

**RESOLUTION OF THE TOWN COUNCIL
OF MOUNTAIN VILLAGE, ADOPTING INTERIM SMALL CELL INFRASTRUCTURE
DESIGN GUIDELINES FOR SMALL CELL FACILITIES**

RESOLUTION NO. 2021-0121-03

WHEREAS, the Town Council (the "Council") of the Town of Mountain Village (the "Town") approves Interim Small Cell Infrastructure Design Guidelines for small cell facilities; and

WHEREAS, the Federal Communications Commission (the "FCC") issued a Final Rule on WT Docket No. 17-79, WC Docket No. 17-84; FCC 18-133 regarding "Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" which became effective January 14, 2019 (the "Final Rule"); and

WHEREAS, the Final Rule provides "States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way" and that the Section 253(a) and 332(c)(7) preempts much of State or Municipal law in regulating Rights of Way; and

WHEREAS, in addition the Final Rule set forth several clarifications that act as new requirements and limitations upon jurisdictions' obligations to facilitate the rapid deployment of small cell infrastructure, including within Rights of Way; and

WHEREAS, some of the new requirements include permitting the entry of new technology never before deployed in Rights of Way in the Town; and

WHEREAS, the Final Rule permits local jurisdictions to adopt aesthetics requirements and other regulations, and such regulations are not preempted so long as they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments and (3) objective and published in advance; and

WHEREAS, the Final Rule acknowledged "at least some localities will require some time to establish or publish aesthetics permits, parking permits, or excavation permits"; and

WHEREAS, notwithstanding the aforementioned acknowledgement of necessary time, a moratorium is not allowed under the FCC ruling due to the institution of new shot-clock time lines with respect to small cell deployment; and

WHEREAS, it is the intent of the Town Council to:

1. Facilitate the rapid deployment of small cell facilities within Town Rights of Way as required by the Final Rule, and
2. Establish reasonable regulations to protect the health, safety, and welfare of the general public.
3. Establish reasonable regulations that are objective and published in advance to create a fair and balanced legal and regulatory environment for small cell deployments.

WHEREAS, if the Town continued public consideration of permanent regulations and amendments without first adopting an Interim Design Guidelines on Small Cell deployment within Town Rights of Way, companies seeking to deploy small cells could frustrate the effectiveness of this measure by developing or building small cell structures in Town Right of Way without an established, predictable, regulatory framework that other, later-established small cell deployments may be bound by, thereby

potentially creating disparity in coverage and/or regulation among providers of similar services frustrating the purpose of the Final Rule as well as that of Town's regulation(s); and

WHEREAS, it is in the best interest of the public health, safety, and welfare to adopt an interim small cell infrastructure design guidelines; and

WHEREAS, this measure is necessary to preserve the Town's ability to effectuate long-range Right of Way management and decisions, and to plan in a comprehensive manner as it relates to small cell deployment and incorporation in Town Rights of Way.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AS FOLLOWS:

1. If the Town continued public consideration of permanent regulations and amendments without first adopting Interim Small Cell Infrastructure Design Guidelines for small cell deployments in Town Rights of Way, companies seeking to deploy small cells could frustrate the effectiveness of this measure by developing or building small cell structures in Town Right of Way without an established, predictable, regulatory framework that other, later established small cell deployments may be bound by, thereby potentially creating disparity in coverage among providers of similar services frustrating the purpose of the the Final Rule as well as that of County regulation; and
2. The Interim Small Cell Infrastructure Design Guidelines are necessary to preserve the Town's ability to effectuate long-range planning decisions and to plan in a comprehensive manner as it relates to Right of Way management; and
3. The Interim Small Cell Infrastructure Design Guidelines are necessary to protect the health safety and welfare of the general public.
4. The Town Council approves the conditions as set forth in the Interim Small Cell Infrastructure Design Guidelines attached hereto as Exhibit A, and authorizes the Town Manager to sign such guidelines in form substantially similar to the attached Exhibit A.

Section 1. Resolution Effect

- A.** This Resolution shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions repealed or amended as herein provided and the same shall be construed and concluded under such prior resolutions.
- B.** All resolutions, of the Town, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 2. Severability

The provisions of this Resolution are severable and the invalidity of any section, phrase, clause or portion of this Resolution as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Resolution.

Section 3. Effective Date

This Resolution shall become effective on January 21, 2021 (the "Effective Date") as herein referenced throughout this Resolution.

Section 4. Public Meeting

A public meeting on this Resolution was held on the 21st day of January 2021 via virtual Zoom meeting.

Approved and Adopted by the Town Council at a public meeting held on January 21, 2021.

Town of Mountain Village, Town Council

By: 
Laila Benitez, Mayor

Attest:

By: 
Susan Johnston, Town Clerk

Approved as to Form:


Paul Wisor, Town Attorney



EXHIBIT A

PLANNING & DEVELOPMENT SERVICES

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INTERIM SMALL CELL INFRASTRUCTURE DESIGN GUIDELINES

Effective immediately, the following design guidelines shall apply to any new land use applications for the construction, reconfiguration, or addition to cell phone tower infrastructure, antennae, and transmission devices within the Town of Mountain Village, as defined by FCC Small Cell Order 18-133.

1. No towers or antennae will be permitted within 600' of any existing or proposed small cell tower or antennae equipment.
2. All small cell equipment and appurtenances shall be housed internally with regard to the pole or alternative tower structure which hosts the small cell antennas.
3. Electric metering structures and/or meters shall not be visible from the exterior of the pole or alternative tower structure which hosts the small cell antennas where the pole or alternative tower structure is located in Town right-of-way. This requirement may be wholly or partially waived by the Public Works Director where it is technically infeasible to place all or part of a meter internally.
4. Freestanding antennas, and/or any supporting equipment shall not exceed thirty feet (30') in height.
5. Antennas mounted to a structure or building shall not be more than ten percent (10%) higher than the actual, as-built building or structure height to which such antenna is mounted.
6. Concealment of all small cell equipment and appurtenances shall be required.
7. Any stand-alone small cell facility shall not block windows or any building entrances. To the extent possible, poles shall be located at mid-blocks, away from intersections. All poles shall be located so as to ensure proper sight-triangles.
8. The pole design in the Town right-of-way shall match the color, aesthetics, spacing, and architectural characteristics of existing streetlights installed adjacent to the pole, or in the vicinity.
9. Poles and towers shall incorporate banner arms and luminaries to blend with the existing streetscape. A waiver of this requirement may be granted by the Public Works Director where it is deemed in the best interest of the public to do so.
10. Wireless communications facilities and equipment should not be installed within the dripline of any tree.
11. Any area disturbed during utility construction shall be revegetated and landscaped in accordance with the Landscaping Regulations.
12. Pole caissons should be circular in nature and designed to minimize impact of adjacent and future utilities. Concrete must follow the latest Colorado Department of Transportation (CDOT) Road & Bridge Specification for applicable design. All designs must be stamped and signed by a registered Professional Engineer in the State of Colorado.
13. The Town of Mountain Village prefers co-location of facilities and the location of facilities on existing infrastructure, such as Town-owned light poles, with the written approval of the Public Works Director.
14. Any pole/structure needs to be at least 35' from the outside edge of the designated gondola haul rope corridors.
15. The Town of Mountain Village reserves the right to remove and relocate infrastructure if necessary, or if alternative methods become available.
16. Reclamation and Abandonment. Notwithstanding the foregoing, any communication antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of the antenna shall remove the same within ninety (90) calendar days of the issue date of the notice to remove the antenna.