



**Board of County Commissioners - Staff Report**

<b>Meeting Date:</b>	July 21, 2020	<b>Presenter:</b>	Keith Gingery
<b>Submitting Dept:</b>	Road and Levee	<b>Subject:</b>	Authorization to Begin 45 Day Comment Period to Amend Title 3, Chapter 3 Use of County Right Way for Small Wireless Facilities

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**Statement / Purpose:**

Authorization to begin 45-day comment period to potentially amend pursuant to the Wyoming Administrative Procedures Act (Wyo. Stat. §16-6-103) Title 3 Chapter 3 regarding Use of County Right Way for Small Wireless Facilities.

**Background / Description (Pros & Cons):**

Pursuant to the Wyoming Administrative Procedures Act, a 45-day comment period needs to be advertised and comments received prior to adoption of new rules.

The *FCC Declarator Ruling and Third Report and Order* (September 27, 2018) established directives that significantly limit the local control of small wireless infrastructure deployment and associated fees for use of the right of way. Local Governments were given until April 16, 2019 to establish local rules that follow the directives of the *Ruling and Third Report and Order*, and Teton County established new local rules in 2019 in compliance with the FCC Order.

Small wireless facilities differ from the typical and more prevalent larger cell towers, which are usually placed on private property and which are subject to zoning regulations. Small wireless facilities are smaller antennae and support equipment that are installed on utility, light, or traffic poles and are meant to supplement the larger wireless system. Small wireless facilities, including antennae and support structures such as ground equipment and power meters, may be placed within public rights-of-way and are not subject to zoning regulations.

These rules impact only Public Works Department operations and are only applicable to facilities placed in the county right of way. The regulations are based on a model ordinance from the National League of Cities, the Town of Jackson draft ordinance, City and County of Denver Public Works Department standards, the Ogden, UT regulations and the *FCC Declarator Ruling and Third Report and Order*.

Teton County engaged CityScape as a consultant in the past month to recommend updates to the Teton County Land Development Regulations in regards to Small Wireless Facilities. Teton County also requested that CityScape review the already approved Title 3, Chapter 3 as to Small Wireless Facilities in Teton County Right of Ways.

CityScape suggested a few changes to Title 3, Chapter 3 as delineated in the attached redlined version. The changes include:

- 1) Addition of Neutral Host Antenna definition.
- 2) Clarification that pursuant to FCC regulations, antennas cannot exceed 50 feet.
- 3) Any changes authorized by the Federal Government as to recurring fee would be the fee.
- 4) All poles must be able to service 4 providers, so as to reduce the number of poles needed.

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**Board of County Commissioners - Staff Report**

- 5) Encouraging the use of Neutral Host Antennas.
- 6) Adding for location factors that the facility should not obstruct vehicular traffic viewsheds of pedestrian movement.

**Legal Review:**

*Gingery*

**Attachments:**

*Redlined Version of Title 3 Chapter 3 Use of County Right of Way For Small Wireless Facilities*

**Suggested Motion:**

**I move to authorize to begin the 45 day comment period to potentially amend Chapter 3 to Title 3 regarding Use of County Right of Way for Small Wireless Facilities.**

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**TITLE 3**

**ROAD ACCESS AND UTILITIES**

**CHAPTERS 1 AND 2 ADOPTED AND APPROVED ON  
DECEMBER 4, 2018**

**BY THE TETON COUNTY BOARD OF COUNTY  
COMMISSIONERS**

**CHAPTERS 1 AND 2 EFFECTIVE AS OF JANUARY 1,  
2019**

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**CHAPTER 3 ADOPTED AND APPROVED ON JULY 16, 2019  
BY THE TETON COUNTY BOARD OF COUNTY COMMISSIONERS  
CHAPTER 3 EFFECTIVE AS OF JULY 16, 2019**



