

**EXHIBIT A  
DRAFT  
Development Code Update  
City Council  
March 20, 2019**

Prepared by:  
City of Bend Planning Division

**Note:**

Text in underlined typeface is proposed to be added

Text in ~~strikethrough~~ typeface is proposed to be deleted.

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

Staff comments are ***bold and italicized***

**Chapter 3.7**

**WIRELESS AND BROADCAST COMMUNICATION FACILITIES – STANDARDS AND PROCESS**

**Sections:**

**3.7.100 Purpose and Applicability.**

**3.7.200 Definitions.**

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**3.7.700 Maintenance.**

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**3.7.900 Preexisting Towers.**

**3.7.1000 Abandonment or Discontinuation of Use.**

**3.7.100 Purpose and Applicability.**

- A. Purpose. This chapter is intended to accommodate the provision of wireless and broadcast communication services and provide a uniform and comprehensive set of standards for the development, siting, and installation

of wireless and broadcast communication facilities. In accordance with the guidelines and intent of Federal law and the Telecommunications Act of 1996, these regulations are intended to: (1) protect and promote the public health, safety, and welfare of the residents of Bend; (2) preserve neighborhood character and protect aesthetic quality; (3) encourage siting in preferred locations and (4) minimize adverse visual impacts through careful design, configuration, screening, and innovative camouflaging techniques.

B. Applicability.

1. This chapter applies to the development, siting, and installation of wireless and broadcast communication facilities, including but not limited to cellular telephone facilities, broadband Internet facilities, and radio and TV broadcasting facilities. This chapter in no way prohibits, restricts, or impairs the installation, maintenance, or use of video antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations.
2. This chapter also applies to an eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station. See BDC 3.7.550, Eligible Facilities Request for a Modification of an Existing Tower or Base Station.

**3.7.200 Definitions.**

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**Appurtenances** means attachments to the tower including, but not limited to, antennas, radios, mounts, rods, and other equipment related to the operation of the wireless communication facility.

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**Base station** means 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 term does not encompass a tower as defined in this section or any equipment associated with a tower.

1. The term includes, but is not limited to, 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.

2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
3. The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under BDC 3.7.550, supports or houses equipment described in (1) through (2) of this definition that 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.
4. The term does not include any structure that, at the time the relevant application is filed with the State or local government under BDC 3.7.550, does not support or house equipment described in (1) through (2) of this definition.

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**Facility or personal wireless service facility** for small wireless facilities means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

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**Small wireless facility** means a low-power wireless communication facility used to increase capacity to wireless communication demand areas or provide infill coverage in areas of weak reception, including a separate transmitting and receiving station serving the facility, or that is considered a small wireless facility under federal law.

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**Structure** means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

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#### **3.7.300 Application Requirements.**

Applications for small wireless facilities must submit an application demonstrating compliance with BDC 3.7.500(2).

Applications for eligible facilities requests must submit an application in compliance with BDC 3.7.5500. All other

applications for a wireless or broadcast communication facility shall must provide the following reports, documents or documentation:

- A. Geographic Service Area. The applicant shall must ~~identify the geographic service area for the proposed facility, including submit~~ a map showing all the applicant's existing sites in the ~~local service network city~~, associated with the gap the facility is meant to close. ~~The applicant shall describe how this service area fits into and is necessary for the service provider's service network.~~ Prior to the issuance of any building permits, applicants for AM, FM, HDFS, TV, and DTV projects shall must provide a copy of the corresponding FCC Construction Permit or license for the facility being built or relocated.
- B. Visual Impact, ~~Technological Design Options,~~ and Alternative Site Analysis. The applicant shall must provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall must include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall must include a map showing where the photos were taken. Except for Type I applications, the applicant shall must include an analysis of alternative sites and ~~technological design options~~ for the facility within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower is proposed, the applicant must demonstrate the need for a new tower, and why alternative locations and ~~design alternatives, such as the use of microcell technology,~~ cannot be used to meet the identified service objectives.
- C. Narrative. The application shall must include a written narrative that describes in detail all of the equipment and components to be included in the facility, e.g., antenna(s) and arrays, equipment cabinet(s), back-up generator(s), air conditioning unit(s), lighting, fencing, etc. The following information shall must also be provided:
  - 1. Height. Provide an engineer's diagram showing the height of the facility and all of its visible components. Carriers must provide evidence that establishes that the proposed facilities are designed to the minimum height required from a technological standpoint for the proposed site to meet the carrier's coverage objectives. If the tower height will exceed the base height restrictions of the applicable zone, this narrative shall must include a discussion of the physical constraints (topographical features, etc.) making the additional height necessary. The narrative shall must include consideration of the possibility for design alternatives, including the use of multiple sites or microcell technology that would avoid the need for the new facility or the requested height.

2. Construction. Describe the anticipated construction techniques and time frame for construction or installation of the facilities. This narrative shall must include all temporary staging and the type of vehicles and equipment to be used.
3. Maintenance. Describe the anticipated maintenance and monitoring program for the antennas, back-up equipment, and landscaping.
4. Noise/Acoustical Information. Provide manufacturer's specifications for all noise-generating equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties.
5. Landscape Plan. Provide a plan showing all proposed landscaping, screening and proposed irrigation with a discussion of how the chosen materials at maturity will screen the site.
6. Parking. Provide a site plan showing the designated parking area for maintenance vehicles and equipment.
7. Co-location. In the case of new multi-user towers or similar support structures, the applicant shall must submit engineering feasibility data and a letter stating the applicant's willingness to allow other carriers to co-locate on the proposed facilities wherever technically and economically feasible and aesthetically desirable.
8. Lease. The site plan shall must show the lease area of the proposed facility.
9. FCC License. Provide a copy of the applicant's FCC license and/or construction permit, if an FCC license and/or construction permit is required for the proposed facility, including documentation showing that the applicant is in compliance with all FCC RF emissions safety standards.
10. Lighting and Marking. Any proposed lighting and marking of the facility, including any required by the FAA.

