

Bridger Canyon Zoning Regulation Proposed Amendments

The following definitions will be added to Section 3 Definitions:

Section 3 Definitions

- 3.4 Antenna. Any equipment or device used to receive or transmit electromagnetic waves for the provision of Personal Wireless Services including, but not limited to, cellular, paging, personal communication services (PCS), and microwave communications. Antennas include, but are not limited to, directional antennas, such as panels, microwave and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designated for amateur radio use, or satellite dishes designed for residential or household purposes.
- 3.5 Antenna Support Structure. Any structure, mast, pole, or tower used for the purpose of supporting an antenna.
- 3.6 Antenna Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more Antennas for telephone, television, radio, similar voice and data communication purposes, or Personal Wireless Services. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and antenna tower alternative structures.
- 3.8 Applicant, Personal Wireless Service Facility. The owner or operator, or authorized representative thereof, of a Personal Wireless Service Facility who applies for a Conditional Use Permit or Modification.
- 3.17 “Carrier on Wheels” or “Cell on Wheels” (“COW”). A portable self-contained Personal Wireless Service Facility that can be moved to a location and set up to provide Personal Wireless Services. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna Support Structure.
- 3.22 Domestic Wireless Equipment. Non-commercial wireless communication equipment serving 10 or fewer dwellings or parcels and conforming to height limits, setbacks and other standards in this Regulation, including amateur radios and domestic antennas, such as for the reception of terrestrial or satellite television signals or wireless internet service.
- 3.28 FAA. The U.S. Federal Aviation Administration.
- 3.30 FCC. The U.S. Federal Communications Commission.
- 3.39 Lease, Personal Wireless Service Facility. With respect to a Personal Wireless Service Facility, an agreement, however designated (such as, without limitation, lease, license, easement, right to use, access right), by means of which a property owner grants to the

Personal Wireless Service Facility operator a right to construct or operate a Personal Wireless Service Facility on his property.

- 3.43 Modification, Personal Wireless Service Facility. Any alteration to an existing Personal Wireless Service Facility Antenna Tower or base station that involves: (1) the collocation of new transmission equipment; (2) the removal of transmission equipment; or (3) replacement of transmission equipment. Personal Wireless Services. Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- 3.46 Personal Wireless Services. Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- 3.47 Personal Wireless Service Facility. A facility for the provision of Personal Wireless Services. A Personal Wireless Service Facility typically consists of an equipment enclosure, an Antenna Tower, one or more Antennas, and accessory equipment.
- 3.55 Telecommunications Law. Any statute or regulation enacted by any federal, state, or local governmental agency that in any way governs (a) telecommunications, (b) the construction, maintenance, Modification, or operation of a Personal Wireless Service Facility, (c) radio frequency emissions or their environmental impact, or (d) building, fire, plumbing, or mechanical standards applicable to a Personal Wireless Service Facility; and any applicable judicial or administrative interpretation of any of the foregoing.

Sections 6-7 9-11: Districts AE, RF, B2, B3, B4

Amend as indicated:

AE

6.2 Uses Allowed as a Matter of Right. The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grains and other crops. The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals; the excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses; signs warning against trespass, shooting and hunting on premises, without limitation as to number or size. Signs in accordance with Section 16. One single-family detached dwelling on each 40-acre parcel. Barns, corrals and other out buildings and structures accessory to the foregoing uses. The sale on the premises of products produced thereon. The packing, storing and processing of produce grown on the land, together with accessory buildings and structures required therefore. Non-agricultural, home occupations and hobbies when conducted within buildings and structures, the principal use of which is one of the foregoing uses. Domestic Wireless Equipment.

6.3 Uses Permitted After Securing Approval of a Conditional Use Permit. Stands and other facilities for the purpose of selling products grown on the land, together with accessory picnic facilities and similar accommodations for the convenience of patrons; non-commercial airstrips for the use of aircraft used for agricultural purposes, together with accessory buildings and structure required therefore. Residential buildings, including mobile homes, to house persons and their families who labor, either continuously or seasonally, on the same farm, ranch, or land unit on which such buildings are situated (40-acre minimum does not apply). Commercial feed lots; commercial chicken houses, commercial pig houses; public and private schools for the academic education of children below the seventh grade level; the development and processing of natural resources in accordance with Appendix A, Natural Resources Conditional Use Permits; guest houses, commercial snowmobile facilities, guest ranches; accessory buildings and structures the principal use of which is the pursuit of non-agricultural, home occupations and hobbies; bed and breakfast inns; the operation of private hunting and fishing clubs; caretaker's residences; ~~community receiving antennas, microwave relay stations~~ Personal Wireless Service Facilities; and electric transmission lines.

