

Chapter 11. Supplemental Standards

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24-1101 Wireless Communication Facilities

- a. **Intent.** In order to accommodate the communication need of residents and businesses while protecting the public, health, safety, and general welfare of the community, the City Council finds that these regulations are necessary to:
1. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
 2. Minimize adverse visual effects of WCFs through thoughtful design and siting, camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever possible;
 3. Encourage the location of towers in areas in a manner that minimizes the total number of towers needed throughout the community;
 4. Promote the collocation of WCFs;
 5. Encourage owners and users to locate WCFs in areas where the adverse impact to the community is minimized;
 6. Enhance the ability of wireless communications service providers to provide services to the community quickly, effectively, and efficiently;
 7. Effectively manage the multiple users of the public right-of-way, including limited application of WCFs, and maintain the quality, function and design characteristics that create value in public spaces
 8. Manage amateur radio facilities and over-the-air devices in the City.
- b. **Applicability.** No person, firm or corporation shall construct, establish or build or cause to be constructed, established or built a WCF without first having obtained a site plan or special review permit, a lease (as applicable), pole attachment agreement or license (as applicable), and a building permit for this purpose.
1. *Procedures.* The requirements in this Section shall apply to all WCF applications as specified in Table 24-11-1: WCF Applicability & Process.

Table 24-11-1: WCF Applicability & Process

Type of WCF	Zone District	Process (See Chapter 2)	Timeframe (See 24-1101.b.3.)
Tower	All Zone Districts	Use by Special Review, 24-206	<ul style="list-style-type: none"> ▪ 150 day
Alternative Structures in the ROW	All Zone Districts	Site Plan, 24-207, plus Master License Agreement for ROW	<ul style="list-style-type: none"> ▪ 90 day - major modification; ▪ 150 - new structure/tower

Table 24-11-1: WCF Applicability & Process

<i>Type of WCF</i>	<i>Zone District</i>	<i>Process (See Chapter 2)</i>	<i>Timeframe (See 24-1101.b.3.)</i>
<i>Base Station or Alternative Tower Structure (concealed)</i>	All Zone Districts	Site Plan, 24-207	<ul style="list-style-type: none"> ▪ 90 day - major modification ▪ 150 day - new structure/tower
<i>Small Cell</i>	All Zone Districts	Site Plan, 24-207	<ul style="list-style-type: none"> ▪ 60 day – existing structure ▪ 90 day - new structure
<i>Eligible Facilities Request (EFR)</i>	All zone districts	Administrative Process – EFR Application	<ul style="list-style-type: none"> ▪ 60 day
<i>Equipment Change (same size)</i>	All zone districts	Building Permit	<ul style="list-style-type: none"> ▪ 60 day

2. **Exclusions.** The requirements in this Section shall not apply to:
 - (a) Amateur radio antenna owned and operated by a federally licensed amateur radio station operator or are exclusively receive-only antennas, provided that the height be no more than the distance from the base of the antenna to the property line is met..
 - (b) Antennas used for reception of television, multi-channel video programming and radio such as Over-the-Air Receiving Device (OTARD) antennas, television broadcast band antennas, and broadcast radio antennas, provided that any requirements related to accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.
 - (c) A WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of public necessity by the City. or reasonable ability to obtain such written determination within 72 hours
 - (d) A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.

3. **Timeframe for Decisions.** The applicant shall submit information demonstrating qualification for specific types of applications and procedures in Table 24-11-1.
 - (a) The Director shall make a decision within the timeframes in Table 24-11-1 for any complete application.
 - (b) The timeframe will toll if the Director notifies the applicant of any deficiencies in the application in writing within 30 days of submission, and how to correct the deficiencies.
 - (c) Upon resubmission, the timeframe will continue, unless the Director notifies the applicant of incompleteness within 10 days.
 - (d) At any point, the Director may determine that the application does not qualify under the provisions of this Section for a specific type of application, and notify the applicant. Any determination shall be subject to other applicable timeframes for the request and the Telecommunications Act timeframes and FCC’s rules.
 - (e) Failure of the Director to act within this timeframe shall be deemed approval of the application.

4. **Submittal Requirements.** In addition to submittal requirements for any application authorized under 24-201.a., the following supplemental information is required for WCF applications.
 - (a) Signal non-interference letter;
 - (b) Radio frequency emissions letter;

- (c) Photo simulations showing before and after conditions;
- (d) Map, site inventory or other representation of the applicant's current and proposed WCPs in the city and within 0.5 miles of City, including those it anticipates within the next 3 years. Sites shall be identified by name, address, and general description of the type of facility. This information is to assist the city with planning and coordination possible administrative approvals with other applicants. The applicant may omit any proprietary information.
- (e) Abandonment and removal affidavits from both the property owner and applicant acknowledging responsibility for removal of facilities if abandoned or unused for six months.
- (f) Sufficient information for the Director to determine which process the application is eligible for under 24-1101.b.1.
 - (1) Whether the project constitutes a substantial change to an existing facility.
 - (2) Proof of compliance with generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.
 - (3) The application shall not require the applicant to demonstrate a need or business case for any proposed modification or collocation application

c. Operation & Development Standards.

1. *Federal Requirements.* All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other federal government agency with the authority to regulate WCFs. If the standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with the revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet revised standards and regulations within 30 days of the City's determination of noncompliance shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.
2. *Other City Codes and Requirements.* WCFs shall comply with all other building, electrical, structural and safety codes and requirements of the City; with any other permit or license issued by a local, state, or federal agency with jurisdiction of the WCF; and with any easements, covenants, condition or restrictions applicable to the underlying real property. The property shall be maintained in good working condition according to any conditions or standards of the approval, and be maintained free from trash, debris, litter, graffiti, and other forms of vandalism. Curing deficiency from any of these standards shall be as soon as practicable, but never more than 10 days from notification by the City or after discovery by the owner or operator. The city may address any issues with any facility in the right-of-way and the owner or operator shall be all costs associated with the maintenance within 30 days of receiving and invoice from the City.
3. *Use of Public Right-of-Way or Public Property.* Siting WCFs in the ROW requires a license agreement with the City, granting a non-exclusive license to use the ROW. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure requires written evidence of a license, or other legal right or approval by its owner, to use the structure. The applicant shall remain the owner of, and solely responsible for, any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on public property, the applicant shall execute a lease agreement with the City.
4. *Operation and Maintenance.* The owner of a WCF shall maintain the structural integrity of WCFs in compliance with the standards contained in applicable local building and safety codes. If the City inspects and concludes that a WCF fails to comply with the codes and

constitutes a danger to persons or property, the City shall issue written notice of violations. The owner shall have 30 days from the date of notice to bring the WCF into compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official may extend the compliance period no more than 90 days from the date of notice. If the owner fails to bring such WCF into compliance within this time period, the City may remove the WCF at the owner's expense.