#### **3.7.400 General Regulations.**

All applications for wireless and broadcast communication facilities are subject to the following requirements and regulations:

- A. Maximum Number of High Visibility Facilities per Lot or Parcel. No more than one high visibility facility is allowed on any one lot or parcel. The Planning Commission may approve exceeding the maximum number of high visibility facilities per lot or parcel if one of the following findings is made through a Type III review process: (1)

co-location of additional high visibility facilities is consistent with neighborhood character, (2) the provider has shown that denial of an application for additional high visibility facilities would have the effect of prohibiting service because the facility would fill a significant gap in coverage and no alternative locations are available and technologically feasible, or (3) the provider has shown that denial of an application for additional high visibility facilities would unreasonably discriminate among providers of functionally equivalent services. In such cases, the Planning Commission ~~shall be~~ is the Review Authority for all related applications (e.g., Wireless or Broadcast Communication Facility Site Plan, Conditional Use Permit).

- B. Towers Adjacent to Residentially Designated Property. In order to ensure public safety, all wireless and broadcast communication towers located adjacent to any property designated as Residential on the Bend Comprehensive Plan Map shall must be set back from all residential property lines by a distance at least equal to the height of the facility, including any antennas or other appurtenances. The setback shall ~~be~~ is measured from that part of the tower that is closest to the neighboring residentially designated property.
- C. High visibility facilities require a Conditional Use Permit on any property designated as Residential on the Bend Comprehensive Plan Map, or designated Public Facilities (PF) on the Bend Comprehensive Plan Map but developed as a residential subdivision.
- D. Historical Buildings and Structures. No facility ~~shall be~~ is allowed on any building or structure, or in any district, that is listed on any Federal, State or local historical register unless it is determined by the Review Authority that the facility will have no adverse effect on the appearance of the building, structure, or district. No change in architecture and no high visibility facilities are permitted on any such building, any such site, or in any such district.
- E. Equipment Location. No tower or equipment ~~shall can~~ be located in a front, rear, or side yard setback in any zone, and no portion of any antenna array ~~shall can~~ extend beyond the property lines. For guyed towers, all guy anchors ~~shall must~~ be located at least 50 feet from all abutting properties.
- F. Tower Heights. Towers may exceed the height limits otherwise provided for in the Development Code. However, all towers greater than the height limit of the underlying zone ~~shall require a Conditional Use Permit application (Type II process). to be reviewed by the Development Services Director through a Type II process under BDC Chapter 4.1, Development Review and Procedures, subject to the approval standards in BDC Chapter 4.4, Conditional Use Permits.~~

1. Exemption to Conditional Use Permit.

- a. Type I small wireless facilities in the public right-of-way or in a public utility easement on an existing or replacement utility or light pole.

- G. Accessory Building Size. All accessory buildings and structures built to contain equipment accessory to a wireless or broadcast communication facility may not exceed 12 feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure located on any property designated as Public Facilities or Residential on the Bend Comprehensive Plan Map is limited to 200 square feet, unless approved through a Conditional Use Permit.
- H. Visual Impact. All facilities ~~shall~~must be designed to minimize the visual impact to the greatest extent practicable by means of placement, screening, landscaping, and camouflage. All facilities ~~shall~~must also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. The applicant ~~shall~~must use the least visible antennas reasonably available to accomplish the coverage objectives. All high visibility facilities ~~shall~~must be sited in such a manner as to cause the least detriment to the viewshed of adjoining properties, neighboring properties, and distant properties.

1. Exemption.

- a. Small wireless facilities on an existing or replacement utility pole, light pole or structure.

- I. Colors and materials for facilities ~~shall~~must be nonreflective and chosen to minimize visibility. Facilities, including support equipment and buildings, ~~shall~~must be painted, colored or textured using colors to match or blend with the primary background, unless required by any other applicable law.
- J. All camouflaged facilities ~~shall~~must be designed to visually and operationally blend into the surrounding area in a manner consistent with existing development on adjacent properties. The facility ~~shall~~must also be appropriate for the specific site. In other words, it should not "stand out" from its surrounding environment.
- K. Facade-mounted antennas ~~shall~~must be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted antennas ~~shall~~must not extend more than two feet out from the building face.
- L. Roof-mounted antennas ~~shall~~must be constructed at the minimum height possible to serve the operator's service area and ~~shall~~ be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.

