

SPONSORED BY: MAYOR DOWNING


COUNCILMAN'S RESOLUTION

NO. CB-1873  
Series of 2016

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN,  
COLORADO, THAT:

A PUBLIC HEARING WILL BE HELD ON CB-1873, SERIES OF 2016, ENTITLED "A BILL FOR AN ORDINANCE AMENDING THE NORTHGLENN MUNICIPAL CODE CONCERNING MODIFICATIONS TO EXISTING WIRELESS TELECOMMUNICATIONS FACILITIES" SEPTEMBER 26, 2016 AT 7:00 P.M., CITY HALL COUNCIL CHAMBERS, 11701 COMMUNITY CENTER DRIVE, NORTHGLENN.

DATED this 12<sup>th</sup> day of September, 2016.

  
CAROL DODGE  
Mayor Pro Tem

ATTEST:

  
JOHANNA SMALL, CMC  
City Clerk

AFFIDAVIT OF POSTING:

I, Johanna Small, certify that CB-1873 was posted at the authorized posting places in the City of Northglenn this 15<sup>th</sup> day of September, 2016.

  
City Clerk's Office

**PLANNING & DEVELOPMENT MEMORANDUM**  
**MEMORANDUM #16-20**

**DATE:** September 12, 2016  
**TO:** Honorable Mayor Joyce Downing and City Council Members  
**FROM:** James A. Hayes, AICP, City Manager *JH*  
Brook Svoboda, Director of Planning and Development *BS*  
Becky Smith, City Planner *BS*  
**SUBJECT:** CB-1873 Commercial Mobile Service ("CMRS") Regulations

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**BACKGROUND:**

The two proposed revisions to the Commercial Mobile Radio Service ("CMRS") Facility Regulations are to address recent developments regarding these facilities. The first proposed revision is triggered by the recent Middle Class Tax Relief and Job Creation Act of 2012 (more commonly known as the "Spectrum Act"), which contains provisions governing a local government's review of land use applications relating to wireless communications towers or base stations. The second proposed amendment addresses height limitations in Public Rights-of-Way.

**ORDINANCE OVERVIEW:**

Attached to this memo is the proposed CMRS ordinance update. As mentioned in the background, the update addresses the Spectrum Act and height limitations in Public Rights-of-Way. A general overview of these amendments are as follows:

- Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") prohibits the City from denying land use applications that would not substantially change the physical dimensions of certain CMRS facilities, and restricts the review process for an application for the modification of certain CMRS facilities. The first set of proposed amendments to the CMRS regulations provides compliance with Section 6409(a) of the Spectrum Act.
- The CMRS regulations do not currently regulate tower or antenna height in the public rights-of-way. The proposed amendments would limit the height for CMRS facilities located on property owned by the City or in any right-of-way to a maximum of forty (40) feet. Adding this to the regulations through legislative action enables the City to exercise "police power" limiting the height of towers or antennas that can be within public rights-of-way, thereby allowing the City to deny applications that propose to exceed this height.

**PROCESS:**

As required by the City's ordinance (11-37-2), the Planning Commission must hear and provide a recommendation to the City Council any change to Chapter 11 of the Municipal Code. Included is the Planning Commission Resolution 16-06 (Attachment A) from the September 6, 2016 Public Hearing.

**RECOMMENDATION:**

Staff recommends that the City Council attached ordinance as submitted.

**STAFF REFERENCE:**

Brook Svoboda, Director of Planning and Development	<a href="mailto:bsvoboda@northglenn.org">bsvoboda@northglenn.org</a>	303.450.8937
Becky Smith, Senior Planner	<a href="mailto:bsmith@northglenn.org">bsmith@northglenn.org</a>	303.450.8741

**ATTACHMENTS**

ATTACHMENT A Planning Commission Resolution 16-06

**ATTACHMENT A**

**RESOLUTION 2016-06  
NORTHGLENN PLANNING COMMISSION**

**A RESOLUTION RECOMMENDING AN ORDINANCE TO AMEND THE  
NORTHGLENN MUNICIPAL CODE CONCERNING MODIFICATIONS TO  
EXISTING WIRELESS TELECOMMUNICATIONS FACILITIES.**

WHEREAS, Article 55 of Chapter 11 of the Municipal Code of the City of Northglenn governs Commercial Mobile Radio Service ("CMRS") facilities;

WHEREAS, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") prohibits the City from denying land use applications that would not substantially change the physical dimensions of certain CMRS facilities, and restricts the review process for an application for the modification of certain CMRS facilities;

WHEREAS, the Planning Commission desires to amend the Code to comply with Section 6409(a) of the Spectrum Act; and

WHEREAS, the Planning Commission further desires to clarify the height limitations of CMRS facilities located in public rights-of-ways.

