



Memorandum

To: Planning and Environmental Commission

From: Community Development Department

Date: March 26, 2018

Subject: A request for a recommendation to the Vail Town Council for a prescribed regulations amendment pursuant to Section 12-3-7 Amendment, Vail Town Code, to amend Title 12 of the Vail Town Code to add a new Chapter 27, Wireless Service Facilities, and setting forth details in regard thereto. (PEC18-0010)

Applicant: Town of Vail
Planner: Justin Lightfield

I. SUMMARY

The applicant, the Town of Vail, requests the review of a prescribed regulations amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Title 12 of the Vail Town Code to add a new Chapter 27, Wireless Service Facilities, and setting forth details in regard thereto.

The Planning and Environmental Commission's role in the review of the Code language is to make a recommendation on the language that should be incorporated into the Town Code to allow for an implementable Wireless Service Facilities section. The final determination will be made by Town Council.

Based upon staff's review of the criteria outlined in Section V of this memorandum and the evidence and testimony presented, the Community Development Department recommends the Planning and Environmental Commission forward a **recommendation of approval** to the Vail Town Council for the proposed prescribed regulations amendment, subject to the findings noted in Section VI of this memorandum.

II. DESCRIPTION OF REQUEST

In order to implement the regulations and to align the Vail Town Code with state and federal requirements, the Town Council has requested the adoption of a new chapter within Title 12 of the Vail Town Code. The proposed request is to amend Title 12 of the Vail Town Code by adding a new Chapter 27, Wireless Service Facilities. The proposed ordinance is not a change in policy, but is required in order to ensure that the Town's

regulations are consistent with state and federal law, including the Telecommunications Act of 1996, the Spectrum Act, and House Bill 17-1193.

III. BACKGROUND

The purpose of the Wireless Service Facilities Ordinance is to align the Vail Town Code with state and federal requirements. These regulations will continue to allow the location of wireless service facilities in the Town while protecting the public health, safety, and general welfare of the community. These regulations will also require the Town to continue to act on applications for the location of wireless service facilities within a reasonable time, will continue to encourage co-location of wireless service facilities, and will continue to prevent unreasonable discrimination among providers of functionally equivalent services.

The Town of Vail Community Development Department worked with Town Attorney to develop a comprehensive ordinance in conjunction with the most recent state and federal regulations, which are summarized below.

The Telecommunications Act of 1996 (Federal)

In accordance with the Telecommunications Act of 1996 (the “Act”), local governments are authorized to regulate the placement, construction and modification of personal wireless service facilities, provided that any such regulation does not unreasonably discriminate among providers of functionally equivalent services, or prohibit, or have the effect of prohibiting the provisions of personal wireless services.

The Spectrum Act (Federal)

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (commonly referred to as the “Spectrum Act”), requires a local government to approve any eligible request for a modification of an existing wireless tower or base station that does not “substantially change” the physical dimensions of such tower or base station. Section 6409 also imposes new rules on a local government’s review of applications for the modification of existing towers and base stations. Section 6409 does not apply to applications for new towers or base stations, but rather, modifications of existing towers and base stations.

House Bill 17-1193 (State)

The Colorado General Assembly passed House Bill 17-1193, which also provides certain mandatory procedural requirements and regulations for installation of small cell facilities within public rights-of-way. HB 17-1193 provides that telecommunications provider has the right to locate or collocate small cell facilities and small cell networks on local government entity’s light poles, traffic signals, or utility poles in rights-of-way owned by local government, subject applicable law. HB 17-1193 clarifies that the expedited permitting process established for broadband facilities applies to small cell facilities and small cell networks.

IV. APPLICABLE PLANNING DOCUMENTS

Title 12 – Zoning Regulations, Vail Town Code

Section 3-7 Amendment (in part)

A. Prescription: The regulations prescribed in this title and the boundaries of the zone districts shown on the official zoning map may be amended, or repealed by the town council in accordance with the procedures prescribed in this chapter.

B. Initiation:

1. An amendment of the regulations of this title or a change in zone district boundaries may be initiated by the town council on its own motion, by the planning and environmental commission on its own motion, by petition of any resident or property owner in the town, or by the administrator.

2. A petition for amendment of the regulations or a change in zone district boundaries shall be filed on a form to be prescribed by the administrator. The petition shall include a summary of the proposed revision of the regulations, or a complete description of proposed changes in zone district boundaries and a map indicating the existing and proposed zone district boundaries. If the petition is for a change in zone district boundaries, the petition shall include a list of the owners of all properties within the boundaries of the area to be rezoned or changed, and the property adjacent thereto. The owners' list shall include the names of all owners, their mailing and street addresses, and the legal description of the property owned by each. Accompanying the list shall be stamped, addressed envelopes to each owner to be used for the mailing of the notice of hearing. The petition also shall include such additional information as prescribed by the administrator.