5. *Abandonment and Removal.* An existing WCF that has not been in use for a period of three months requires the owner to notify the City of the non-use and indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of the WCF shall remove the WCF within 30 days of receipt of written notice from the City. If the WCF is not removed within said thirty 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the City, in its sole discretion, may not approve any new WCF application until the applicant who is also the owner or operator of any abandoned WCF has removed the WCF or payment for removal has been made to the City.
6. *Hazardous Materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
7. *Collocation.* No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site. No new towers, excepting small cell facilities in the right-of-way, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the applicant proposes to address with its tower application, and sufficient separation of towers is achieved. Evidence may consist of the following:
 - (a) No existing WCFs with a suitable height are located within the geographic area required to meet the applicant's engineering requirements;
 - (b) Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
 - (c) The applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the applicant's proposed WCF; and
 - (d) The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
8. *Setbacks.* The following minimum setback requirements shall apply to all WCFs, except for alternative tower structures in the right-of-way
 - (a) A tower shall meet the greater of the following minimum setbacks from all property lines:
 - (1) The setback for a principal building within the applicable zoning district; or
 - (2) 25% of the facility height, including WCFs and related accessory equipment;
 - (b) For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one foot for every foot in height

- (c) Towers over 90 feet in height shall not be located within one-quarter mile from any existing tower that is over 90 feet in height, unless the applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

d. **Design Standards.**

1. *General Camouflage and Concealment.* WCFs and transmission equipment shall be designed to blend with the surroundings of the natural setting and built environment, with landscape, materials, colors and textures, screening, underground equipment and other design techniques.
 - (a) WCFs in areas of particular sensitivity (e.g historic property, natural views, or other areas with aesthetic or architectural importance) shall locate facilities away from high visibility locations or use elevated camouflage strategies to minimize the profile.
 - (b) All accessory equipment and antenna shall blend with the natural surroundings and buildings or structures they are mounted on, using similar neutral and non-reflective materials and colors.
 - (c) Alternative tower structures should be used where possible and according to Section 24-1101.d.7.
 - (d) Any WCF shall be sited to minimize visual impacts on residential property, including considering feasible locations that are more remote and considering alternative tower structures. In residential areas WCFs shall be placed:
 - (1) Near common property lines between adjoining residential property, to minimize visual impacts equitably among adjacent and nearby property.
 - (2) For a corner lot, the WCF may be placed adjacent to a common property line near adjoining property or on the corner formed by intersecting streets.
 - (3) Other locations may be considered by the Director if the applicant submits a written statement why these requirements are not feasible from an engineering or design perspective.
2. *Collocation.* WCFs shall be designed and constructed accommodate at least two wireless service providers on the same facility, except where this capacity is not feasible due to engineering and construction justifications, or where it would undermine the intent of this Section, and particularly increase the visibility of facilities.
3. *Lighting.* WCFs shall comply with any FAA lighting requirements. All other lights shall be limited to those common to any alternative tower structure or for security purposes within the equipment yard, on mounted on poles or on buildings below the height of the screen wall or fence.
4. *Noise.* All sites shall comply with the noise requirements of Chapter 9.24 of the Municipal Code. A WCF owner or operator may exceed the noise standards for a reasonable time no more than two hours for repairs, unless a greater time is authorized by the City through the building permit.
5. *Landscape and Screening.*
 - (a) All WCFs, including small cells, shall have buffers screening them from the right-of-way and adjacent property according to Section 24-803.
 - (b) WCFs shall be sited in a manner that does not reduce the landscape area required for other principal uses on the parcel
 - (c) All equipment not located in the right-of-way shall be screened with wall or fence, or enclosed within a building. Fences shall meet the standards of Chapter 6.

- (d) Roof-mounted equipment shall be screened from off-site views by solid screen walls, building parapets or similar enclosures and architectural features..
6. *Alternative Tower Structures.* WCFs may be located on alternative structures or in structures designed to appear as other common elements in the context or landscape, including buildings, trees, public art, clock towers or similar features. The design shall:
- (a) Be consistent with the size, scale and design of other similar features in the area, and be comparable to the size of the actual elements they are replicating.
 - (b) Be sited in a manner that is sensitive to adjacent property and uses, considering the WCF facility and the alternative structure.
7. *Alternative Tower Structures in the Right-of-Way.* Alternative tower structures and associated small cells, or micro cells in the right-of-way shall meet the following requirements, in addition to those in Section 24-1101.d.6:
- (a) Located on existing street light poles, distribution lines, utility poles or traffic signals.
 - (b) Components shall be located on or within the existing pole, or otherwise designed to create no discernable change to the existing structure. Components may be located on a new utility pole where:
 - (1) Utility lines are aerial;
 - (2) No feasible alternative is available on existing poles; and
 - (3) The applicant is authorized to construct the new utility poles.
 - (c) Ground mounted equipment shall be located to address both public safety and aesthetic concerns, be located out of view where possible, and the Community Development Department may require a flush-to-grade underground equipment vault where appropriate and feasible.
 - (d) Be collocated with other WCFs in the right-of-way wherever practical, and the City may require collocations where new locations would place an abnormal or unusual amount of structures and accessory equipment in the right-of-way, beyond what would otherwise occur absent the use of common facilities for WCFs.
 - (e) No WCF shall be placed in a way to compromise any function, create unreasonable interference, or significantly alter the appearance of the right-of-way and other facilities, whether on existing structures or alternative tower structures.
 - (f) Any new alternative structure located in the right of way shall meet the following:
 - (1) Be no more than 5 feet taller than any existing utility or traffic signal pole within 600 feet; or if a new free-standing structure, no taller than 30 feet; or if mounted on an existing pole, no taller than the existing pole.
 - (2) Be no greater than 18 inches in diameter.
 - (3) Be separated from all other WCFs in the right-of-way by at least 600 feet, unless deployed as an existing base station in the right-of-way.
8. *Towers.*
- (a) Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
 - (b) Wherever possible, towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with the surrounding built and natural environment.
 - (c) Monopole support structures shall taper from the base to the tip.
 - (d) All towers, excluding alternative tower structures in the right-of-way, shall be enclosed by security fencing or wall, and equipped with an appropriate anti-climbing device.