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Planning Commission hereby recommends, to the City Council, approval of the amendments to Section 11 Article 55 of the Northglenn Ordinance regulating Commercial Mobile Radio Service Facilities.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Sonia Di Carlo  
Planning Commission Chair

ATTEST:

\_\_\_\_\_  
Rebecca M Smith  
Secretary

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1873  
Series of 2016

\_\_\_\_\_  
Series of 2016

A BILL FOR AN ORDINANCE AMENDING THE NORTHGLENN MUNICIPAL CODE CONCERNING MODIFICATIONS TO EXISTING WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, Article 55 of Chapter 11 of the Municipal Code of the City of Northglenn governs Commercial Mobile Radio Service ("CMRS") facilities;

WHEREAS, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") prohibits the City from denying land use applications that would not substantially change the physical dimensions of certain CMRS facilities, and restricts the review process for an application for the modification of certain CMRS facilities;

WHEREAS, the City Council desires to amend the Code to comply with Section 6409(a) of the Spectrum Act; and

WHEREAS, the City Council further desires to clarify the height limitations of CMRS facilities located in public rights-of-ways.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Section 11-55-2 of the Municipal Code of the City of Northglenn is hereby amended by the addition of the following new definitions, to be inserted alphabetically:

Definitions.

**Base station:** a structure or equipment, other than a tower, at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes any equipment associated with wireless communications services, including 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). The term includes any structure, other than a tower, to which any of the equipment described hereof is attached.

**Eligible telecommunications facility request:** a request for a land use approval for the modification of an existing tower or base station that involves the collocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

**Public right-of-way:** all roads, streets and alleys and all other dedicated rights-of-way, access and utility easements of the City, the state, or any district, utility or railroad.

**Tower:** a structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Section 2. The definition of "substantial change" in Section 11-55-2 of the Municipal Code of the City of Northglenn is hereby amended as follows:

(i) **Substantial change:** ~~a type of CMRS facility modification that occurs if:~~

~~(1) The mounting of a proposed antenna on a CMRS facility would increase the existing height of the CMRS facility by more than ten percent (10%), or by the height of one (1) additional array with separation from the nearest existing antenna not to exceed twenty feet (20'), whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth herein if necessary to avoid interference with existing antennas; or~~

~~(2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment storage cabinets for the technology involved, not to exceed four (4), or more than one (1) new equipment storage shelter; or~~

~~(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the CMRS facility that would protrude from the edge of the facility more than twenty feet (20'), or more than the width of the CMRS facility structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via a cable; or~~

~~(4) The mounting of the proposed antenna would involve excavation outside the CMRS facility site, defined as the current boundaries of the leased or owned property surrounding the CMRS facility and any access or utility easements currently related to the site.~~

(K) **SUBSTANTIAL CHANGE:** A MODIFICATION TO AN EXISTING TOWER OR BASE STATION UNDER THE FOLLOWING CIRCUMSTANCES:

(1) A SUBSTANTIAL CHANGE IN THE HEIGHT OF AN EXISTING TOWER OR BASE STATION OCCURS AS FOLLOWS:

- A. FOR A TOWER OUTSIDE OF A PUBLIC RIGHT-OF-WAY, WHEN THE HEIGHT OF THE TOWER IS INCREASED BY MORE THAN TEN PERCENT (10%), OR BY THE HEIGHT OF ONE (1) ADDITIONAL ANTENNA ARRAY WITH SEPARATION FROM THE NEAREST EXISTING ANTENNA NOT TO EXCEED TWENTY (20) FEET, WHICHEVER IS GREATER.
  - B. FOR A TOWER LOCATED IN A PUBLIC RIGHT-OF-WAY OR FOR A BASE STATION, WHEN THE HEIGHT OF THE STRUCTURE INCREASES BY MORE THAN TEN PERCENT (10%) OR BY MORE THAN TEN (10) FEET, WHICHEVER IS GREATER.
- (2) CHANGES IN HEIGHT ARE MEASURED AS FOLLOWS:
- A. WHEN DEPLOYMENTS ARE SEPARATED HORIZONTALLY, CHANGES IN HEIGHT SHALL BE MEASURED FROM THE ORIGINAL SUPPORT STRUCTURE, NOT FROM THE HEIGHT OF ANY EXISTING TELECOMMUNICATIONS EQUIPMENT.
  - B. WHEN DEPLOYMENTS ARE SEPARATED VERTICALLY, CHANGES IN HEIGHT SHALL BE MEASURED FROM THE HEIGHT OF THE TOWER OR BASE STATION, INCLUDING ANY APPURTENANCES, AS THE TOWER OR BASE STATION EXISTED ON FEBRUARY 22, 2012.
- (3) A SUBSTANTIAL CHANGE IN THE WIDTH OF AN EXISTING TOWER OR BASE STATION OCCURS AS FOLLOWS:
- A. FOR A TOWER OUTSIDE OF PUBLIC RIGHTS-OF-WAY, WHEN THE ADDITION OF AN APPURTENANCE TO THE BODY OF THE TOWER PROTRUDES FROM THE EDGE OF THE TOWER MORE THAN TWENTY (20) FEET, OR MORE THAN THE WIDTH OF THE TOWER STRUCTURE AT THE LEVEL OF THE APPURTENANCE, WHICHEVER IS GREATER.
  - B. FOR A TOWER IN A PUBLIC RIGHT-OF-WAY OR A BASE STATION, WHEN THE ADDITION OF AN APPURTENANCE TO THE BODY OF THE STRUCTURE WOULD PROTRUDE FROM THE EDGE OF THE STRUCTURE BY MORE THAN SIX (6) FEET.
- (4) A SUBSTANTIAL CHANGE ALSO OCCURS FOR AN EXISTING TOWER IN A PUBLIC RIGHT-OF-WAY OR AN EXISTING BASE STATION AS FOLLOWS:
- A. WHEN THE CHANGE INVOLVES THE INSTALLATION OF ANY NEW EQUIPMENT CABINETS ON THE GROUND, IF NO GROUND CABINETS PRESENTLY EXIST, OR

