

## CHAPTER 17.56

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## CHAPTER 17.56

### WIRELESS COMMUNICATIONS STRUCTURES

#### **17.56.010 DEFINITIONS**

- A. PCS (Personal Communications Services). An advanced form of radiotelephone services, capable of transmitting and receiving voice, data, text and video messaging.
- B. Personal Wireless Communication Facility. An un-staffed facility for the transmission or reception of radio frequency, microwave or other signals for personal communication purposes, typically consisting of an equipment enclosure and antennae, receivers, relays and other transmission devices. This definition excludes public government and amateur radio antennae and towers.
- C. Support Structures for Personal Wireless Communication Facilities. Towers, lattice frames, poles, base platforms and other structures upon which personal wireless communication facilities are located or supported.

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#### **17.56.020 INTENT**

It is the duty of the City to protect the public health, safety and welfare of all residents. The City has authority to regulate the placement, construction and modification of wireless facilities in the advancement of that duty.

The City recognizes the need to respond to the policies in the Telecommunications Act of 1996 and has constructed its regulations to ensure adequate provision of wireless communications services while respecting and protecting the character of its historic, residential, and commercial neighborhoods.

The purpose of this Chapter is to:

- A. Reduce visual and other impacts of wireless facilities by establishing standards for the location, co-location, and design compatibility of support structures for personal wireless service equipment; and
- B. Support the ability of personal wireless service providers to deliver services in the City in a manner consistent with adopted goals and objectives for community development; and
- C. Provide for the orderly and timely removal of structures that are no longer used to support personal wireless communications facilities.

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**17.56.030     **APPLICABILITY****

The provisions of this Chapter apply in all zoning districts for all structures constructed or erected for the purpose of supporting personal wireless service facilities. Such structures include, but are not limited to, towers, guy wires and base platforms capable of supporting antennae, receivers, relays and other associated transmission devices utilized for purposes of personal wireless communication. Support structures utilized exclusively for public safety and other FCC licensed transmissions and broadcasts are not covered by this Chapter.

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**17.56.040     **DEVELOPMENT STANDARDS****

**A.     Permitted Locations**

Support structures for personal wireless communications facilities that are operating and licensed at the time of passage of this ordinance are deemed legal and conforming with this ordinance for purposes of zoning compliance. New support structures for personal wireless service facilities shall be:

1.     Co-located on telecommunications support structures already in existence at the time of adoption of this Chapter; or
2.     Located on buildings or other structures not constructed or erected for the primary purpose of supporting wireless or other communications facilities, providing height limitations of the applicable zoning district are not exceeded; or
3.     Located in Municipal Zoning Districts Industrial Manufacturing/Industrial District; or
4.     Located in C-1, C-2, C-3, M-1, M-2 and PBP districts, providing the height of the support structure does not exceed thirty feet (30') or the height of existing utility and telephone poles within three hundred feet (300') of the proposed site; or
5.     Comply with standards set by the Ridgeline and Viewshed map.

**B.     Historic Districts**

Any proposed development located inside of, or within three hundred feet (300') of, a designated Historic District, shall be reviewed by the Administrative Official and the Historic Preservation Committee for consistency with any design standards established for that District. Certificates of Appropriateness are required for the construction or erection of all wireless communications support structures and facilities proposed in or within three hundred feet (300) of historic districts.

C. Height Limitations

Support structures for personal wireless communication facilities that are located on buildings or other edifices and monuments may not exceed a height of ten feet (10), from the highest point on the building.

D. Removal

Any wireless communications support structures that are not utilized for the provision of wireless services for a continuous period of six months shall be considered abandoned. All abandoned facilities and support structures shall be removed within six months of the cessation of operations. If a support structure and personal wireless communication facility is not removed within six months, the City shall remove the facility at the business facility or land owner's expense. Where multiple users share a support structure, the non-operational antennae and associated ground mounted equipment shall be removed if no public safety endangerment would occur but any common equipment may be retained until all users have terminated the utilization of the support structure.

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**17.56.050 SUBMITTAL REQUIREMENTS**

A Zoning Compliance Permit shall be obtained from the Administrative Official prior to construction or erection of any wireless telecommunications support structure. Any applicant with FCC license approval may submit a site plan to the Administrative Official for zoning compliance review.