- (e) Towers shall be subject to the height restrictions of each zoning district and no more than 30-feet high in the right-of-way.
9. *Roof-mounted WCFs.*
- (a) Roof-mounted WCFs may be approved only where an applicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service.
 - (b) Roof mounted antennas shall extend no more than 10 feet above the parapet of any flat roof or ridge of a sloped roof to which they are attached.
 - (c) Other roof mounted transmission equipment shall extend no more than 10 feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.
 - (d) All rooftop equipment and antennas must be adequately screened, per Section 24-803.d.
10. *Base Stations.*
- (a) Antennas and other proposed equipment shall be architecturally compatible with the base station and, when appropriate, colored or otherwise camouflaged to integrate with the base station to which they are attached.
 - (b) Facilities mounted on a base station shall be installed as flush to the wall as technically practical. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be six feet.
11. *Related Accessory Equipment.*
- (a) All buildings, shelter, cabinets, and other accessory components shall be grouped as closely together as technically possible.
 - (b) The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet.
 - (c) No related accessory equipment or accessory structure shall exceed 12 feet in height.
 - (d) Related accessory equipment shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where alternate locations are not available, the accessory equipment shall use camouflage design techniques.
- e **Defined Terms.** The following terms used in this Section shall have the meaning given below. All other terms shall have their usual customary meaning, or the meaning given elsewhere in this code or other applicable uniform or international code adopted by the City, except where the context clearly indicates a different meaning.
- Alternative tower structure* shall mean man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of antennas or towers so as to make them architecturally compatible with the surrounding area pursuant to the requirements of this Section. This term also includes any antenna or antenna array attached to an alternative tower structure. A stand-alone pole in the right-of-way, streetlight, or traffic signal that accommodates small cell facilities is considered an alternative tower structure to the extent it meets the camouflage and concealment standards of this Section.
- Antenna* shall mean any device used to transmit and/or receive radio or electromagnetic waves such as panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations as well as exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

Base station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower or any equipment associated with a tower. Base station does include:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Section, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks) that, at the time the relevant application is filed with the City under this Section, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in Paragraphs 1. and 2. above.

Camouflage, concealment, or camouflage design techniques shall mean the designing of a WCF to alter its appearance to substantially integrate it into surrounding building designs and/or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A WCF site utilizes camouflage design techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola; or (ii) is integrated in an outdoor fixture such as a utility tower; or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Cell on wheels (COW) shall mean a mobile cell site that consists of an antenna tower and electronic radio transceiver equipment on a truck or trailer, designed to boost reception as part of a larger cellular network and is temporary in nature.

Collocation shall mean the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible facilities request shall mean any request for modification of an existing tower or base station that is not a substantial change.

Eligible support structure shall mean any tower or base station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

Existing tower or base station shall mean a constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was built; for example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

Micro cell facility shall mean a small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than 11 inches in length.

Monopole shall mean a single, freestanding pole-type structure supporting one or more antennas.

Over the air receiving device shall mean an antenna used to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations, but shall not include antennas used for AM/FM radio, amateur ("ham") radio, CB radio, digital audio radio services or antennas used as part of a hub to relay signals among multiple locations.

Pole-mounted small cell facility shall mean a small cell facility with an antenna that is mounted and supported on an alternative tower structure, which includes a replacement pole.

Public property shall mean real property owned or controlled by the City, excluding the public right-of-way.

Public right-of-way (ROW) shall mean any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio frequency emissions letter shall mean a letter from the applicant certifying, all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

Replacement pole shall mean an alternative tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a WCF or small cell facility or micro cell facility or to accommodate collocation, and replaces a pre-existing pole or structure.

Signal non-interference letter shall mean a letter from the applicant certifying all WCFs that are the subject of the application shall be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for towers (other than towers in the right-of-way and eligible support structures) shall mean the current boundaries of the leased or owned property surrounding the tower or eligible support structure and any access or utility easements currently related to the site. A site, for other alternative tower structures, base stations, micro cell facilities, and small cell facilities in the right-of-way, is further restricted to that area comprising the base of the structure and to other related accessory equipment already deployed on the ground.

Small cell facility shall mean a WCF where each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than 17 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to alternate tower structures, replacement pole, and base stations. The definition of a small cell facility shall also include a micro cell or micro cell facility.

Substantial change shall mean a modification that substantially changes the physical dimensions of an eligible support structure if, after the modification, the structure meets any of the following criteria:

1. For towers, other than alternative tower structures or towers in the right-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent 10% or more than 10 feet, whichever is greater;
2. For towers, other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
4. For towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more 10% larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
5. For any eligible support structure, it entails any excavation or deployment outside the current site;
6. For any eligible support structure, it would defeat the concealment elements of the eligible support structure. For the purposes of this subsection 6., a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure; or
7. For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless 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 Paragraphs 1., 2., and 3. of this definition. For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Toll and tolling shall mean to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower shall mean any structure that is designed and constructed primarily built for the sole or primary purpose of supporting one or more any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

Transmission equipment shall mean equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Unreasonable interference shall mean any use of the right-of-way that disrupts or interferes with its use by the City, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

Wireless communications facility or WCF shall mean a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, base stations, support equipment, alternative tower structures, and towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Title.

24-1102 Oil & Gas

- a. **Intent.** State law recognizes that surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Additionally, the City has the responsibility to protect city infrastructure and resources, manage and mitigate adverse land use impacts, and protect the health, safety, morals and general welfare of the public. This Section has the following intent with regard to the rights of surface and mineral estates:
1. Ensure and monitor compliance with all State and Federal laws and rules;
 2. Enable the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests;
 3. Minimize or mitigate adverse land use impacts on mineral estates, and provide mutual accommodation of the surface and mineral owners.
 4. Protect the City's infrastructure and groundwater resources and require mineral estate developers to ensure these resources are not harmed.
 5. Mitigate potential negative impacts from mineral estate development on property owners, adjacent or future land uses, and ecological resources through reasonable regulations for initiating, operating and ceasing mineral estate development.
- b. **Applicability.** The standards and procedures in this Section apply to all apply to oil and gas exploration and production operations located on surface property with within all zoning districts in the City limits. No oil and gas facility shall be operated or reactivated, and no site development or equipment shall be located prior to the following:
1. *Use by Special Review.* All oil and gas exploration and production operations shall require a special review permit for the facility according to the procedures and criteria in Section 24-206
 2. *Site Plan.* Approval of a site plan in association with the special review permit, or in accordance with the procedures and criteria in Section 24-207 for any new or relocated facilities, and provided it is compliance with an approved special review permit and the standards of this Section.
 3. *Notice to Proceed.* Prior to commencement of construction, drilling, redrilling or enhanced recovery operations for which a use by special review has been previously granted, a