## CHAPTER 3 – USE OF COUNTY RIGHT OF WAY FOR SMALL WIRELESS FACILITIES

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### 3-3-1 SMALL WIRELESS FACILITIES IN COUNTY RIGHT OF WAY

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- a. Subject to the provisions of this Chapter and along, across, upon or under a county public right-of-way (ROW), a wireless provider may:
  - i. Collocate a small wireless facility, including collocation on a County pole, or other utility provider's pole through a third-party attachment agreement;
  - ii. Install, operate, modify, maintain or replace:
    1. a utility pole associated with the wireless provider's collocation of small wireless facilities;
    2. a stand-alone pole owned by a wireless provider for use with a small wireless facility; or
    3. equipment required for a wireless provider's operation or collocation of a small wireless facilities.
  - iii. An applicant may not install a new utility pole or a small wireless facility, including any associated equipment, upon or under a residential street without the County's discretionary written consent [and in compliance with this chapter](#).
  - iv. This chapter applies to the construction, modification, removal and operation of small wireless facilities installed in the public ROW.
  - v. This chapter does not apply to video service systems, wireline services, or wireless facilities that are not small wireless facilities.
  - vi. All references to small wireless facilities in this chapter shall refer only to small wireless facilities in the ROW and not small wireless facilities located anywhere outside of the ROW.
  - vii. No person shall install, construct, modify, or otherwise place any small wireless facility within the public ROW except pursuant to the provisions of this chapter.
  - viii. Microwave, macro towers, and other wireless backhaul facilities are not permitted within the public ROW.
  - ix. The definitions used in this chapter apply only to this chapter.

### 3-3-2 DEFINITIONS

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- a. For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.
  - i. County Pole: An authority pole owned by Teton County.

- ii. License: A License constitutes the formal written consent of the County to occupy a portion of the right-of-way as set for in the Teton county Rules and Regulations, Title 3, Chapter 2, Section 3-2-2, Right-of-Way License Rules.
- iii. Neutral Host Antenna – A small wireless facility using an antenna or an antenna array designed and utilized to provide services for more than one (1) wireless provider, or a single wireless provider utilizing more than one (1) frequency band or spectrum, for the same or similar type of services.
- iv. Provider. The Provider means a communication service provider or a wireless services provider and includes any person that owns and/or operated with in the public ROW any communications facilities, wireless facilities, Poles built for the sole or primary purpose of support communications facilities or towers.
- v. Right-of-way (ROW): Does not include private streets; private alleys; utility easements owned by the County, including public utility easements shown on a recorded subdivision plat; the interior of public parks or other public grounds including internal sidewalks, parking areas or roads; or trails and paths that are not immediately adjacent to and parallel with a public ROW.
- vi. Residential Street: A public ROW that is not more than 60 feet wide, as shown on a deed, dedication plat, or other official plat record on file with the office of the Teton County Recorder and that is adjacent to single-family residential lots, other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restriction.
- vii. Small wireless facility: A type of wireless facility not greater than 50 feet in height on which each wireless provider's individual antenna could fit within an enclosure of no more than three cubic feet in volume, and collective antenna could fit within an enclosure of no more than six cubic feet in volume, and for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not including any:
  1. electric meter;
  2. concealment element;
  3. telecommunications demarcation box;
  4. grounding equipment;
  5. power transfer switch;
  6. cut-off switch;
  7. vertical cable run for the connection of power or other service;
  8. wireless provider antenna; or
  9. coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular combined location, unless the cable is a wireline backhaul facility.
- viii. Stand-alone pole: A pole installed by a wireless provider in the public ROW or use in connection with a small wireless facility not more than 50 feet in height.

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### 3-3-3 EFFECTS OF A LICENSE

- a. **License Authorization.** Any License granting the work in the public ROW issued under this Chapter authorized construction at a location as proposed and as

approved by the license, with the permission of the County.

- b. **Not in lieu of Other Required Permits.** A license is not in lieu of building permits, electrical permits, franchise agreements, third party agreements, licensing agreements, or any other permits or authorizations that may be required as a condition of construction or operation of the permanent facilities or utility, and it

does not excuse compliance with any other law, regulation, practice or other requirement under federal, state or local law.

- c. **License Consents Required for Access to Public ROW.** Prior to installing in the public ROW any small wireless facility, or any pole built for the sole or primary purpose of supporting a communications facility, a person shall enter into a license agreement with the County expressly authorizing the use of the public ROW for small wireless facility or pole proposed to be installed.
- d. **Non-Exclusive Use Permission.** The license grants non-exclusive use of the public ROW for the sole purpose of installing, maintaining and operating communication facilities in which the authority has an actual interest. It is not a warrant of title or interest in any public ROW and it does not confer on the Provider any interest in any particular location with the public ROW. No other right or authority is granted except as expressly set forth in the license.