- B. WHEN THE CHANGE INVOLVES THE INSTALLATION OF GROUND CABINETS THAT ARE MORE THAN TEN PERCENT (10%) LARGER IN HEIGHT OR OVERALL VOLUME THAN ANY EXISTING GROUND CABINETS.
- (5) A SUBSTANTIAL CHANGE ALSO OCCURS FOR ANY EXISTING TOWER OR BASE STATION WHEN ANY OF THE FOLLOWING ARE FOUND:
- A. WHEN THE CHANGE INVOLVES INSTALLATION OF MORE THAN THE STANDARD NUMBER OF NEW EQUIPMENT CABINETS FOR THE TECHNOLOGY INVOLVED, OR MORE THAN FOUR (4) NEW CABINETS, WHICHEVER IS LESS.
  - B. WHEN THE CHANGE ENTAILS ANY EXCAVATION OR DEPLOYMENT OUTSIDE THE CURRENT SITE.
  - C. WHEN THE CHANGE WOULD DEFEAT THE CONCEALMENT ELEMENTS OF THE ELIGIBLE SUPPORT STRUCTURE.
  - D. WHEN THE CHANGE DOES NOT COMPLY WITH CONDITIONS ASSOCIATED WITH THE ORIGINAL SITING APPROVAL OF THE CONSTRUCTION OR MODIFICATION OF THE TOWER, BASE STATION OR BASE STATION EQUIPMENT. THIS LIMITATION DOES NOT APPLY IF THE NON-COMPLIANCE IS DUE TO AN INCREASE IN HEIGHT, INCREASE IN WIDTH, ADDITION OF CABINETS, OR NEW EXCAVATION THAT WOULD NOT EXCEED THE THRESHOLDS IDENTIFIED IN SUBSECTIONS (1) THROUGH (5)(B), HEREOF.

Section 3. Section 11-55-7 of the Municipal Code of the City of Northglenn is hereby amended to read as follows:

**Section 11-55-7. Application and Approval Procedures.**

\* \* \*

- (B) EXCEPT WITH RESPECT TO AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST THAT MUST BE APPROVED PURSUANT TO SUBSECTION (G) HEREOF, an application for approval of a proposed CMRS facility shall include all information regularly required by the Community Development Department for other development applications, in addition to the following:

\* \* \*

- (g) ~~Modifications to CMRS facilities~~ ELIGIBLE TELECOMMUNICATIONS FACILITY REQUESTS.

- (1) Any modification to a CMRS facility that differs from the original design that was approved by the City shall require new application and approval. Notwithstanding the foregoing, the City may, in its sole discretion, waive or postpone the submittal of any application requirement detailed in this Section when considering a modification request.
- (2) ~~Any request for modification that does not substantially change the dimensions of an existing CMRS facility shall be approved by the City.~~
- (3) ~~Any application for a modification to a CMRS facility shall be reviewed by the City within thirty (30) days of the City's receipt of the completed modification application.~~

(2) APPLICATION MATERIALS.