- "Notice to Proceed" shall be obtained from the City. A copy of any necessary state or federal permit issued for the operation shall be provided to the City.
4. *Building Permits.* Building permits shall be obtained as required by the City's adopted Building and Fire Codes and all other applicable codes and regulations.
 5. The initial use by special review permit shall allow any twinning, sidetracking, deepening, recompleting or reworking of a well and relocation of accessory equipment or gathering and transmission lines so long as all applicable regulations of this jurisdiction and the state are met. If any twinning, sidetracking, deepening, recompleting or reworking of a well, or relocation of accessory equipment or gathering and transmission lines occurs, then the operator shall submit a revised site plan according to the procedures and criteria in Section 24-207.
- c. **Site & Development Standards.** All oil and gas sites shall meet the following site and development standards:
1. *General Provisions.* Operators shall conform to the following:
 - (a) City, county, state and federal regulations and standards concerning air quality, water quality, odor and noise.
 - (b) City sanitation and environmental standards
 - (c) All surface trash, debris, scarp or discarded material shall be removed and disposed of in a legal manner.
 2. *Equipment Setbacks.* All oil and gas equipment, except flow lines, transmission lines and power supply, shall be located according to the setbacks in Table 24-11-2.

Table 24-11-2: Oil & Gas Equipment Setbacks

Location	Equipment	Setbacks	From
All areas of the City	Well Well heads Production tanks Associated production equipment	150' or 1.5x height, whichever is greater	Lot Line/ROW, Parking, Trail, Public or private road, Major above ground utility, Rail line Any occupied building (low density areas)
	New building or structure	50'	Any plugged and abandoned well
		150' or 1.5x height, whichever is greater	Any existing oil and gas equipment listed above
High-density areas		200'	Any occupied building (high density areas)
	Well Well head Production tanks Associated production equipment	350' (well and well heads) 500' (production tanks and associated production equipment)	Education facility, Assembly building Hospital or care facility Jail Outdoor activity areas (State designated)
	Any new building or structure (or per alternative compliance in Section 24-208)	50'	Any plugged and abandoned well
		350' (well and well heads) 500' (production tanks and associated production equipment)	Any existing oil and gas equipment listed above

The Planning Commission may allow a lesser setback if necessary to meet other COGCC rules. A waiver shall first require COGCC approval of all other provisions of the application, demonstration that the COGCC requirements make the setbacks unattainable, and the Planning Commission may require other mitigation measures as provided in this Section to account for lesser setbacks.

3. *Flow Lines.* All flow lines, including transmission and gathering systems, shall have the legal description of the location recorded with the County Clerk and Recorder within 30 days of completion of construction. Abandonment of any flow lines shall be recorded with the County Clerk and Recorder within 30 days after abandonment.
4. *Access Roads.* All roads used to access the tank battery and wellhead shall be constructed and maintained according to the following:
 - (a) 20 feet minimum width;
 - (b) 13.5 feet minimum overhead clearance;
 - (c) Surfaced with:
 - (1) Tank access - Gravel with Class 6 aggregate base course per Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction,"
 - (2) Well head access - dirt;
 - (d) 6-inch thick / 95% compacted subgrade and aggregate base course;
 - (e) Graded to allow drainage and constructed to allow cross-drainage of waterways by a culvert or pipe subject to Public Works approval; and
 - (f) Any intersection with city streets or paved alleys shall be paved to Public Works standards from the road to the edge of the right of way, and otherwise protect public streets, sidewalks, curbs and gutter from any mud or gravel.
 - (g) If a well site falls within a high density area at the time of construction, all leasehold roads shall be constructed to accommodate local emergency vehicle access requirements and shall be maintained in a reasonable condition.
 - (h) If mud or gravel is carried onto City streets or sidewalks, the owner or operator shall ensure that the streets are promptly cleaned. With the permission of the Director of Public Works, the owner or operator may make arrangements for the Public Works Department to clean the streets at the sole cost of the owner or operator.
 - (i) No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage, the owner and operator, jointly and severally, shall indemnify the City for any reasonable repair costs
5. *High Density Areas.* In addition to setbacks as required in Section 24-1102.c.2., the following provisions shall apply to high density areas:
 - (a) At the time of initial installation, if a well site falls within a high density area, all pumps, pits, wellheads and production facilities shall be adequately fenced to restrict access by unauthorized persons. For security purposes, all such facilities and equipment used in the operation of a completed well shall be surrounded by a fence six feet in height, of noncombustible material and which includes a gate which shall be locked.
 - (b) Any material not in use that might constitute a fire hazard shall be placed a minimum of 25 feet from the wellhead, tanks and separator. Within 90 days after a well is plugged and abandoned, the well site shall be cleared of all nonessential equipment.
 - (c) Adequate blowout prevention equipment shall be provided for drilling operations and well servicing operations.