### **3-3-4 LICENSE AGREEMENT REQUIRED**

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- a. An executed license agreement shall be in effect prior to:
  - i. Collocating a small wireless facility in a public ROW;
  - ii. Installing a new, modified, or replacement utility pole, authority pole or standalone pole associated with a small wireless facility in a ROW;
  - iii. Permanently removing a small wireless facility.
- b. It is unlawful for any person to construct, maintain or remove small wireless facilities in public ROW of the County without first having executed with the County a license agreement setting forth the terms and conditions under which such improvements may remain in place.
- c. The license agreement shall be a binding contract approved as to form by the County Attorney. The Provider hereby agrees to indemnify, defend, and save harmless the County, its officers, agents, and employees against any and all claims for personal injury or property damage, including reasonable attorney's fees arising out of or connected in any way with the Provider's use of the public right-of-way.

### **3-3-5 LICENSE AGREEMENT APPLICATION CONTENTS**

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- a. All applications for permits shall contain the following:
  - i. An application form signed by the applicant or its authorized representative;
  - ii. construction drawings which demonstrate the application meets the minimum requirements of this chapter;
  - iii. Executed third-party pole attachment agreements for the license
  - iv. The appropriate application fee as set forth in subsection 3-3-5.
  - v. An affidavit or attestation describing the entity that will provide wireless service using the small wireless facility and that the installation or collocation of the small wireless facility shall be completed within 270 days after the day on which the County issues the license except in the case that:
    - 1. The county and the applicant agree to extend the 270 day period; or

2. Lack of commercial power or communications transport infrastructure to the small wireless facility delays completion;
- vi. An affidavit or attestation from a Wyoming state licensed engineer that proposed pole structure, pedestals and foundations meet or exceed IBC Structural Design Criteria, and are structurally competent to carry load, shear and any other stresses.
- vii. An affidavit or attestation from a Wyoming state licensed engineer that the proposed wireless facility shall comply with the radio frequency emissions limits established by the FCC.
- viii. For an application that proposes collocation of the small wireless facility:
  1. an industry-standard pole load analysis indicating that the structure on which the wireless facilities will be mounted will safely support the load; and
  2. if a small wireless facility cannot be safely installed on the respective structure, the applicant shall either replace the structure with a compliant structure of the same type, or propose a new location.
- b. Applications for a permit shall be filed with the Teton County Road and Levee Supervisor on a form or forms to be furnished by the Teton County Road and Levee Supervisor, and shall contain, as applicable:
  - i. The name, address, telephone, and facsimile number of the applicant. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the public way, the application also shall include the name, address, telephone, and facsimile number of the owner;
  - ii. A description of the location, purpose, method of the proposed work, and surface and subsurface area to be affected;
- c. A plan showing the proposed location of the work and the dimensions of any excavation and the facilities to be installed, maintained, or repaired in connection with the work, and such other details as the Teton County Road and Levee Supervisor may require;
- d. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Teton County Road and Levee Supervisor, that the applicant is authorized to act on behalf of the owner;
- e. The proposed start date of work;
- f. The proposed duration of the work, which shall include the duration of the restoration of the right of way physically disturbed by the work;
- g. Written certification that all material to be used in the work and restoration of the ROW, will be on hand and ready for use so as not to delay the work and the prompt restoration of the public ROW;
- h. Written certification that the applicant and owner are in compliance with all terms and conditions of this chapter, the orders, and all applicable rules and regulations of the Teton County Road and Levee Supervisor, and that the applicant and owner are not subject to any outstanding assessments, fees or penalties that have been finally determined by the County;
- i. A scaled small wireless facilities/ pole site plan, rendering or photo simulation, scaled elevation view and other supporting drawings and calculations, showing the location and dimension of all improvements. The submittal must include sufficient information to determine compliance with the standards and requirements of this chapter, specifically including information concerning structure height and location within the ROW,

compliance with the County's intersection and driveway sight distance standards, and compliance with the ADA; and

- j. Any other information that may reasonably be required by the Teton County Road and Levee Supervisor.