- M. Compliance with Photo Simulations. As a condition of approval and prior to final inspection of the facility, the applicant shall must submit evidence, such as photos, to the satisfaction of the City sufficient to prove that the facility is in substantial conformance with photo simulations provided with the application. Nonconformance shall requires modification to compliance within 90 days or the structure must be removed.
- N. Noise from any equipment supporting the facility shall must meet the requirements of BC Chapter 5.50, Noise.
- O. No signs, striping, graphics, or other attention-getting devices are permitted on any wireless or broadcast communication facility except for warning and safety signage with a surface area of no more than three square feet. Signs shall must be affixed to a fence or ancillary facility and limited to no more than two signs unless more is required by law.
- P. Traffic Obstruction. Maintenance vehicles servicing facilities located in the public or private right-of-way shall cannot park on the traveled way or in a manner that obstructs traffic.
- Q. No net loss in required parking spaces shall can occur as a result of the installation of any wireless or broadcast communication facility.
- R. Sidewalks and Pathways. Cabinets and other equipment shall must not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land and shall must be screened from view.
- S. Lighting. Wireless or broadcast communication facilities shall cannot include any beacon lights or strobe lights, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If beacon lights or strobe lights are required, the Review Authority shall review the available alternatives and approve the design with the least visual impact. All other site lighting for security and maintenance purposes shall must be shielded and directed downward, and shall must comply with the outdoor lighting standards in BDC 3.5.200, unless otherwise required under Federal law.
- T. Speculation. No application shall can be accepted or approved for a speculation tower, i.e., from an applicant that simply constructs towers and leases tower space to service providers, but is not a service provider, unless the applicant submits a binding written commitment or executed lease from a service provider to utilize or lease space on the tower.

### **3.7.500 Review Process and Approval Standards.**

A. Type I Process. The following facilities are allowed with the approval of a Wireless or Broadcast Communication Facility Site Plan ~~to be reviewed by the Development Services Director~~ pursuant to a Type I process under BDC Chapter 4.1, Development Review and Procedures:

1. Stealth and low visibility facilities.

2. Small Wireless Facilities.

a. Small wireless facilities proposed within the public right-of-way or in a public utility easement on an existing or replacement utility or light pole, so long as they meet all of the following:

a. ~~The antennas do not project more than 24 inches above the existing utility pole support structure;~~

b. ~~No more than a total of two antennas or antenna arrays are located on a single pole;~~

c. ~~The equipment cabinet is no larger than six cubic feet and is concealed from public view by burying or screening by means other than walls or fences.~~

i. The Facilities:

(A) Are mounted on existing or replacement structures 50 feet or less in height including their antennas, or

(B) Are mounted on existing or replacement structures no more than 10 percent taller than other adjacent structures, or

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

ii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

iii. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the facility, is no more than 28 cubic feet in volume.

iv. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards.

v. Comply with Part II, Section 8 of the City of Bend Standards and Specifications when located in the public right-of-way or public utility easement.

b. Small wireless facilities proposed on private property on an existing or replacement utility pole, light pole or structure, so long as they meet all of the following:

- i. The facilities do not exceed the height limits of the underlying zone or as otherwise authorized by federal law.
- ii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
- iii. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the facility, is no more than 28 cubic feet in volume.
- iv. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards.
- v. Comply with Part II, Section 8 of the City of Bend Standards and Specifications.

- 3. Facade-mounted antennas or low powered networked telecommunications facilities, such as those employing microcell antennas, integrated into the architecture of an existing building in such a manner that no change to the architecture is apparent and no part of the facility is visible to public view.
- 4. Antennas or arrays that are hidden from public view through the use of architectural treatments, e.g., within a cupola, steeple, or parapet which is consistent with the applicable building height limitation.
- 5. New antennas or arrays that are attached to an existing broadcast communication facility located in any zone; provided, that they do not exceed the following "safe harbor" parameters:
  - a. Side-mounted antennas.
  - b. Small top-mounted antennas. No more than three small top-mounted antennas shall can be placed on the top of any one broadcast communication facility without a Type II review.
- 6. To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location of antennas or arrays on existing towers shall takes precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:
  - a. An existing tower may be modified or rebuilt to a taller height to accommodate the co-location of additional antennas or arrays, as long as the modified or rebuilt tower will not exceed the height limit of the applicable zoning district. The height change may only occur one time per tower.

- b. An existing tower that is modified or reconstructed to accommodate the co-location of additional antennas or arrays shall must be of the same tower type and reconstructed in the exact same location as the existing tower.
- B. Type II Process. The following facilities are allowed with the approval of a Wireless or Broadcast Communication Facility Site Plan ~~to be reviewed by the Development Services Director pursuant to a Type II process under BDC Chapter 4.1, Development Review and Procedures:~~
1. High visibility facilities located on any property designated as Commercial, Industrial, Public Facilities, ~~Surface Mining or Mixed-Use on the Bend Comprehensive Plan Map and at least 500 feet from any property designated as Residential on the Bend Comprehensive Plan Map.~~
  2. Moderate visibility facilities that do not exceed the height limit of the applicable zone.
  3. New antennas or arrays that are attached to an existing broadcast communication facility located in any zone which exceed the "safe harbor" parameters of subsection (A)(65)(a) or (b) of this section.
  4. Small wireless facilities that exceed the thresholds in BDC 3.7.500(A)(2).
- C. Conditional Use Permit Requirements. Applications for wireless or broadcast communication facilities in all other locations and situations including moderate or high visibility facilities that exceed the height limit of the applicable zone ~~shall also require a Conditional Use Permit (Type II process). to be reviewed by the Development Services Director through a Type II process under BDC Chapter 4.1, Development Review and Procedures, subject to the approval standards in BDC Chapter 4.4, Conditional Use Permits.~~ In addition to the approval standards in BDC Chapter 4.4, Conditional Use Permits, the applicant shall must demonstrate that the Wireless or Broadcast Communication Facility Site Plan approval standards in subsections (D)(2) through (5) of this section are met.
- D. Approval Criteria. ~~The Development Services Director shall~~ City may approve the use and Wireless or Broadcast Communication Facility Site Plan for any of the facilities listed in subsections (B) and (C) of this section upon a determination that the following criteria are met:
1. The height of the proposed tower or facility does not exceed the height limit of the underlying zoning district, or does not increase the height of an existing facility.
  2. The location is the least visible of other possible locations and technological design options that achieve approximately the same signal coverage objectives.
  3. The location, size, design, and operating characteristics of the proposed facility will be compatible with adjacent uses, residences, buildings, and structures, with consideration given to:

- a. Scale, bulk, coverage and density;
  - b. The harmful effect, if any, upon neighboring properties;
  - c. The suitability of the site for the type and intensity of the proposed facility; and
  - d. Any other relevant impact of the proposed use in the setting where it is proposed.
4. All required public facilities have adequate capacity, as determined by the City, to serve the proposed wireless or broadcast communication facility; and
  5. The proposed wireless or broadcast communication facility complies with all of the general regulations contained in BDC 3.7.400.
  6. Small wireless facilities must comply with Part II, Section 8 of the City of Bend Standards and Specifications.
- E. Conditions of Approval. The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards, including designation of an alternate location, or if compliance with all of the applicable approval criteria cannot be achieved through the imposition of reasonable conditions, the application ~~shall~~must be denied.
- F. Timeframe for Review. Within the time limits imposed by state or federal law less any time period that may be excluded by state or federal law, the Review Authority must approve the application unless the Review Authority determines that the application is not covered by this chapter or does not comply with applicable standards.

### **3.7.550 Eligible Facilities Request for a Modification of an Existing Tower or Base Station.**

- A. Applicability. An applicant may submit an eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station that involves:
1. Collocation of new transmission equipment;
  2. Removal of transmission equipment; or
  3. Replacement of transmission equipment.

For purposes of this subsection, collocation means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility 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.

B. Type I Process. An eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station is reviewed pursuant to a Type I process under BDC Chapter 4.1, Development Review and Procedures.

C. The applicant must provide documentation or information to verify whether the request is not a substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
  - a. Changes in height should be 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 should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
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, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site;

5. It would defeat the concealment elements of the eligible support structure; or

6. It does not comply with the conditions of approval associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 1 through 4 above.

D. Approval Criteria. The City may approve an eligible facilities request for a modification of an existing wireless tower or base station upon a determination that the following criterion is met:

1. The eligible facilities request for a modification of an existing tower or base station does not substantially change the physical dimension of such tower or base station.

E. Conditions of Approval. The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards, or if compliance with the applicable approval criterion cannot be achieved through the imposition of reasonable conditions, the application must be denied.

F. Timeframe for Review. Within the time limits imposed by state or federal law less any time period that may be excluded by state or federal law, the Review Authority must approve the application unless the Review Authority determines that the application is not covered by this chapter or does not comply with applicable standards.

**3.7.600 Exemptions.** The following shall be considered ~~are~~ exempt structures or activities under this chapter:

A. Whip or other similar antennas no taller than six feet with a maximum diameter of two inches.

B. Antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations regardless of zone category.

C. Low-powered networked telecommunications facilities such as microcell radio transceivers located on existing utility poles and light standards within public right-of-way. Low-powered networked telecommunications facilities shall must comply with this chapter.

D. All military, Federal, State, and local government communication facilities except for towers.

- E. Cell on Wheels (COW), which are permitted as temporary uses in ~~Nonresidential Zones~~ for a period not to exceed 44 ~~180~~ days, in residential zones for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State.
- F. Replacement antennas or equipment, provided the replacement antennas and/or equipment (i) have a function similar to the replaced antenna and/or equipment and do not exceed the overall size of the original antenna and/or equipment or (ii) the replacement equipment will be located in an existing cabinet or base station.

#### **3.7.700 Maintenance.**

The following maintenance requirements apply to all facilities:

- A. All landscaping shall must be maintained at all times and shall be promptly replaced if not successful.
- B. If a flag pole is used for camouflaging a facility, flags must be flown and must be properly maintained at all times.
- C. All wireless and broadcast communication sites shall must be kept clean and free of litter.
- D. All wireless and broadcast communication sites shall must maintain compliance with current RF emission standards of the FCC, the National Electric Safety Code, and all State and local regulations.
- E. All equipment cabinets shall must display a legible operator's contact number for reporting maintenance problems.

#### **3.7.800 Inspections.**

- A. The City or its agents shall ~~have~~ authority to enter onto the property upon which a wireless or broadcast communication facility is located, to inspect the facility for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City and Federal and State law.
- B. The City reserves the right to conduct such inspections at any time, upon reasonable notice to the wireless or broadcast communication facility owner. In the event such inspection results in a determination that violation of applicable construction and maintenance standards set forth by the City has occurred, remedy of the violation may include cost recovery for all costs incurred in confirming and processing the violation.

#### **3.7.900 Preexisting Towers.**

Towers that lawfully existed prior to the adoption of this chapter shall ~~be~~ are allowed to continue their use as they presently exist. This code does not make lawful any towers that are not lawfully approved on the date the ordinance codified in this code is adopted. Routine maintenance shall ~~be~~ is permitted on such lawful preexisting towers.

Lawfully existing towers may be replaced as long as the replacement is ~~in the exact location of the tower being replaced and is of a construction type identical in height, width, weight, located on the same property, no closer to the nearest property line than the existing tower, no taller than the existing tower, has a width no more than 10% larger than the existing tower & has identical lighting & painting.~~ The tower being replaced must be removed within 30 days of completion of the replacement tower. Any other changes or modifications to a replacement tower shall ~~not be considered routine maintenance, shall~~ must be treated as new construction, and shall must comply with the requirements of this chapter.