- (d) The operator shall identify the location of plugged and abandoned wells with a permanent monument which shall include the well number and date of plugging inscribed on the monument.
 - (e) Where possible, operators shall provide for the development of multiple reservoirs by drilling on existing pads or by multiple completions or commingling in existing well bores.
 - d. **Coordination with COGCC Rules.** In addition to any other standards that are part of a special review permit, all oil and gas facilities shall comply with the following rules of Oil the Oil and Gas Conservation Commission of the State of Colorado (COGCC).
 - 1. *Generally.* All exploration and production waste, including drilling mud or other drilling fluids, shall be stored, handled, transported, treated, recycled or disposed of in accordance with COGCC regulations, to prevent any significant adverse environmental impact on air, water, soil or biological resources.
 - 2. *Abandonment and Plugging.* The operator shall comply with all COGCC rules with respect to abandonment and plugging of wells.
 - (a) Operators of wells which are to be abandoned upon the completion of drilling and not be put into production shall notify the Greeley Fire Department not less than two hours prior to commencing plugging operations.
 - (b) Operators of formerly producing wells shall notify the Greeley Fire Department not less than 2 days prior to removing production equipment or commencing plugging operations.
 - 3. *Seismic Operations.* All persons shall comply with all COGCC rules with respect to seismic operations. Seismic operations shall occur within the City only between the hours of 7:00 a.m. and 7:00 p.m. In addition, the owner or operator shall provide a notice of intent to conduct seismic exploration at least seven days prior to commencement of the data recording operations to the Community Development Director and the Fire Chief. Notice shall include the following:
 - (a) Method of exploration;
 - (b) Map showing the proposed seismic lines, at a scale at least one-half inch to the mile;
 - (c) Name and permanent address of the seismic contractor; and
 - (d) The name, address and telephone number of the seismic contractor's local representative.
 - 4. *Signs.* The well and tank battery owner or operator shall comply with all COGCC rules with respect to signs. In addition, the owner or operator shall maintain all signs in readable condition. Signs shall comply with Chapter 9, Signs, and the International Fire Code, except when any variations from these codes are required by COGCC regulations.
 - 5. *Reclamation.* The operator shall comply with all COGCC rules with respect to site reclamation. The COGCC Drill Site Reclamation Notice shall be filed with the City at the same time it is sent to the surface owner.
 - e. **Environmental Mitigation.** To ensure appropriate integration into the context within the City, and to promote the long-term interests of all land owners, oil and gas shall mitigate the following environmental impacts.

1. **Noise.** State law and regulations concerning noise abatement (Title 25, Article 12, C.R.S.) shall apply to all operations, together with applicable local government ordinances, rules or regulations. In addition, each site shall comply with the following:
 - (a) Where a well or tank battery does not comply with the required setback or other portions of this Section, or where the well or tank battery is in an area of particular noise sensitivity, such as hospitals, schools and churches, additional noise mitigation may be required. In determining noise mitigation, specific site characteristics shall be considered, including the following:
 - (1) Nature and proximity of adjacent development (design, location, type);
 - (2) Prevailing weather patterns, including wind directions;
 - (3) Vegetative cover on or adjacent to the site; and
 - (4) Topography.
 - (b) Based upon the site characteristics, additional noise mitigation may require any combination of the following:
 - (1) Acoustically insulated housing or cover enclosing the motor, engine or compressor, or similar techniques;
 - (2) Vegetative screen consisting of trees and shrubs;
 - (3) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;
 - (4) Noise management plan identifying and limiting hours of maximum noise emissions, type, frequency and level of noise to be emitted and proposed mitigation measures;
 - (5) Lowering the level of pumps or tank battery; and
 - (6) Requirements for electric motors only.
 - (c) Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from all buildings certified or intended for occupancy, to the extent practicable.

2. **Visibility.** Oil and gas facilities shall be located away from prominent natural features and otherwise located to minimize visibility from rights-of-way, public spaces or adjacent property.
 - (a) **General Location.** The following strategies shall be used to minimize visibility:
 - (1). Locate to avoid crossing hills and ridges or silhouetting.
 - (2) Use structures of minimal size to satisfy present and future functional requirements.
 - (3) Minimize the removal of existing vegetation.
 - (4) Locate facilities at the base of slopes to provide a background of topography and natural cover.
 - (5) Replace earth adjacent to water crossings at slopes at an angle, which insures stability for the soil type of the site, to minimize erosion.
 - (6) Align access roads to follow existing grades and minimize cuts and fills.
 - (b) **Landscaping.** One or more of the following landscape strategies may be required, on a site-specific basis:
 - (1). Adequate ground covers, shrubs and trees.
 - (2) Shaping cuts and fills to appear as natural forms.
 - (3) Cutting rock areas to create irregular forms.
 - (4). Designing the facility to utilize natural screens.
 - (5). Construction of fences or walls, such as woven wood or rock, for use with or instead of landscaping.
 - (c) **Painting and Colors.** Facilities shall be painted as follows:
 - (1). Uniform, noncontrasting, nonreflective color tones, similar to Munsell Soil Color Coding System.
 - (2) Color matched to land, not sky, slightly darker than adjacent landscape.
 - (3) Exposed concrete colored to match soil color.

- (4) Storage tanks and other facilities shall be kept clean and well-painted and otherwise properly maintained, so that signs are legible and all flammable material removed from the site.
 - (d) *Visual Mitigation Plan.* Where a well or tank battery does not comply with the required setback or other portions of this Section or in areas of increased visual sensitivity determined by the City, the applicant shall submit a visual mitigation plan which shall include one or more of the following standards:
 - (1) Exterior lighting shall be directed away from residential areas or shielded from said areas to eliminate glare.
 - (2) Construction of buildings or other enclosures may be required where facilities create noise and visual impacts which cannot be mitigated because of proximity, density and/or intensity of adjacent residential land use.
 - 3 *Safety.* Adequate precautions shall be taken and necessary wellhead safety devices used at all times during the drilling, completion, recompletion, reworking, production, repair and maintenance of the well.
 - (a) Adequate fire-fighting apparatus and supplies, approved by the Greeley Fire Department or appropriate fire district, shall be maintained on the drilling site at all times during drilling, completion and repair operations. All machinery, equipment and installations on all drilling sites within the City limits shall conform with such requirements as may be issued by the Greeley Fire Department or appropriate fire district.
 - (b) Any well located less than 350 feet from an occupied building or in high density areas shall be equipped with blowout preventers during drilling.
 - 4. *Wildlife.*
 - (a) When one or more wells or tank batteries are located within sensitive areas as identified on the City's Areas of Ecological Significance Map, the applicant shall consult with the Division of Wildlife and the City to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures.
 - (b) In lieu of a site specific mitigation review for each well and well site, the applicant may submit to the Community Development Director a multi-site plan addressing cumulative impacts to wildlife from the estimated total number of facilities planned in the same area and including areas within the Long-Range Expected Growth Area, if at least one proposed well site is in the City.
 - 5. *Flood Plain Restrictions.* The well and tank battery shall comply with all applicable federal, state and local laws and regulations when located in a flood way or a one-hundred-year flood plain area.
 - (a) All equipment at production sites located within a one-hundred-year flood plain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one foot above the level of a one-hundred-year flood.
 - (b) Any activity or equipment at any well site within a one-hundred-year flood plain shall comply with the Federal Emergency Management Act and shall not endanger the eligibility of residents of the City to obtain federal flood insurance.
- f. **Application Materials.** In addition to all submittal requirements for a use by special review required by Chapter 2 and Section 24-206, a use by special review for oil and gas facilities shall require the following:

1. **Site Plan.** Copies of all information submitted to the COGCC. If any of the following is not included on the COGCC information, it shall be submitted on one or more plats or maps, drawn to scale:
 - (a) The proposed location of production site facilities or well site facilities. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within 500 feet of the well site shall be shown.
 - (b) The location of the drilling equipment and related facilities and structures.
 - (c) The following information within a radius of 500 feet of the proposed well or production site:
 - (1) Existing surface improvements;
 - (2) Existing utility easements and other rights-of-way of record; and
 - (3) Existing irrigation or drainage ditches.
 - (4) Names of abutting subdivisions or owners of abutting unplatted property
 - (d) Drainage and erosion control plans for the well site or production site and the area immediately adjacent to such site, if applicable.
 - (e) Location of access roads.
 - (f) Well site or production site's existing lease boundaries, well name and number.
 - (g) True north arrow, scale and plan legend.
 - (h) A title block showing the scale; date of preparation; and name, address and telephone number of the plan preparer, applicant and operator.