V. CRITERIA FOR REVIEW

Section 12-3-7(C)(2) of the Zoning Regulations identifies the criteria that the Planning and Environmental Commission must consider before making a recommendation for a change to the text of the code. These criteria include the following:

1. The extent to which the text amendment furthers the general and specific purposes of the zoning regulations; and

Staff finds the prescribed regulations amendment furthers the general and specific purposes of the zoning regulations by allowing the location of wireless service facilities in the Town while protecting the public health, safety, and general welfare of the community. Additionally, the prescribed regulations amendment encourages co-location of wireless service facilities, thereby maintaining the Town's established

appearance. This amendment meets the following purposes of the zoning regulations:

12-1-2 A

General: These regulations are enacted for the purpose of promoting the health, safety, morals, and general welfare of the town, and to promote the coordinated and harmonious development of the town in a manner that will conserve and enhance its natural environment and its established character as a resort and residential community of high quality.

12-1-2 B

- 5. To conserve and maintain established community qualities and economic values.*
- 8. To safeguard and enhance the appearance of the town.*

Staff finds that this criterion has been met.

- 2. The extent to which the text amendment would better implement and better achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and**

Staff finds that the proposed prescribed regulations amendment will better implement or achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail Comprehensive Plan. Specifically in the Vail Land Use Plan's adopted Goals and Policies, staff identified the following applicable statement:

1. General Growth / Development

- 1.1. Vail should continue to grow in a controlled environment, maintaining a balance between residential, commercial and recreational uses to serve both the visitor and the permanent resident.*

Additionally, in the Vail 20/20 Strategic Action Plan, staff identified the following applicable statement:

Goal #3: *Ensure fairness and consistency in the development review process.*

Staff finds that this criterion has been met.

- 3. The text amendment demonstrates how conditions have substantially changed since the adoption of the subject regulation and how the existing regulation is no longer appropriate or is inapplicable; and**

Staff believes that while existing regulations are still appropriate and applicable, the prescribed regulations amendment will further codify existing process and regulations with state and federal laws, including the Act, Section 6409 and House Bill 17-1193.

Staff finds that this criterion has been met.

4. The extent to which the text amendment provides a harmonious, convenient, workable relationship among land use regulations consistent with municipal development objectives; and

The proposed language ensures the Town is in compliance with state and federal laws. Staff believes this amendment will ensure a harmonious, convenient, workable relationship among land use regulations consistent with the Town's development objectives. Specifically, the prescribed regulations amendment encourages the Town to continue the co-location of wireless service facilities and prevents unreasonable discrimination among the providers of functionally equivalent services.

Staff finds that this criterion has been met.

5. Such other factors and criteria the planning and environmental commission and/or council deem applicable to the proposed text amendment.

VI. STAFF RECOMMENDATION

The Community Development Department recommends the Planning and Environmental Commission forward a **recommendation of approval** for the prescribed regulations amendment to the Vail Town Council. This recommendation is based upon the review of the criteria outlined in Section V of this memorandum and the evidence and testimony presented.

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed prescribed regulations amendment, the Community Development Department recommends the Commission pass the following **motion**:

"The Planning and Environmental Commission forwards a recommendation of approval to the Vail Town Council for a prescribed regulation amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Title 12 of the Vail Town Code to add a new Chapter 27, Wireless Service Facilities, and setting forth details in regard thereto."

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed prescribed regulation amendment, the Community Development Department recommends the Commission makes the following **findings**:

“Based upon a review of Section V of the March 26, 2018 staff memorandum to the Planning and Environmental Commission, and the evidence and testimony presented, the Planning and Environmental Commission finds:

- 1. That the amendment is consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail Comprehensive Plan and is compatible with the development objectives of the Town; and*
- 2. That the amendment furthers the general and specific purposes of the Zoning Regulations outlined in Section 12-1-2, Purpose, Vail Town Code; and*
- 3. That the amendment promotes the health, safety, morals, and general welfare of the Town and promotes the coordinated and harmonious development of the Town in a manner that conserves and enhances its natural environment and its established character as a resort and residential community of the highest quality.”*

VII. ATTACHMENTS

Attachment A – Ordinance No. 8, Series 2018

Attachment B – Site photos of existing wireless service facilities in the Town of Vail