. Gap In Coverage Or Capacity: Upon request by the City, the applicant shall demonstrate the following with a tower application:

- (1) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
- (2) The gap can only be filled through an exception to one (1) or more of the standards herein; and
- (3) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to the standards of this section to the greatest extent possible.

c. Least Intrusive Means: For a new tower, the applicant, upon request by the City, must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

d. Alternative Sites Analysis: For new towers, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. When requested, the City's tower location preferences must be addressed in a clear and

complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate location(s). Alternative site analysis is not limited to locations within the City limits.

6. General Standards: The following regulations apply to all wireless communication facilities in all zones and overlays, unless otherwise stated:

a. Color: WCFs shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings.

b. Building Codes; Safety Standards: To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable State or Local building codes and the applicable industry standards for towers, as amended from time to time.

c. Notice: For purposes of this chapter, any conditional use permit shall require notice to all property owners within a radius of the subject property equal to five (5) times the total height of the facility above existing grade, in addition to any notice otherwise required by this Code.

d. Landscaping, Screening And Fencing: Applicant shall provide a landscaping, screening and fencing plan that shall meet with the approval of the reviewing official.

e. Setbacks:

(1) A freestanding wireless communication facility shall be set back a minimum of one hundred feet (100') from the property line of a residential zone or the height of the tower, whichever is greater (SE), except when the facility is located in the Wireless Communication Facility Overlay Zone. New freestanding wireless communication facilities located in public utility substations shall be exempt from the above residential setback requirement if the wireless communication tower is no taller than the existing substation structures.

(2) Except as stated in subsection 6e(1) of this use, freestanding wireless communication facilities shall conform with the setback requirements of the zone in which located. (SE)

f. Public Utility: When mounted on a transmission or sub-transmission line structure, the antenna shall not extend more than six feet (6') above the top of the existing pole, subject to the applicable maximum height limitation of the zoning district, and any equipment cabinet(s) mounted on the structure shall be not more than three feet (3') by four feet (4') by eighteen inches (18") deep, with a minimum clearance of ten feet (10') above grade and a maximum height of twenty feet (20').

g. Lighting And Signage: Only security lighting or lighting required by a State and/or Federal agency is allowed, and provided the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises. The only signage that is permitted is that which is required by State or Federal law.

h. Abandonment: All wireless communication facilities which are not in use for six (6) consecutive months shall be removed by the wireless communication facility owner. This removal shall take place within one hundred twenty (120) days of the end of such six-month period. Upon removal, the site shall be revegetated or otherwise surfaced to blend with the existing surrounding area. If there is no vegetation on a wireless communication facility site, the site shall be returned to its preconstruction condition. The facility owner shall notify the City when removal of the facility occurs. Failure to remove an abandoned WCF within one hundred

twenty (20) days shall be grounds to remove the WCF at the owner's expense, including all costs and attorneys' fees. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

i. Interference: Every wireless communication facility shall meet the regulations of the Federal Communications Commission regarding physical and RF interference.

j. Health Issues: Every wireless communication facility shall meet health and safety standards for RF emissions as established by the Federal Communications Commission. Certification by a qualified Wyoming licensed engineer shall be submitted to verify such.

7. Collocation: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antennas of more than one (1) wireless communication service provider on a single support tower.

Collocations are encouraged, but shall be done in the least visibly-intrusive manner, considering available technology and coverage needs. Collocations may be approved by the City Planner in conjunction with the building permit process and as noted in subsection 14 of this use; provided if the Planner is not clearly convinced that the "least visibly-intrusive manner" criterion is met, the matter may be referred to the Planning and Zoning Board for a determination on such.

8. Non-Conforming Wireless Communication Facilities: Non-conforming wireless communication facilities have the rights and restrictions outlined in chapter 13 of this title; provided, such facilities are subject to the six-month abandonment provision noted above; any expansion is limited to the definition of a "collocation" as set forth in this Code; and, consideration of any expansion is based on the size of the facility as it existed on April 17, 2017.

9. Application Requirements:

a. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce the provisions of this section.

b. All applications shall include documentation establishing that the installer has permission from the structure owner and property owner to install the wireless communication antenna(s) and any associated buildings, cabinets or equipment at the site.

10. Independent Technical And Legal Review: The City may retain the services of independent experts of its choice to provide technical and legal evaluation of permit applications for WCFs, including administrative and conditional use permits. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, which is to be paid within ten (10) days of the City's written request.

11. Application Fees: In connection with the filing of an application, the applicant shall pay all applicable application fees as required by the City.

12. Indemnification: Each permit issued shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, consultants, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

13. Eligible Facilities Request:

a. Purpose: This section implements section 6409(a) of the Spectrum Act, 47 USC section 1455(a) as interpreted by the FCC in its Report and Order No. 14153, which requires a State or Local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of



such tower or base station. Eligible facilities requests shall be governed solely by the provisions in this section and Federal law.

**b. Application Review:**

(1) Upon receipt of a complete application for an eligible facilities request pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within sixty (60) days of the date on which an applicant submits a complete application seeking approval of an eligible facilities request under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

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. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days 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 this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired.

**14. Collocation Applications:**

a. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

**b. Application Review:**

(1) Upon receipt of a complete application for a collocation request pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within ninety (90) days of the date on which an applicant submits a complete application seeking approval of a collocation request under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The ninety (90) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

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. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days 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 this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

15. New Site Or Tower Applications:

a. Purpose: This section also implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

b. Application Review:

(1) Upon receipt of a complete application for a request for a new site or tower pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within one hundred fifty (150) days of the date on which an applicant submits a complete application seeking approval of a request for a new site or tower under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The one hundred fifty (150) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

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. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days 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 this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

X. "X" Uses: Reserved.

Y. "Y" Uses: Reserved.

Z. "Z" Uses: Reserved. (Ord. 2017-10, 4-13-2017)