2. **Vicinity Maps.** Copies of the vicinity maps as submitted to the COGCC. If any of the following is not included on the COGCC vicinity maps, it shall be submitted included for a three-mile radius around the proposed well:
 - (a) Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well.
 - (b) Location of existing oil and gas wells as reflected in COGCC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand-foot radius of the proposed location for the well.
 - (c) Location of drill site and access from one or more public roads.
 - (d) Surface and mineral lease ownership within 200 feet of the wellhead and within 400 feet of the wellhead in high-density areas.

3. **Other Items.** The application shall include the following:
 - (a) The operator's and surface owner's names and addresses, copies of any required COGCC Form 2 and designation of agent, if applicable.
 - (b) An operating plan.
 - (c) A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than COGCC.
 - (d) An emergency response plan that is mutually acceptable to the operator and the Greeley Fire Department or appropriate fire district that includes a list of local telephone number of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities.
 - (e) A plan for minimizing negative impacts, including noise and vibration levels, air and water quality, odor levels, visual impacts, wildlife impacts, waste disposal and public safety.
 - (f) A fire protection plan that is mutually acceptable to the operator and the Greeley Fire Department or appropriate fire district that includes planned actions for possible emergency events and any other pertinent information. Prior to the

application to the City, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the Greeley Fire Department or appropriate fire district.

- g. **Review Criteria.** In addition to all other general criteria in Section 24-206 for use by special review, the Planning Commission shall consider the following for oil and gas facilities:
1. The submittal of all necessary information demonstrates compliance with all federal, state and local laws and regulations regarding siting and operating facilities.
 2. The site plans demonstrate compliance with all standards in this Section.
 3. The site plan or any additional environmental mitigation plans meet the standards, guidelines and criteria for the specific location and context.
 4. No other conditions or circumstances exist that will undermine the intent of this Section.
- h. **Inspections.** The holder or agent of the special review permit shall allow inspections of all wells and accessory equipment and structures by City personnel at any reasonable hour.
1. Failure to allow inspections for more than ten days shall result in scheduling a special review permit revocation hearing before the Planning Commission. The Planning Commission's decision on a special review permit revocation based on failure to allow inspections shall be final.
 2. Each year the operator of any producing oil or gas well shall provide the following to the Fire Chief:
 - (a) Proof of insurance and bonding required by any City, county, state or federal law or regulation
 - (b) Certification of compliance with the conditions of this Section, the Uniform Building and Fire Codes, and other applicable regulations.
 - (c) Annual inspection fees established by the City to cover inspection costs. This fee shall be paid no later than February 1 for the preceding year. Wells which have been plugged and abandoned are exempt from the fee.
- i. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All terms not listed but that are defined in the Act, or in regulations by the COGCC or CDPHE authorized under the Act, shall defer to those definitions, and any conflicts resolved in favor of the state definitions. All other terms shall have their usual customary meaning, the meaning given elsewhere in this code, or any generally accepted oil and gas industry meaning if the term is technical in nature.

Act shall mean the Oil and Gas Conservation Act of the State of Colorado.

Assembly building shall mean any building or portion of building or structure used for the regular gathering of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transport.

Building unit shall mean a building or structure intended for human occupancy. A dwelling unit, every guest room in a hotel/motel, every 5,000 square feet of building floor area in commercial facilities and every fifteen thousand 15,000 square feet of building floor area in warehouses or other similar storage facilities is equal to one building unit.

Commission or COGCC shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Educational facility shall mean any building used for legally allowed educational purposes for more than 12 hours per week for more than six persons. This includes any building or portion of building used for licensed day-care purposes for more than six persons.

High-density area shall be determined at the time the well is permitted on a well-by-well basis, by calculating the number of occupied building units within the seventy-two-acre area defined by a one-thousand-foot radius from the wellhead or production facility and shall mean any tract of land which meets one of the following:

1. 36 or more actual or platted building units are within a one-thousand-foot radius, or 18 or more building units are within any semi-circle of the one-thousand-foot radius, at an average density of one building unit per two acres. If platted building units are used to determine density, then 50% of said platted units shall have building units under construction or constructed;
2. An educational facility, assembly building, hospital, nursing home, board and care facility or jail is located within 1,000 feet of a wellhead or production facility; or
3. If a designated outside activity area is within one thousand 1,000 feet of a wellhead or production facility, the area may become high density upon application and determination by the COGCC.

Hospital, nursing home, board and care facilities, for the sole purpose of this Chapter, shall mean buildings used for the licensed care of more than five in-patients or residents.

Inspector, City shall mean any person designated by the City Manager or by the Manager's designee, who shall have the authority to inspect a well site to determine compliance with this Chapter and other applicable ordinances of the City.

Jail shall mean those structures where the personal liberties of occupants are restrained, including but not limited to mental hospitals, mental sanitariums, prisons and reformatories.

Local government designee shall mean the office designated to receive, on behalf of the local government, copies of all documents required to be filed with the local governmental designee pursuant to the rules of the COGCC.

Mineral owner shall mean any person having title or right of ownership in subsurface oil and gas or leasehold interest therein.

Operating plan shall mean a general plan which describes an oil and gas exploration and production facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operation, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

Operator shall mean the person designated by the owner or lessee of the mineral rights as the operator and so identified in Oil and Gas Conservation Commission applications.

Production facilities shall mean all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flow lines and other equipment directly associated with oil wells, gas wells or injection wells.

Sidetracking shall mean entering the same wellhead from the surface, but not necessarily following the same well bore, throughout its subsurface extent when deviation from such well bore is necessary to reach the objective depth because of an engineering problem.

