



Memorandum

To: Vail Town Council

From: Community Development Department
Planning and Environmental Commission

Date: July 3, 2018

Subject: Second Reading of Ordinance No. 8, Series of 2018, an ordinance 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 held a public hearing on the proposed Prescribed Regulations Amendment on March 26, 2018 where a recommendation for approval was forwarded to the Vail Town Council by a vote of 7-0.

On April 3, 2018, the Town Council voted 7-0 to approve Ordinance No. 8 on first reading. Since the April 3, 2018 Town Council meeting, the Town Attorney has worked with industry partners to address predictability, consistency and applicability of criteria and process of small cell facilities. Changes to Ordinance No. 8 since the first reading on April 3, 2018 are highlighted in Attachment B.

Ordinance No. 8, Series 2018 (Attachment A), redlined Ordinance No. 8, Series 2018 (Attachment B), Planning and Environmental Commission Staff Memorandum dated March 26, 2018 (Attachment C), Planning and Environmental Commission meeting minutes dated March 26, 2018 (Attachment D), Town Council meeting minutes dated April 3, 2018 (Attachment E), and site photos of existing wireless service facilities in the Town of Vail (Attachment F) are attached for review.

II. DESCRIPTION OF REQUEST

In order to implement the regulations and to align the Vail Town Code with state and federal requirements, the Town 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 has continued to work with Town Attorney and collaborated with industry partners 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. PLANNING AND ENVIRONMENTAL COMMISSION ACTION

On March 26, 2018, the Planning and Environmental Commission (PEC) voted 7-0 to recommend that the Vail Town Council **approve** Ordinance No. 8, Series of 2018. This recommendation was based upon the review of the criteria outlined in Section V of the March 26, 2018 memorandum to the PEC (Attachment C) and the evidence and testimony presented. Please see the PEC minutes from March 26, 2018 (Attachment D) for additional detail.

V. ACTION REQUESTED OF THE VAIL TOWN COUNCIL

Should the Vail Town Council choose to approve Ordinance No. 8, Series of 2018 upon second reading, the Planning and Environmental Commission recommends the Council passes the following **motion**:

"The Vail Town Council approves, on second reading, Ordinance No. 8, Series of 2018, an ordinance for a Prescribed Regulation Amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Title 12 of the Vail Town Code by the addition of a new Chapter 27 of Title 12, concerning Wireless Service Facilities, and setting forth details in regard thereto."

Should the Vail Town Council choose to approve Ordinance No. 8, Series of 2018 on second reading, the Planning and Environmental Commission recommends the Council makes the following **findings**:

"Based upon the review of the criteria outlined in Section V of the Staff memorandum to the Planning and Environmental Commission dated March 26, 2018 and the evidence and testimony presented, the Vail Town Council 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."*

VI. ATTACHMENTS

- A. Ordinance No. 8, Series 2018
- B. Redlined Ordinance No. 8, Series 2018
- C. Planning and Environmental Commission Staff Memorandum, 03-26-2018
- D. Planning and Environmental Commission Minutes, 03-26-2018
- E. Town Council Meeting Minutes, 04-03-2018
- F. Site photos of existing wireless service facilities in the Town of Vail