### **3.7.1000 Abandonment or Discontinuation of Use.**

The following requirements apply to the abandonment and/or discontinuation of use for all facilities:

- A. All facilities located on a utility pole shall must be promptly removed at the operator's expense at any time a utility is scheduled to be placed underground or otherwise moved.
- B. All operators who intend to abandon or discontinue the use of any wireless or broadcast communication facility shall must notify the City of such intentions no less than 60 days prior to the final day of use.
- C. Wireless or broadcast communication facilities ~~shall be~~ are considered abandoned 90 days following the final day of use or operation.
- D. All abandoned facilities shall must be physically removed by the facility owner no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first.
- E. The City reserves the right to remove any facilities that are abandoned for more than 90 days at the expense of the facility owner.
- F. Any abandoned site shall must be restored to its natural or former condition. Grading and landscaping in good condition may remain.

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## **Chapter 4.1**

### **DEVELOPMENT REVIEW AND PROCEDURES**

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#### **4.1.815 Hearings Body.**

- A. The following must serve as the Hearings Body as determined by the Development Services Director:
  - 1. Hearings Officer.

2. Planning Commission, for matters of interpretation of this code, appeals of Type II decisions; where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of City code.
3. City Council subject to BDC 4.1.1100, Appeals.
4. City Council for annexation applications subject to BDC Chapter 4.9, Annexations.

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**EXHIBIT B  
FINDINGS OF FACT  
BEND DEVELOPMENT CODE (BDC) UPDATE  
AMENDMENT PZ 19-0037**

**I. PROCEDURAL FINDINGS:**

- (1) PUBLIC NOTICE AND COMMENTS.** Notice of the proposed amendments was provided to the Department of Land Conservation and Development (DLCD) on January 17, 2019. A notice of the Planning Commission's public hearing on February 25, 2019, and of the City Council's public hearing on March 6, 2019, was printed in the Bend Bulletin on February 3, 2019, and was sent to the neighborhood associations on January 30, 2019. Staff also emailed the changes to the Development Code Update Group and to several wireless industry contacts on January 30, 2019, and to utility companies in Bend on February 4, 2019, for their review.

Due to inclement weather, the Planning Commission's public hearing on February 25, 2019, was rescheduled to March 11, 2019, and the City Council's public hearing on March 6, 2019, was rescheduled to March 20, 2019. A notice of the Planning Commission's March 11, 2019, public hearing and of the City Council's public hearing on March 20, 2019, was printed in the Bend Bulletin on March 2, 2019, and was sent to the neighborhood associations on February 26, 2019.

As of the writing of this report, the City received two comments. A response to Verizon's issues raised is included in Section V below.

**(2) PROPOSAL:**

**Small Wireless Facilities**

On September 26, 2018, the FCC released a Declaratory Ruling and Third Report and Order that significantly limits state and local management of small wireless facility deployment and associated fees for use of the rights-of-ways and public property in the rights-of-way. The proposed amendments include new definitions, a review process and development standards for small wireless facilities. The proposed amendments also reference the Bend Standards and Specifications, which provide design standards.

**Eligible Facilities Request**

On January 9, 2015, the Federal Communications Commission ("FCC") issued new regulations in response to the interpretation of certain provisions of Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") related to processing applications for wireless communications facilities. Section 6409 requires local jurisdictions to approve certain eligible collocations and modifications to existing wireless communications facilities. The proposed amendments include new definitions and create a section, BDC 3.7.550, for eligible

facilities request for a modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station.

**BDC Chapter 4.1, Development Review and Procedures**

The following proposed amendment to BDC 4.1.815, Hearings Body clarifies the correct meaning of the provision.

**4.1.815 Hearings Body.**

- A. The following must serve as the Hearings Body as determined by the Development Services Director:
1. Hearings Officer.
  2. Planning Commission, for matters of interpretation of this code, appeals of Type II decisions, where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of City code.
  3. City Council subject to BDC 4.1.1100, Appeals.
  4. City Council for annexation applications subject to BDC Chapter 4.9, Annexations.

**II. CRITERIA OF APPROVAL:**

- (1) The Bend Comprehensive Plan
- (2) Bend Development Code
  - (a) Chapter 4.6, Land Use District Map and Text Amendments;  
Section 4.6.200(B), Criteria for Legislative Amendments

**III. APPLICABLE PROCEDURES:**

- (1) Bend Development Code
  - (a) Chapter 4.1, Land Use Review and Procedures

**IV. FINDINGS REGARDING COMPLIANCE WITH APPLICABLE CRITERIA:**

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6,  
LAND USE DISTRICT MAP AND TEXT APMENDMENTS**

**4.6.200 Legislative Amendments.**

**A. Applicability, Procedure and Authority.** Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV

procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

**FINDING:** The recommended amendments to the text of the Bend Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

**B. Criteria for Legislative Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

**FINDING:** The proposed amendments are consistent with the applicable State land use law. In particular, they satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, and Goal 11: Public Facilities and Services.

**Goal 1, Citizen Involvement,** is satisfied through following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

A notice of the Planning Commission's public hearing on February 25, 2019, and of the City Council's public hearing on March 6, 2019, was printed in the Bend Bulletin on February 3, 2019, and was sent to the neighborhood associations on January 30, 2019. Staff also emailed the changes to the Development Code Update Group and to several wireless industry contacts on January 30, 2019, and to utility companies in Bend on February 4, 2019, for their review

Due to inclement weather, the Planning Commission's public hearing on February 25, 2019, was rescheduled to March 11, 2019, and the City Council's public hearing on March 6, 2019, was rescheduled to March 20, 2019. A notice of the Planning Commission March 11, 2019, public hearing and of the City Council's public hearing on March 20, 2019, was printed in the Bend Bulletin on March 2, 2019, and was sent to the neighborhood associations on February 26, 2019.