- A. AN APPLICANT FOR AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST SHALL BE REQUIRED TO SUBMIT ONLY SUCH DOCUMENTATION AND INFORMATION AS IS REASONABLY NECESSARY TO DETERMINE WHETHER A PROPOSED MODIFICATION WOULD SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF AN ELIGIBLE TOWER OR BASE STATION.
- B. THE CITY SHALL MAKE AVAILABLE AN APPLICATION FORM WHICH SHALL BE LIMITED TO THE INFORMATION NECESSARY FOR THE CITY TO CONSIDER WHETHER AN APPLICATION WOULD SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF AN ELIGIBLE TOWER OR BASE STATION. THE APPLICATION FORM MAY NOT REQUIRE THE APPLICANT TO DEMONSTRATE A NEED OR BUSINESS CASE FOR THE PROPOSED MODIFICATION OR COLLOCATION.

(3) INCOMPLETE APPLICATIONS.

- A. WHEN AN APPLICATION IS INCOMPLETE, THE CITY SHALL PROVIDE WRITTEN NOTICE TO THE APPLICANT WITHIN THIRTY (30) DAYS, SPECIFICALLY IDENTIFYING ALL MISSING DOCUMENTS OR INFORMATION.
- B. IF AN APPLICATION REMAINS INCOMPLETE AFTER A SUPPLEMENTAL SUBMISSION, THE CITY SHALL NOTIFY THE APPLICANT WITHIN TEN (10) DAYS. SECOND OR SUBSEQUENT NOTICES OF INCOMPLETENESS MAY NOT REQUIRE THE PRODUCTION OF DOCUMENTS OR INFORMATION THAT WERE NOT REQUESTED IN THE ORIGINAL NOTICE OF INCOMPLETENESS.

(4) EXPEDITED REVIEW.

- A. AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST SHALL BE APPROVED OR DENIED BY THE CITY WITHIN SIXTY (60) DAYS



OF THE DATE OF THE CITY'S RECEIPT OF THE COMPLETED APPLICATION. THIS TIME PERIOD MAY BE TOLLED ONLY BY MUTUAL AGREEMENT OR WHERE AN APPLICATION IS INCOMPLETE.

B. IF THE CITY FAILS TO APPROVE OR DENY AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST WITHIN THE TIME FRAME FOR REVIEW (ACCOUNTING FOR ANY TOLLING), THE REQUEST SHALL BE DEEMED GRANTED; PROVIDED THAT THIS AUTOMATIC APPROVAL SHALL BECOME EFFECTIVE ONLY UPON THE CITY'S RECEIPT OF WRITTEN NOTIFICATION FROM THE APPLICANT AFTER THE REVIEW PERIOD HAS EXPIRED (ACCOUNTING FOR ANY TOLLING) INDICATING THAT THE APPLICATION HAS BEEN DEEMED GRANTED.

(5) REVIEW.

A. THE DIRECTOR OF COMMUNITY DEVELOPMENT OR COMMISSION SHALL REVIEW THE APPLICATION TO DETERMINE WHETHER THE APPLICATION QUALIFIES AS AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST.

B. APPROVAL.

1. THE CITY SHALL APPROVE AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST THAT DOES NOT SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF A TOWER OR BASE STATION.

2. THE CITY MAY APPROVE AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST THAT SUBSTANTIALLY CHANGES THE PHYSICAL DIMENSIONS OF A TOWER OR BASE STATION IF IT COMPLIES WITH THE REMAINDER OF THIS CODE.

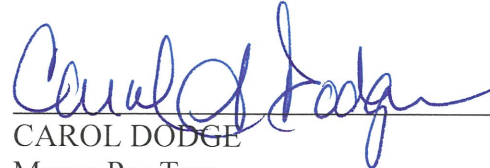
3. THE CITY MAY CONDITION THE APPROVAL OF ANY ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST ON COMPLIANCE WITH GENERALLY APPLICABLE BUILDING, STRUCTURAL, ELECTRICAL, AND SAFETY CODES OR WITH OTHER LAWS CODIFYING OBJECTIVE STANDARDS REASONABLY RELATED TO HEALTH AND SAFETY.

C. DENIAL. A FINAL DECISION BY THE CITY TO DENY AN ELIGIBLE TELECOMMUNICATIONS FACILITY REQUEST UNDER THIS SECTION SHALL BE IN WRITING AND SHALL INCLUDE THE REASON(S) FOR DENIAL.

Section 3. Section 11-55-3 of the Northglenn Municipal Code is amended by the addition of the following new subsection (e):

(e) HEIGHT LIMIT. IN NO CASE SHALL A CMRS FACILITY LOCATED ON PROPERTY OWNED BY THE CITY OR IN ANY PUBLIC RIGHT-OF-WAY EXCEED FORTY (40) FEET IN HEIGHT.

INTRODUCED, READ AND ORDERED POSTED this 12<sup>th</sup> day of September, 2016.

  
CAROL DODGE  
Mayor Pro Tem

ATTEST:

  
JOHANNA SMALL, CMC  
City Clerk


PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

  
COREY Y. HOFFMANN  
City Attorney