

ORDINANCE NO: 2186

INTRODUCED BY: DAVIS, DOUGLAS, ELLIOTT, FORD, FRANK, GUARDIOLA,
HUSEMAN, MADERA, TETER

AN ORDINANCE AMENDING SECTIONS 21-5602, 21-5606 AND 21-11200 OF THE LAND DEVELOPMENT CODE AND ENACTING A NEW SECTION 21-5607 TO THE LAND DEVELOPMENT CODE RELATING TO SMALL CELL TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

WHEREAS, the City Council of the City of Commerce City adopted the Land Development Code, effective March 1, 2009, by Ordinance 1720, which has been amended from time to time;

WHEREAS, the ongoing application and interpretation of the Land Development Code has identified a need to amend the provisions relating to the regulation of small cell telecommunications facilities in the right-of-way and to establish new regulations relating to the same;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Section 21-5602 (Table V-5) (Use Schedule for Telecommunication Facilities) of the Land Development Code is amended to establish a schedule for new facilities mounted on new pole structures in the public right-of-way, as set forth in Exhibit A.

SECTION 2. Section 21-5606 of the Land Development Code relating to Telecommunications Facilities Located on Existing Pole Structures is amended as set forth in Exhibit A.

SECTION 3. A new Section 21-5607 is established in the Land Development Code to be entitled "Telecommunications Facilities Located on New Pole Structures on the Public Right-of-Way," as set forth in Exhibit A.

SECTION 5. Section 21-11200 of the Land Development Code relating to Definitions is amended by the addition of definitions for "Micro Cell," "Pole," and "Small Cell," as set forth in Exhibit A.

SECTION 6. Exhibit A is attached and incorporated by reference.

SECTION 7. This ordinance is necessary and appropriate to protect the public health, safety, and welfare and in the general public interest.

SECTION 8. Except as specifically modified herein, the provisions of the Land Development Code shall remain unchanged and in full force and effect.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS 19TH DAY OF NOVEMBER, 2018.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 17TH DAY OF DECEMBER, 2018.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk

EXHIBIT A TO ORDINANCE 2186

(Underlined text indicates new material; strikethrough text indicates deletions.)

Sec. 21-5602 (Table V-5) of the Land Development Code is amended as follows:

Sec. 21-5602. Telecommunication Facility Location Requirements

Telecommunication facilities shall be allowed as detailed in Table V-5, entitled Use Schedule for Telecommunication Facilities. An “R” indicates that the facility is allowed with an administrative approval by the director. A “P” indicates that the facility is allowed as a use-by-permit. If the cell is blank, the facility is prohibited. Vacant properties shall default to the future land use shown in the comprehensive plan and mixed use properties shall default to the predominant land use (multi-family or commercial).

Table V-5 – Use Schedule for Telecommunication Facilities

| Land Use | New Non-Concealed Facilities Mounted on Existing Buildings or | New Concealed Facilities | New Non-concealed Monopoles | New Facilities Mounted on Existing Pole Structures | <u>New Facilities Mounted on New Pole Structures in the Public Right-of-Way</u> |
|----------------------------|---|--------------------------|-----------------------------|--|---|
| Single- Family Residential | | | | P | <u>P</u> |
| Multi- Family Residential | P | | | R | <u>R</u> |
| Mobile Home Park | | | | R | <u>R</u> |
| Commercial | R | R | P | R | <u>R</u> |
| Industrial | R | R | P | R | <u>R</u> |
| Public | R | R | R | R | <u>R</u> |
| Floodplain | | | | | |

* Excludes 6409(a) facilities

Sec. 21-5606 of the Land Development Code is amended as follows:

Sec. 21-5606. Telecommunication Facilities Located on Existing Pole Structures

All new telecommunications facilities, including small cell, micro cell, and distributed antenna systems (DAS), installed on existing utility poles, light poles, signs, electric distribution facilities, and similar types of structures, excluding monopoles, whether on private property or in the public right-of-way, shall comply with the following standards:

- (1) Location and Distance Requirements. In single-family residential zone districts, equipment shall only be located on existing poles within the right-of-way or within a utility easement. Such equipment must be located a minimum of 25 feet from any single-family residential home.