The Planning Commission held a work session on February 11, 2019, and a public hearing on March 11, 2019, and the City Council will hold a public hearing on March 20, 2019, regarding the proposed amendments.

As of the writing of this report, the City received two comments. A response to the Verizon's issues raised is included in Section V below.

**Goal 2, Land Use Planning**, requires a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Goal is met because the City followed the land use planning process and policy framework established in the City's acknowledged Comprehensive Plan and Development Code as a basis for the decisions and actions related to the new regulations regarding the use of land and to assure an adequate factual base for these decisions and actions. This application provides the required information and responses to the applicable approval standards for a Development Code text amendment and therefore is consistent with Statewide Planning Goal 2. The proposed amendments will be adopted by the City Council after a public hearing. Several opportunities were provided for review and comment by citizens during the preparation of this ordinance.

Goal 2 specifically states that minor plan changes should be based on special studies or other information, which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. On September 26, 2018, the FCC released a Declaratory Ruling and Third Report and Order that significantly limits state and local management of small wireless facility deployment and associated fees for use of the rights-of-ways and public property in the rights-of-way. The proposed amendments include new definitions, a review process and development standards for small wireless facilities. The proposed amendments also reference the Bend Standards and Specifications, which provide design standards.

On January 9, 2015, the Federal Communications Commission ("FCC") issued new regulations in response to the interpretation of certain provisions of Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") related to processing applications for wireless communications facilities. Section 6409 requires local jurisdictions to approve certain eligible collocations and modifications to existing wireless communications facilities. The proposed amendments create a new section, BDC 3.7.550, Eligible Facilities Request for a Modification of an Existing Tower or Base Station to address eligible facilities modifications under the FCC implementing rules. The proposed regulations establish a Type I application process and approval criteria for issuing a decision for an eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station.

The proposed code amendments provide a public benefit and need since wireless connectivity is essential for residents, businesses, visitors and emergency services. Therefore, compliance with Goal 2 is maintained.

**Goal 3, Agricultural Lands and Goal 4, Forest Lands, Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces** Goals 3 and 4 are not applicable because there are no Agricultural or Forest Lands in the City. Goal 5 is not applicable because these amendments do not affect any regulation that implements Goal 5 and the City's acknowledged regulations implementing Goal 5 remain in effect with no change in applicability.

**Goal 6, Air, Water and Land Resources Quality** requires that all waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. Goal 6 is not applicable because the City's acknowledged regulations implementing Goal 6 remain in effect with no change in applicability.

**Goal 7, Areas Subject to Natural Hazards** is not applicable because the City's acknowledged regulations implementing Goal 7 remain in effect with no change in applicability.

**Goal 8, Recreational Needs** requires the City to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. This goal is not applicable as the amendments have no effect on the availability of or access to recreational opportunities.

**Goal 9, Economic Development**, is implemented through Oregon Administrative Rule(OAR) Division 9 which is intended to ensure that each jurisdiction maintain an adequate land supply for economic development and employment growth. Goal 9 is not applicable because these amendments do not affect any regulation that implements Goal 9 and the City's acknowledged regulations implementing Goal 9 remain in effect with no change in applicability.

**Goal 10, Housing** is not applicable to the proposed Development Code amendments because the amendments will not reduce residential inventories.

**Goal 11, Public Facilities and Services** requires the City to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The proposed amendments will support the continued opportunity for the provision of wireless communications facilities in the City of Bend and aid in enhancing communications options. The proposed amendments provide consistency for small wireless facilities and eligible facilities request. The proposed amendments also provide design guidance to the Small Wireless Facility Franchise Utilities as they deploy their facilities and infrastructure in Bend. Therefore, compliance with Goal 11 is maintained.

**Goal 12, Transportation** requires the City to provide and encourage a safe and convenient and economic transportation system. The proposed amendments are not site specific and therefore do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore, the proposed text amendments do not cause a “significant effect” under ORS 660-012-0060. Therefore, compliance with Goal 12 is maintained.

**Goal 13: Energy Conservation** is not applicable because the City’s acknowledged regulations implementing Goal 13 remain in effect with no change in applicability.

**Goal 14, Urbanization**, requires the City to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The proposed amendments do not encourage sprawl or lower than targeted densities, or uncoordinated development. The management of the City’s land use inventories is unaffected by these proposed amendments and therefore compliance with Goal 14 is maintained.

**Other Goals:** Because the proposed code amendments are limited in scope, there are no other Statewide Planning Goals or Administrative Rules applicable to this amendment. Likewise, there are no applicable Oregon Revised Statutes that are criteria applicable to these amendments (Note, consistency with the Transportation Planning Rule (TPR) is discussed further in this document).

Based on the above discussion, the proposed text amendments to the Development Code are consistent with the statewide planning goals and therefore comply with the requirement that the amendment be consistent with state land use planning law.