A request for a Zoning Compliance Permit shall include:

- A. An application containing ownership, applicant's representative or contact, easement, lease terms, FCC license approval and other information necessary for permit processing; and
- B. A site plan drawn to scale showing the following:
  - 1. North point;
  - 2. Legal description of the site;
  - 3. Boundaries, easements and ownerships as set forth in the legal description;
  - 4. Topography at appropriate contour intervals;
  - 5. Existing structures and improvements;

6. Location of existing vegetation including trees over ten (10) inches in diameter that might be impacted by the proposal, watercourses, other natural features and areas of slope greater than twenty-five percent (25%);
7. Areas of vegetation and landscaping to be added, retained, replaced, or removed;
8. Proposed improvements, if any;
9. Utilities;
10. All adjacent streets and rights-of-way;
11. Elevation drawings and/or photographs of all existing and proposed structures;
12. A statement by a licensed professional engineer shall be provided demonstrating that the proposed facility complies with FCC standards for radio emissions, and for all applicable local, state, or federal building codes.

C. Additionally, applicants must provide the following written information:

1. A detailed explanation of how the support structure and its wireless telecommunications facilities will be maintained and how the maintenance and operations of the structure and facilities will be transferred to a third party in the event the applicant ceases to retain ownership. Unless otherwise approved by the City, the responsibility of maintenance and operations shall transfer to the owner of the underlying property; and
2. An explanation of how the applicant will provide a financial security for the removal of the support structure in the event that it no longer serve telecommunications carriers or service providers. The financial guarantee shall be one hundred fifty percent (150%) of the estimated cost of facility removal and must be acceptable to the City; and
3. A weed control program for the site has been submitted for approval to the Beaverhead County Weed Board. A noxious weed management plan shall be approved for each site by the Beaverhead County Weed Board prior to the final approval of the application by the Zoning Commission; and
4. The first application for a proposed communication facility by a provider shall include a detailed inventory of all the provider's existing and approved facilities within Beaverhead County, and all incorporated areas within the County; and
5. An explanation as to why one or more exceptions listed in DMC 17.56.060 apply; and

6. A vicinity map showing adjacent properties and land uses within one thousand (1000) feet of the proposed antenna site; and
7. Elevation drawings of the proposed facility showing all antennas, towers, structures, equipment buildings and cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. Specific colors and materials shall be noted; and
8. Photo-realistic renderings of before and after construction will be required of the site from a specific vantage point demonstrating the true impact of the antenna on the surrounding visual environment; and
9. A report describing the facility and the technical, economic, and other reasons for its design and location, the need for the facility and its role in the overall network; and describing the capacity of the structure, including the number and type of antennas it can accommodate; and
10. A statement from the applicant verifying that the request has been submitted to the Montana Aeronautics Division for a formal response; and
11. A letter of intent to allow co-location on the antenna tower as proposed, if the communication facility is taller than sixty (60) feet in height.

D. Permit fees as required; and

E. Adequate review of applications may require the City to retain consultants or other third party assistance to review an application. In such event the applicant shall reimburse the City for the reasonable actual costs incurred by the City for retention of consultants or other third parties prior to issuance of a building or zoning compliance permit.

Enc Ord 433 December 5, 2012, Revised Ord 448 October 11, 2016

### **17.56.060      EXCEPTIONS**

In the event that standards of this Chapter cannot be met by an applicant, and there exists no feasible alternative to providing adequate service by any provider for a particular geographic area, the applicant may apply to the Zoning Commission for zoning compliance as a Conditional Use under Chapter 17.32. The Zoning Commission shall make a written report supporting its decision, which shall be based on consideration of the criteria listed in Chapter 17.36 and the following:

- A. Wireless telecommunications services by any provider are not available within a specific geographic area, and cannot be made available unless a new support structure is built or erected in a manner or location contrary to the standards of this Chapter; and
- B. Location on buildings or other structures is not possible because:

1. No existing or proposed structures adequate to support the proposed antennae are located within the geographic area required to meet the applicant's engineering and service requirements; or
2. Property owners or owners of existing structures for smaller scale installations are unwilling to accommodate the applicant's needs; or
3. The applicant demonstrates that there are other factual and verifiable limiting factors that render rooftops and other sites or monuments unsuitable for location of structural supports; and

C. Co-location on existing support structures is not possible because:

1. Existing or approved support structures are not of sufficient height to meet the applicant's engineering and service requirements and a combination of smaller scale facilities will not enable adequate service delivery; or
2. Existing or approved support structures do not have sufficient structural strength to support the proposed antennae and related equipment and cannot be reinforced to provide sufficient structural strength; or
3. The proposed antenna would cause electromagnetic interference with antennae on existing or approved support structures, or the antennae on existing or approved support structures would cause interference with the proposed antenna; or
4. The applicant demonstrates that there are other factual and verifiable limiting factors that render existing or approved structural supports for wireless facilities unsuitable for co-location.

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