- (2) Mounting. Equipment shall be mounted as flush to the pole as is technically feasible.
- (3) Color. Equipment mounted on a pole shall be painted to match the color of the pole on which it is located.
- (4) Ground Equipment. Any equipment located on the ground shall be screened from public view in accordance with the screening standards found in this land development code.
- (5) Pole Replacement. Poles may be replaced in order to structurally accommodate the addition of a telecommunications facility. The new pole shall meet any applicable previous approvals, conditions, and/or current requirements for those structures. Unless otherwise agreed to by the Director or their designee upon clear and convincing evidence, poles must have a primary functional component such as a light, and shall not be installed for the sole purpose of placing telecommunications equipment.
 - (a) If the facility is proposed in an area with an existing or adopted theme, streetscape design, or lighting plan, the replacement pole shall adhere to the design theme for the area in which it is proposed to be placed.
 - (b) New wood poles shall be prohibited.
 - (c) Replacement poles shall comply with section 21-7720 (Utilities to be Placed Underground).
- (6) Authorization to Attach. Where the Telecommunication Facility owner is not the owner of the supporting existing pole structure, the Telecommunication Facility Owner must provide authorization from the existing pole owner to attach the proposed equipment.
- (7) Right-of-Way Usage and Licensing Agreement. If located in the public right-of-way, the proposed Telecommunication Facility operator shall sign a licensing agreement with the City for use of the right-of-way prior to approval of any necessary permits.

Sec. 21-5607 is added to the Land Development Code as follows:

Sec. 21-5607. Telecommunication Facilities Located on New Pole Structures on the Public Right-of-Way

All Telecommunication Facilities, including small cell, micro cell, and distributed antenna systems (DAS), installed on new pole structures and other similar types of structures deployed for the purpose of supporting a Telecommunication Facility in the public right-of-way shall comply with all applicable standards of Sec. 21-5606 in addition to the following standards:

- (1) Location and Distance. All new pole structures deployed in the public right-of-way for the purpose of supporting a Telecommunication Facility shall be separated from any existing or proposed pole structure supporting a Telecommunication Facility by

no less than 300 feet. If located in an Activity Center as identified in the Comprehensive Plan or an urban renewal area, Telecommunication Facilities may be located closer than 300 feet, as determined by the director.

- (2) Color and Design. The new pole structure shall be compatible with the colors and aesthetic design of the other towers or poles in the right-of-way in the immediate vicinity. For example, new pole structures near traffic signals at an intersection should match the color and decorative base cover design of the traffic signals. Similarly, if new pole structures are lights in the public right-of-way, the color and design of the new pole structures should be the same, or substantially the same, as that of the existing light poles in the area.
 - (a) If the facility is proposed in an area with an existing or adopted theme, streetscape design, or lighting plan, the replacement pole shall adhere to the design theme for the area in which it is proposed to be placed.
 - (b) New wood poles shall be prohibited.
 - (c) Utilities serving the pole shall comply with section 21-7720 (Utilities to be Placed Underground).
- (3) Height. The height of the new pole structure shall not be more than ten (10) feet higher (as measured at the base of the pole from the ground to the top of the pole) than any existing utility or traffic signal pole structure within 500 feet of the new pole structure. Additionally, no such new pole structure shall exceed the building height standards set forth in this code for the applicable zone district. Where a height exception is sought in accordance with Sec. 21-3220, it shall conform with all such height exception requirements and be no greater than ten (10) feet higher than the applicable zone district including those being attached to an existing pole structure.
- (4) Other Approvals. The siting and construction of the new pole structure shall comply with all other applicable City requirements, including but not limited to, compliance with city standards for distances and the granting of a right-of-way permit.
- (5) Right-of-Way Usage and Licensing Agreement. Prior to approval of any necessary permits, the proposed Telecommunication Facility operator shall sign a licensing agreement with the City for use of the right-of-way.

Sec. 21-11200 of the Land Development Code is amended as follows, with new definitions are to be inserted alphabetically and all paragraphs renumbered as needed:

Micro cell shall include “micro wireless facility” and shall be defined by C.R.S. 29-27-402(3.5) as currently exists and as may be amended from time to time.

Pole, for the purposes of telecommunications contexts, shall include “pole structure” and “tower” and shall be defined by C.R.S. 29-27-402(6.5) as currently exists and as may be amended from time to time

Small cell shall include “small cell facility” and shall be defined by C.R.S. 29-27-402(4) as currently exists and as may be amended from time to time.

[END OF EXHIBIT A TO ORDINANCE 2186]