**2. The request is consistent with the applicable Bend Comprehensive Plan goals and policies;**

**FINDING:** The “goals” established in the Bend Comprehensive Plan express the desires of the residents of Bend as the City progresses into the future. The “goals” are generally carried out through “policies,” which are statements of public policy. The following Goals and Policies are applicable:

***Chapter 1: Plan Management and Citizen Involvement***

***Policies***

***Citizen Involvement***

**1-15** The City shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.

**1-16** The City will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

**FINDING:** A notice of the Planning Commission's public hearing on February 25, 2019, and of the City Council's public hearing on March 6, 2019, was printed in the Bend Bulletin on February 3, 2019, and was sent to the neighborhood associations on January 30, 2019. Staff also emailed the changes to the Development Code Update Group and to several wireless industry contacts on January 30, 2019, and to utility companies in Bend on February 4, 2019, for their review

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The Planning Commission held a work session on February 11, 2019, and a public hearing on March 11, 2019, and the City Council will hold a public hearing on March 20, 2019, regarding the proposed amendments.

## ***Chapter 6: Economy***

**Goals:** The intent of the Comprehensive Plan is to provide sufficient land to meet the City's goals of promoting quality economic growth and assuring a diverse economy. The following goal statements describe the economic hopes of the community and serve as the foundation for policy statements in this chapter. The citizens and elected officials of Bend wish to:

- Promote a vital, diverse and sustainable economy, while enhancing the community's overall livability.
- Ensure an adequate supply of appropriately zoned land for industrial, commercial, and mixed-use development opportunities.
- Strengthen Bend's position as a regional economic center.
- Create more opportunities in Bend for jobs that pay a higher than median wage.
- Create commercial areas that support multimodal access.
- Encourage more small neighborhood commercial developments and convenience commercial centers to reduce the number and length of single occupancy vehicle (SOV) trips.

## **Policies**

### **General Policies**

**6-4** Infrastructure will be planned, designed, and constructed to support continued economic growth and orderly development.

**FINDING:** The proposed amendments provide a Type I application process and design guidance for small wireless facilities. Small wireless facilities are the next upgrade of wireless technology, offering faster speeds, greater capacity and better reliability, which will support continued economic growth in the City of Bend.

The proposed amendments also create a Type I application process for eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station. These amendments will help increase broadband deployment, which will also support continued economic growth.

Based on the findings stated above, staff concludes that the proposed text amendments are consistent with the applicable Bend Comprehensive Plan Goals and Policies.

**3. The applicant can demonstrate a public need or benefit for the proposed amendment.**

**FINDING:** The proposed amendments coincide with the following City Council Goals:

- *"Move people and products around Bend efficiently, safely and reliably,"*
- *"Keep residents safe with innovative and cost-effective public safety services,"*
- *"Modernize and professionalize how City government operates."*

The proposed amendments will help staff consistently approve appropriate locations for the installation of the small wireless facilities. These facilities are necessary for the deployment of 5G wireless service and are essential for driverless technologies, transfer of information at high speeds and will play a crucial role in Bend's high tech economy of the future. Also as the City continues to grow, emergency services connectivity to reliable high-speed internet is vital to develop innovative service models that improve response times for our public safety programs. Therefore, the proposed amendments provide a public need and benefit for the City of Bend.

**4.6.500 Record of Amendments.**

**The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.**

**FINDING:** In the event the Development Code text amendment is adopted by ordinance, the City Recorder will maintain a record of the amendments and the revised provisions will be included as part of the Bend Development Code available to the public on the City's website.

#### **4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** The new text amends the Bend Development Code, a functional component of the Bend Comprehensive Plan, and is an amendment to a land use regulation as noted in OAR 660-012-0060. The proposed amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore, the proposed text amendments do not cause a "significant effect" under ORS 660-012-0060.

### **V. RESPONSE TO SPECIFIC ISSUES RAISED BY VERISON**

While Verizon generally supports the changes being proposed, Verizon did raise issues, and the following findings address those issues.

**1. *Franchise Code-There are significant problems with references to the Standards for the City of Denver dated April, 2018 for utility pole deployments:***

***a. These standards are specific to the poles owned by the local Denver utility Xcel and have not been adopted by local pole owners in Bend.***

**FINDING:** The second paragraph in the City of Bend Standards and Specifications Section 8.5.2 clarifies that all references to "City and County of Denver" or "Xcel Energy" shall correspond to the City of Bend or the applicable pole owner. (PP&L or Central Electric Coop.) Attachments to existing utility poles will be approved through the States Joint Use program as administered by the utility and the PUC. (Note: The state of Oregon is a "non-FCC" state with respect to colocation attachments.)

***b. These standards are also out of date, as they do not address 5G, which cannot be shielded, camouflaged or screened. They are being revised by the City of Denver.***

**FINDING:** Appendix C of the referenced Denver standards addresses the need for 5G technology. The current standards were drafted with 5G technology in mind. The

standards do take into account the shielding, camouflage and screening issues with 5G, and other alleged deficiencies have not been identified. In addition, section 8.5.1 outlines a “deviation” standard which allows for Franchised Utilities to propose an “approved equal” design, so any potential deficiency in the standards can be addressed on a case-by-case basis.

***c. These standards were developed specific to the climate, topography and vegetation of Metro Denver. These are very different from the conditions in the Pacific Northwest and all affect the types of antennas, radios and equipment that is needed to meet the network objectives. The undergrounding of sensitive radio equipment required by these standards is not feasible in the wet climate of Oregon.***

**FINDING:** Bend has a very similar climate to Denver with annual precipitation levels less than Denver. Bend is considered the “High Desert” and the underlying geology and topography promote very dry conditions. As an example, Apple and Facebook have chosen the Central Oregon region to base their large server farms because of the dry arid climate. Because of the underlying volcanic bedrock geology, the City is able to use “dry wells” versus stormwater collection systems that are typical in the valley which have wetter climates. Stormwater is able to quickly re-enter the underlying aquifer and there is not high ground water as seen in the valley or other parts of the Pacific Northwest. This is one of the reasons that the City of Bend settled on the Denver standards because of how similar the “climate, topography and landscapes” are to Bend’s.