### **3-3-6 LICENSE AGREEMENT APPLICATION, RECURRING FEES AND SURETY BOND**

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- a. A minimum application fee of \$500 shall be paid at the time of application and covers up to five (5) small wireless facilities, and an additional fee of \$100 shall be accessed for each small wireless facility thereafter.
- b. A recurring fee of \$270 per small wireless facility, per year shall be paid by the provider to the County annually from the date of the License Agreement execution before the license agreement is considered to be in effect. If the FCC, a legislative act, or a judicial decision raises the specific recurring fee, as delineated in the September 2018 Declaratory Ruling and Third Report and Order (FCC 18-133) from \$270 to a higher fee, the higher fee shall be the annual fee.

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### **3-3-7 CONSTRUCTION STANDARDS, PERMITS AND TRAFFIC CONTROL**

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- a. Construction standards followed for any license agreement shall comply with the Wyoming Public Works Standard Specifications, as said specifications are periodically updated. If specific criteria are not addressed by the Wyoming Public Works Standard Specifications, the Teton County Road and Levee Supervisor may default to other contemporary published engineering specifications that address specific small wireless facility construction needs.
- b. The Provider shall be responsible for any other local, state or federal permit requirements necessary to perform construction, maintenance and operation of said improvements. Failure to obtain any other required permits shall result in the immediate revocation of the Teton County License Agreement.
- c. The applicant shall be responsible for the small wireless facility impacts and remediation. Mitigation shall result in the small wireless facility being restored to pre-construction undisturbed conditions.
- d. The Provider shall be solely responsible for setting up, maintaining and removing any and all traffic control measures that meet the Model Uniform Traffic Control Device (MUTCD) standards.
- e. If a wireless provider's activity causes damage to a ROW, the wireless provider shall repair the ROW to substantially the same condition as before the damage and in accordance with Teton County Road and Levee Supervisor protocols. If a wireless provider fails to make a repair required by the County within a reasonable time after written notice, the County may:
  - i. make the required repair; and
  - ii. charge the wireless provider the reasonable, documented, actual cost for the repair.

### 3-3-8 REMOVAL RELOCATION AND ABANDONMENT

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- a. Within 60 days following written notice from the County, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its small wireless facilities within the Public ROW, including relocation of above-ground underground small wireless facilities, whenever the County has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any improvement, the operations in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the County for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate small wireless facilities as required in this subsection.
- b. The County or any cooperating emergency response agency with the County retains the right and privilege to cut or move any small wireless facilities located within the Public ROW of the County, as the County or cooperating agency may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the County shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the small wireless facilities. In all cases the County shall notify the Provider after cutting or removing the small wireless facilities as promptly as reasonably possible.
- c. A Provider shall notify the Teton County Road and Levee Supervisor of abandonment of any small wireless facilities at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the Provider shall remove its small wireless facilities at the Provider's own expense, unless the Teton County Road and Levee Supervisor determines that the small wireless facilities may be abandoned in place. The Provider shall remain solely responsible and liable for all of its small wireless facilities until they are removed from the Public ROW unless the County agrees in writing to take ownership of the abandoned small wireless facilities.

### 3-3-9 DESIGN STANDARDS APPLICABLE TO ALL SMALL WIRELESS FACILITIES

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- a. Integrated Design Consideration: Small wireless facilities, including equipment associated with the small wireless facility, shall be integrated into the stand-alone pole, utility pole or authority pole and generally shall be installed in a manner minimizing the visual impact. Whether the small wireless facility is collocated or is placed on its own pole, such facility must be technically capable of servicing a minimum of four (4) wireless service providers with like technical facilities through the use of neutral host antenna and:
  - i. Small wireless facilities should not be readily noticed;