Surface owner shall mean any person having title or right of ownership in the surface estate of real property or leasehold interest therein.

Twinning shall mean the drilling of a well adjacent to or near an existing well when the well cannot be drilled to the objective depth or produced due to an engineering problem, such as a collapsed casing or formation damage.

Well shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

Well site shall mean the areas which are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well or injection well.

Wellhead shall mean the mouth of the well at which oil or gas is produced.

24-1103 Adult Businesses

- a. **Findings.** The City Council finds that certain areas within the City are zoned to allow for adult businesses. The following shall apply to adult businesses:
1. Regulation of adult businesses protects and preserves the health, safety and welfare of the patrons of such businesses, as well as the citizenry.
 2. Regulation of adult businesses furthers substantial governmental interests and is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity has included prostitution, narcotics and liquor law violations, violent crimes against persons and property crimes.
 3. Adult businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature.
 4. The concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the City which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.
 5. Adult businesses have a deleterious effect on both neighboring businesses and surrounding residential areas, causing an increase in crime and a decrease in property values.
 6. It is recognized that adult businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.
 7. Restricted hours of operation will further prevent the adverse secondary effects of adult businesses.
 8. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizens; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; deter the spread of urban blight; and protect the citizens from increased crime.
- b. **Intent.** The intent to of this section is to regulate adult businesses to
1. Promote the health, safety, morals and general welfare of the citizens of Greeley;
 2. Establish reasonable and uniform regulations to prevent any deleterious location and concentration of adult businesses within the City; and
 3. Reducing or eliminating the adverse secondary effects from such adult businesses.
 4. The provisions of this Section have neither the intent nor effect of imposing a limitation or restriction on the content of any constitutionally protected communicative materials, including sexually oriented materials.
 5. Neither is it the intent nor effect of this Section to condone or legitimize the distribution of obscene material.
- c. **General Standards.** The following provisions shall apply to an adult business, service or entertainment establishment:

1. **Age Restriction.** No one under 18 years of age shall be admitted to an adult business, service or entertainment establishment offering any form of live entertainment, nor shall any employee, agent or independent contractor working on such premises where live entertainment is allowed be under 18 years of age.
 2. **Hours of Operation.** Adult entertainment shall only be available at adult business, service or entertainment establishments between the hours of 7:00 a.m. and 12:00 midnight, Monday through Saturday.
 3. **Buffers.** An adult business, service or entertainment establishment shall be adequately buffered through the use of facade treatment, landscaping or fencing to minimize adverse impacts on commercial or residential uses, public parks, churches, public or private schools, preschools or child care centers certified or licensed by the State of Colorado, which are in proximity to such adult businesses. Buffering requirements shall be as provided in Section 24-803.
 4. **Lightning & Signs.** All outside lighting and signs shall be arranged, shielded and restricted so as to prevent adverse impacts and any nuisance on adjacent streets, commercial or residential uses, public parks, churches or public or private schools, preschools or child care centers certified or licensed by the State.
 5. **Location Restrictions.** No adult business, service or entertainment establishment shall be operated or maintained within 1,000 feet of the following uses, measured in a straight line without regard to intervening structures or objects from the closest property line of the use to the property line of the adult establishment.
 - (a) Any school, preschool or child care center certified or licensed by the state;
 - (b) Church property;
 - (c) Property zoned for residential use;
 - (d) A public park; or
 - (e) Any existing adult business
 6. **Site Limits.** Not more than one adult business shall be operated or maintained in the same building, structure or portion thereof.
- d. **Public Nuisance.** Any adult business, service or entertainment establishment which engages in repeated or continuing violation of these regulations shall constitute a public nuisance subject to the provisions of Chapter 1.32. For purposes of these regulations, *repeated violations* shall mean three or more violations of any provision set forth herein within a consecutive twelve-month period, dating from the time of any violation. Any *continuing violation* shall mean a violation of any provision set out herein lasting for three or more consecutive days.
- e. **Free Expression.** Nothing in this Section shall be construed to apply to the presentation, showing or performance of any play, drama, ballet or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher education or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of a state of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

24-1104 **Marijuana Uses**

- a. **Intent.** The intent of this Section is to prohibit certain land uses related to commercial and medical marijuana in the City and, in furtherance of this intent, the City Council makes the following findings:

1. The Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S., clarifies state law regarding the scope and intent of Article XVIII, Section 14 of the Colorado Constitution.
 2. The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."
 3. The Colorado Medical Marijuana Code specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses ... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."
 4. Article XVIII, Section 16 of the Colorado Constitution ("Amendment 64") specifically authorizes the governing body of a municipality to "prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores through the enactment of an ordinance."
 5. The City has the power and authority to make and publish ordinances which are necessary and proper to provide for the safety and preserve the health of the citizens of the City not inconsistent with the laws of the State.
 6. Both Section 14 and Section 16 of Article XVIII of the Colorado Constitution provided specific direction regarding the requirements related to growing marijuana for personal use, including providing limits to the number of plants which may be grown; and Section 14 specifically addresses the noncommercial cultivation of marijuana by requiring that marijuana may not be grown openly or publicly, requiring that marijuana be grown in an enclosed and locked space and providing that marijuana grown for personal use may not be made available for sale.
 7. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, Sections 14 and 16 of the Colorado Constitution and the potential secondary effects of the cultivation and dispensing of medical marijuana and the retail sale, distribution and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the City and its inhabitants.
- b. **Authority.** The City's authority to adopt this section is found in the following:
1. Article XVIII, Sections 14 and 16 of the Colorado Constitution,
 2. Colorado Medical Marijuana Code, Section 12-43.3-101, C.R.S.;
 3. Local Government Land Use Control Enabling Act, Section 29-20-101, C.R.S.,
 4. Section 31-23-101, et seq., C.R.S. (Municipal Zoning Powers);
 5. Sections 31-15-103 and 31-15-401, C.R.S. (Municipal Police Powers);
 6. Section 31-15-501, C.R.S. (Municipal Authority to Regulate Businesses); and t
 7. City of Greeley Home Rule Charter.
- c. **Applicability.** This Section shall apply to all property within the City. To the extent that the City is required to allow the cultivation of medical marijuana or marijuana for personal use under state law, the standards, conditions and limited authorizations in this Section apply. Nothing in this Section shall be interpreted to permit marijuana dispensaries of any kind otherwise prohibited by this or any other regulation. If the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution and/or the Colorado Recreational Marijuana Code, Article XVIII, Section 16 of the Colorado Constitution are declared unlawful in violation of federal law, nothing in this Code shall be deemed to permit the cultivation, possession or use of marijuana for medical or any other purpose. This Section shall be liberally construed to prevent and prohibit the establishment, operation and continuation of any prohibited activity, but shall not be construed to criminalize lawful activity under Article XVIII, Section 16 of the Colorado Constitution.