The City also understands that there are specific pieces of equipment that cannot be undergrounded and there is a clear distinction between what is and is not required to be installed underground in the Denver standard. There are a couple of goals that the City is trying to meet with these standards. First, the City, in an effort to comply with the FCC ruling is working to provide standards that are “(1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.” (NATOA, Guideline for Implementation, 2019.)

***d. The current Denver standards are unworkable for Verizon's deployment in Bend.***

**FINDING:** The City’s professional evaluation is that Verizon’s Smart Pole Technology will be compatible with the Denver design standards. Denver partnered with industry leaders to develop an acceptable “best practices” design guide and wishes to learn more. The City is willing listen to Verizon’s concerns and will work with Verizon and others on developing reasonable best practices for the deployment of 5G throughout the city.

**2. 3.7.200-Definitions--Verizon suggests adding definitions from the recent FCC Order for "Colocation" and "Small Wireless Facility" for consistency.**

**FINDING:** Staff revised the definition for Small Wireless Facility as follows:

**Small wireless facility** means a low-power wireless communication facility used to increase capacity to wireless communication demand areas or provide infill coverage in areas of weak reception, including a separate transmitting and receiving station serving the facility, or that is considered a small wireless facility under federal law.

Staff revised the proposed code update to clarify that for eligible facilities request that collocation means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility 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.

**3. 3.7.300 -Application Requirements-- Many of these regulations are not applicable to small wireless facilities in the ROW, like landscaping, fencing, parking, etc. Verizon suggests a separate section for small wireless facilities standards and application requirements.**

**FINDING:** Staff revised the proposed code update to require applications for small wireless facilities to only submit an application demonstrating compliance with BDC 3.7.500(2) and applications for eligible facilities requests to only submit an application in compliance with BDC 3.7.5500. Therefore, BDC 3.7.300 is not applicable to small wireless facilities and eligible facility requests.

**4. 3.7.300 (A) Application Requirements--requires a showing of a significant gap in coverage to justify a new wireless facility. The Order at Paragraph 37 rejects the use of the significant gap in coverage for all wireless facilities. Verizon requests this paragraph be deleted.**

**FINDING:** Staff revised the proposed code update with the following amendments to address this comment.

3.7.300 (A) Geographic Service Area. The applicant shall must identify the geographic service area for the proposed facility, including submit a map showing all the applicant's existing sites in the local service network city, associated with the gap the facility is meant to close. ~~The applicant shall describe how this service area fits into and is necessary for the service provider's service network.~~ Prior to the issuance of any building permits, applicants for AM, FM, HDFS, TV, and DTV projects shall must provide a copy of the corresponding FCC Construction Permit or license for the facility being built or relocated.

5. **3.7.300(B) -Application Requirements--This section contains a requirement that other technological options, like microcells, be ruled out for meeting the coverage objective before a new macro facility will be approved. Under federal law, cities cannot dictate or require a preference for the type of technology used and may not regulate the choice of technology or equipment design. New York SMSA Ltd. Partnership v. Town of Clarkston, 612 P.3d 97 (2nd Cir. 2010).**

**FINDING:** Staff revised the proposed code update with the following amendments to address this comment.

3.7.300(B) Visual Impact, ~~Technological Design Options~~, and Alternative Site Analysis. The applicant shall must provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall must include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall must include a map showing where the photos were taken. Except for Type I applications, the applicant shall must include an analysis of alternative sites and ~~technological design options~~ for the facility within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower is proposed, the applicant must demonstrate the need for a new tower, and why alternative locations and ~~design alternatives, such as the use of microcell technology,~~ cannot be used to meet the identified service objectives.

6. **3.7.400(H)(1)(A) --Requires antennas and equipment be painted or textured to match the pole. 5G antennas cannot be painted but they can be made of material colored to match. Verizon suggests adding the term "or colored" to this section.**

**FINDING:** The subsection that requires antennas and equipment to be painted or textured to match the pole is in BDC 3.7.400(I), not 3.7.400(H)(1)(A). Staff revised the proposed code update with the following amendments to address this comment.

3.7.400(I). Colors and materials for facilities shall must be nonreflective and chosen to minimize visibility. Facilities, including support equipment and buildings, shall must be painted, colored or textured using colors to match or blend with the primary background, unless required by any other applicable law.

7. **3.7.500(a)(2)(a) --Verizon requests adding replacement poles to this section. When a utility owner requires that small cell antennas be placed pole top, the pole must be replaced at a slightly greater height to provide separation from the power lines. The providers have no control over this requirement.**

**FINDING:** Staff revised the proposed code update and add replacement poles to this section.

- 8. 3.7.600(E) Exemptions--Temporary Cells on Wheels (COW) are exempt from the zoning code. These are often used when a property with a wireless facility on it is redeveloping and one structure is torn down and replaced with a new structure. Verizon requests adding this circumstance to the exemption.**

**FINDING:** Staff revised the proposed code update and added the following new timelines for cells on wheels.

**3.7.600(E)**Cell on Wheels (COW), which are permitted as temporary uses in Nonresidential Zzones for a period not to exceed 14 180 days, in residential zones for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State.

## **VI. CONCLUSIONS:**

Based on the above Findings, the proposed BDC amendments meet all applicable criteria for adoption.