- ii. All equipment, including electric meters, should be located on or within the pole unless prohibited by the owner of the pole, in which case an alternative power meter box must be approved by the Teton County Road and Levee Supervisor;
- iii. A small wireless facility and associated equipment located on the exterior of a pole shall be enclosed in a shroud or enclosure painted to match the existing pole color;
- iv. All small wireless facilities shall be constructed out of or finished with nonreflective materials (visible exterior surfaces only);
- v. For metal poles:
  - 1. Cable runs should be inside of the pole to the maximum extent practicable;
  - 2. Equipment associated with the small wireless facility should, where practicable, be enclosed at the base of the wireless support structure in a space not more than 24 inches in diameter and not more than five feet eight inches in height; and
  - 3. Poles used for collocation shall be designed to separate different pole users, such as through dual chamber or tri-chamber design.
- vi. If equipment cannot be installed inside of the pole, pole attachments within 15 feet of ground level shall be positioned on the side of the pole facing away from approaching traffic in the travel lane closest to the pole, provided that if the equipment would extend over a sidewalk or road surface, the equipment shall be positioned in a way to avoid such encroachment;
- vii. Wireless facility equipment on the outside of a utility pole shall be placed at least 8 feet above the public way, unless otherwise permitted by County;
- viii. Shall not be lighted or marked unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or other applicable governmental authority; and
- ix. Signs located at the small wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by applicable governmental authority. Commercial advertising is strictly prohibited.

b. Antennas

- i. Each individual antenna shall be located entirely within a shroud enclosure of not more than three (3) cubic feet in volume. All antennas associated with the small wireless facility shall not exceed a combined space of six (6) cubic feet and shall, to the greatest extent possible, be a neutral host antenna.
- ii. The diameter of the antenna or antenna enclosure should generally not exceed the diameter of the top of the wireless support structure pole, and to the maximum extent practical, should appear as a seamless vertical extension of the pole.
- iii. In no case shall the maximum diameter of the shroud be wider than one and one-half (1.5) times the diameter of the top of the pole.
- iv. Where maximum shroud diameter exceeds diameter of the top of the pole, the shroud shall be tapered to meet the top of the pole
- v. Unless technologically infeasible or otherwise appropriate based on neighborhood context, all antenna shall be mounted to the top of the wireless support structure pole, aligned with the centerline of the structure.
- vi. Antennas shall be generally cylindrical in shape.

vii. Antenna shall be completely housed within a cylindrical shroud that is capable of accepting paint to match the wireless support structure.

c. Height Limitation

Except for small wireless facilities within a public right of way on a residential street:

- i. The height of a structure used for collocation of a small wireless facility, including the wireless facility, measured at the base of the structure shall not exceed the lesser of:
  1. For a new or modified utility pole or County pole, 30 feet above ground level together with the minimum antenna height necessary for one antenna contained within any approved concealment feature.
  2. A utility pole existing on or before adoption of this Chapter that is used for the collocation of a small wireless facility may, on only one occasion, be increased by up to ten feet (10') to allow for the attachment of the small cell wireless antenna together with any approved concealment feature.
  3. A stand-alone pole shall not exceed 30 feet in height.
- ii. If a ground mounted or buried equipment cabinet is proposed, the cabinet or vault:
  1. May be placed above ground in a landscaped park strip or, if there is no landscaped park strip it shall be placed underground;
  2. Shall meet the same separation standards as required for a new utility pole from trees and drive approaches; and
  3. Ground cabinet shall be secured to a concrete foundation or slab with a breakaway design in the event of collisions and shall not exceed three feet in height, unless special conditions exist that would result in the cabinet encroaching into the sidewalk or to within two feet of the curb.

### **3-3-10 DESIGN STANDARDS APPLICABLE TO COLLOCATED SMALL WIRELESS FACILITIES**

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- a. To the maximum extent practicable, all small wireless facilities, associated equipment and cabling shall be completely concealed from view within an enclosure, and may be installed in the following locations:
- b. Where equipment cannot reasonably be incorporated into the base of the authority pole in accordance with section 3-3-7-a-v, it may be installed within:
  - i. An equipment enclosure mounted to the authority pole; or
  - ii. A ground-mounted cabinet physically independent from the authority pole.
- c. Equipment enclosures mounted to an authority pole:
  - i. Shall not protrude more than eighteen (18) inches beyond the face of the pole to the outermost portion of the enclosure.
  - ii. Should be installed as flush to the pole as practical. In no case shall an enclosure be installed more than four inches from the wireless support structure pole.
  - iii. Where multiple enclosures are proposed on a wireless support structure pole, the enclosures shall be grouped as closely together as possible on the same side of the pole.