- d. **Prohibited Uses.** The following activities are prohibited in the City, and not permitted as a primary land use, incidental activity or accessory use to another lawful land use, or as a home occupation:
1. Medical marijuana dispensaries, medical marijuana centers, medical marijuana-infused products manufacturers and optional premises cultivation operations
 2. Commercial marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores.
 3. Any private marijuana club.

The City designates the Department of Finance as the entity responsible for processing applications for licenses to operate a marijuana establishment. Pursuant to the prohibitions set forth above, any application for a license to operate a marijuana establishment shall be deemed denied upon the date of submission

- e. **Limited Authorizations.** Caregivers and patients within the City are authorized to engage in only those activities regarding medical marijuana which are set forth in Section 14 of Article XVIII of the Colorado Constitution, as defined and limited by Section 25-1.5-106, C.R.S. Caregivers within the City are subject to any and all restrictions, limitations and prohibitions regarding the possession, consumption, transfer and cultivation of medical marijuana as set forth in Section 25-1.5-106, C.R.S., and all administrative rules and regulations promulgated by state agencies.

f. **Other Standards & Prohibitions**

1. It is unlawful to grow medical marijuana or marijuana for personal or medicinal use anywhere in the City other than in a detached single-family residence and therein, within an enclosed, locked space which is not open or public within a detached single-family residential property under the ownership of the person cultivating the marijuana or with the written permission of the property owner. For purposes of this Section, a garage or detached structure associated with the residence shall not be used for the cultivation of marijuana.
2. It is unlawful to cultivate marijuana or medical marijuana inside a residential dwelling in an area exceeding 32 square feet or exceeding a height of 10 feet. This limit applies regardless of the number of qualified patients or caregivers or persons otherwise allowed to possess and grow marijuana for personal use residing in the residence. The cultivation area shall be a single, locked area and shall not be accessible to anyone under the age of 21 unless such person possesses a medical marijuana registration card.
3. It is unlawful to use any lighting for the indoor cultivation of marijuana or medical marijuana other than light emitting diodes (LEDs), compact fluorescent lamps (CFLS) or fluorescent lighting. All high intensity discharge (HID) lighting, including but not limited to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high pressure sodium (HPS) lamps and xenon short-arc lamps, are prohibited.
4. It is unlawful to use gas products (e.g., CO₂, butane) for indoor marijuana or medical marijuana cultivation or processing.
5. It is unlawful to cultivate marijuana or medical marijuana in any structure without complying with applicable building and fire codes, including plumbing, mechanical and electrical, and all applicable zoning codes, including by not limited to lot coverage, setback and height requirements.

6. Any indoor marijuana or medical marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the property line for detached single-family residences or residential property, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the International Residential / Building Code.
 7. It is unlawful to store chemicals used for marijuana or medical marijuana cultivation inside of the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.
 8. It is unlawful for any marijuana or medical marijuana cultivation activity to adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts; or be hazardous due to the use or storage of materials, processes, products or wastes or from other actions related to the cultivation.
- g. **Violations and Enforcement.** Violations of this Section shall constitute a Code infraction violation and shall be punished pursuant to Chapter 1.33 of the Greeley Municipal Code. The establishment, operation and continuation of any activity in violation of the terms of this Section is specifically determined to constitute a public nuisance, may be abated by the City as a nuisance and may be enjoined by the City in an action brought in a court of competent jurisdiction in the County in which such activity occurs. The remedies set forth in this Section shall not be exclusive, shall be cumulative and shall be in addition to any other remedy available at law or in equity.
- h. **Defined Terms.** The following terms used in this Section shall have the meaning given below. All other terms shall have their usual customary meaning, or the meaning given elsewhere in this code or Article XVIII, Section 16 of the Colorado Constitution, except where the context clearly indicates a different meaning.

Caregiver shall have the same meaning as set forth in Section 25-1.5-106(2), C.R.S.

Enclosed space means a permanent or semi-permanent area, surrounded on all sides, including the roof. The temporary opening of windows or doors does not convert the area into an unenclosed space.

Locked space means the area where cultivation occurs must be secured at all points of ingress and egress with a locking mechanism designed to limit access, such as a key or combination lock.

Marijuana or marihuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or its resin, including marihuana concentrate. *Marijuana or marihuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana cultivation facility means an entity licensed to cultivate, prepare and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility or a retail marijuana store.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Medical marijuana shall mean marijuana that is grown and sold pursuant to the provision of Article 43.3 of Title 12, C.R.S.

Medical marijuana center shall mean a person, business or any other entity licensed pursuant to Article 43.3 of Title 12, C.R.S., to operate a business as described in Section 12-43.3-402, C.R.S., that sells medical marijuana to registered patients or caregivers as authorized in the Colorado Revised Statutes, but is not a caregiver.

Medical marijuana dispensary shall have the same meaning as a *medical marijuana center* as set forth above.

Medical marijuana-infused product shall mean a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures.

Medical marijuana-infused products manufacturer shall mean a person, business or any other entity licensed pursuant to Article 43.3 of Title 12, C.R.S., to operate a business as described in Section 12-43.3-404, C.R.S.

Open means not protected from unaided observations lawfully made from outside its perimeter not involving physical intrusion.

Optional premises cultivation operation shall mean a person, business or any other entity licensed pursuant to Article 43.3 of Title 12, C.R.S., to operate a business as described in Section 12-43.3-403, C.R.S.

Patient shall mean a person who has a debilitating medical condition and who has been provided with a registry identification card pursuant to the Colorado Revised Statutes to obtain medical marijuana.

Primary caregiver shall have the same meaning as set forth in Section 25-1.5-106(2), C.R.S.

Private marijuana club means the consumption of marijuana by persons assembled within a commercial or industrial structure, where such consumption is permitted, encouraged, promoted, enabled or condoned by persons assembled therein, whether such consumption is the primary intended purpose or an intended purpose incidental to other reasons for assembly therein.

Public means an area which is open to general access without restriction.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Reserved Sections 24-1105 through 24-1200