- iv. Small wireless facility equipment enclosures should be the smallest size practicable to house the necessary facilities and equipment.
- v. Small wireless facility equipment enclosures shall be cylindrical or rectangular in shape, and should generally be no wider than the maximum outside diameter of the pole to which it is attached, to the maximum extent possible.
- vi. Attachment. The shroud enclosure shall be securely strapped to the wireless support structure pole using stainless steel banding straps. Through-bolting or use of lag bolts on publicly-owned wireless support structures is prohibited.

**3-3-11 DESIGN STANDARDS APPLICABLE TO SMALL WIRELESS FACILITIES ON NEW STAND ALONE UTILITY POLES**

- a. If an applicant proposes to install a new stand-alone utility pole to support a small wireless facility, the pole:
  - i. Design shall be cylindrical and shall match the aesthetics of existing streetlight poles and streetlights installed adjacent to the pole within the same right of way; and,
  - ii. Together with the small wireless facility components shall be sized to be visually pleasing:
    - 1. For a pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered;
    - 2. The equipment associated with the small wireless facility shall be enclosed at the base of the wireless support structure in a space described in subsection 3-3-7-a-v, provided that if a separate equipment cabinet or vault not exceeding 28 cubic feet in size may be used if the equipment cannot reasonably be contained in the space allowed;
    - 3. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size and shall taper between different pole sizes;
    - 4. The upper pole shall be scaled to 0.5 to 0.75 the size of the equipment cabinet, with a 10-inch minimum outer diameter at the widest portion of the pole;
    - 5. All hardware connections shall be hidden from view;
    - 6. No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet to prevent cups, trash, and other objects from being placed on the equipment cabinet;
    - 7. Each pole component shall be architecturally compatible to create a cohesive aesthetic; and
    - 8. The pole shall be made of steel and shall be powder coated black.
  - iii. Shall not be located within 100 feet of the apron of a fire station or other adjacent emergency service facility.
  - iv. Shall be placed in alignment with existing trees, utility poles, and streetlights.
  - v. Shall be located such that it in no way impedes, obstructs, or hinders the usual pedestrian or vehicular travel, affect public safety, obstructs vehicular traffic viewsheds of pedestrian movement, obstruct the legal access to or use of the public ROW, violate applicable law, violate or conflict with public ROW design standards, specifications, or violate the Federal Americans with

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- Disabilities Act of 1990, or in any way create a risk to public health, safety, or welfare.
- vi. Shall be located at intersecting property lines as much as possible.
  - vii. Whenever possible, shall be located on the secondary street.
  - viii. Shall be located a minimum of 15 feet away from trees or outside of the tree drip line, whichever is greater, to prevent disturbance within the critical root zone of any tree.
  - ix. Shall be located at least 5 feet away from the widest part of an alley or drive approach, including any flare associated with the approach.
  - x. Shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single or two-family residence and the street.
- b. When located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the pole such that it does not negatively impact the business.
- i. Shall not be located in-front of store front windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.
  - ii. Should be located between properties as much as possible.

### **3-3-12 UNDERGROUNDING**

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- a. A wireless provider will place newly constructed lines and cables underground whenever practicable when building in:
  - i. New residential subdivision areas where other utilities have been placed underground;
  - ii. On any public ROW within the Scenic Overlay District; and
  - iii. Within any Complete Neighborhood as set forth in the Jackson/Teton County Comprehensive Plan
- b. A wireless provider shall locate wires, cables, or other facilities that are not required to be above ground underground.
- c. Any request by a wireless provider for location of any overhead or aerial facilities (other than the antennas or other facilities required to remain above ground in order to be functional) shall be considered by County in accordance with applicable rules and regulations.

### **3-3-13 CONFLICTS**

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- a. In the event of a conflict between any provision of this Chapter and a license agreement entered pursuant to it, the provisions of this Chapter shall control.

### **3-3-14 OTHER APPLICABLE ORDINANCES**

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- a. A provider's rights are subject to the police powers of the County to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall

comply with all applicable general laws and ordinances enacted by the County pursuant to its police powers. All providers shall comply with the Teton County Land Development Regulations and other land use requirements.

### **3-3-15 COUNTY FAILURE TO ENFORCE**

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- a. A provider shall not be relieved of its obligation to comply with any of the provisions of this Chapter or any franchise granted pursuant to this Chapter by reason of any failure of the County to enforce prompt compliance.