RF

7.2 Uses Allowed as a Matter of Right. One (1) single-family dwelling on each 40-acre parcel. Growing and harvesting of timber and other forest products and related activities, including logging and all operations incidental to and connected therewith; road building; crop farming and harvesting; forest stations and lookouts; grazing; riding and hiking trails; stables and corrals; public and private playgrounds and parks; picnic areas; public utility buildings; structures and uses; structures accessory to any use listed above; signs in accordance with Section 16. Non-agricultural home occupations and hobbies when conducted within buildings and structures; the principal use of which is one of the foregoing uses. Domestic Wireless Equipment.

7.3 Uses Permitted After Securing Approval of a Conditional Use Permit. Lumber mills, logging camps; the development and processing of natural resources in accordance with Appendix A, Natural Resources Conditional Use Permits; campgrounds; seasonal recreational campsites; golf courses; driving ranges; ski lift facilities; pack stations; airports; guest ranches; commercial snowmobile facilities; cross country ski facilities; structures and uses accessory to the uses listed herein; accessory buildings and structures the principal use of which is the pursuit of non-agricultural; home occupations and hobbies; ~~community receiving antennas, microwave relay stations~~ Personal Wireless Service Facilities; electric transmission lines.

B2

9.2.n. Domestic Wireless Equipment.

9.3.f. ~~Community receiving antennas, microwave relay stations,~~ Personal Wireless Service Facilities, subject to Section 17 and electric transmission lines.

B3

10.2.1. Domestic Wireless Equipment.

10.3.e. ~~Community receiving antennas, microwave relay stations~~ Personal Wireless Service Facilities, subject to Section 17 and electric transmission lines.

B4

11.2.m. Domestic Wireless Equipment.

11.3.q. ~~Community receiving antennas, microwave relay stations~~ Personal Wireless Service Facilities, subject to Section 17 and electric transmission lines.

SECTION 15 General Provisions

Amend as indicated:

15.1 Utility Uses. ~~Radio and television receiving antennas,~~ Domestic Wireless Equipment and public utility distribution and transmission lines, both overhead and underground, shall be permitted in all districts without the necessity of first obtaining a ~~building~~ land use permit.

NEW SECTION

Section 17 PERSONAL WIRELESS SERVICE FACILITIES

17.1 Intent. The intent of this Section is to provide for Personal Wireless Services in the Zoning District while conforming to the goals of preserving the natural beauty and rural character of Bridger Canyon, as expressed in the Bridger Canyon Development Pattern (General Plan).

17.2. Regulation of Personal Wireless Service Facilities

17.2.1 A Conditional Use Permit and a Land Use Permit is required to place or construct any Personal Wireless Service Facility, including Antenna Structures, Antenna Towers and any Antennas, structures, buildings, and roads associated with the foregoing.

17.2.2 If any these provisions conflict with any applicable Telecommunications Laws, the requirements or limitations of the Telecommunications Law shall control.

17.2.3 The regulations contained in this Section supersede all other provisions in the Regulation that may be applied to Personal Wireless Communication Facilities, except as specifically stated in this Section, and shall control in the case of a conflict.

17.3 Standards

- 17.3.1 A Personal Wireless Service Facility shall comply with all applicable Telecommunications Laws.
- 17.3.2 Servicing and construction shall occur during normal business hours, except as required for emergencies and repair of unscheduled breakdowns or outages.
- 17.3.3 No Personal Wireless Service Facility shall be permanently staffed. Servicing and construction shall occur during normal business hours, except as required for emergencies and repair of unscheduled breakdowns or outages.
- 17.3.4 To the greatest extent possible, a Personal Wireless Services Facility shall be designed to survive fire, wind and other natural disasters. If a Personal Wireless Services Facility is damaged due to a natural disaster, a COW Facility is permitted for a period of not more than one hundred twenty (120) days for temporary use related to replacement or repair of the damaged Personal Wireless Services Facility.
- 17.3.5 Personal Wireless Service Facilities and the surrounding environment.
- a. Towers shall be of monopole design unless the Applicant demonstrates that an alternative design would better blend into the surrounding environment.
 - b. To the greatest extent possible, a Facility shall be constructed to conceal all Towers, Antennas, and accessory structures. Visual mitigation techniques, such as coloring painting, landscaping, screening, artificial trees, or a fire tower, shall be used to blend the Facility into the surrounding environment. Visual mitigation shall be maintained while the Facility remains in use and until dismantled and removed by the Applicant or its successor or assign.
 - c. Antennas shall be mounted on Towers so as to present the smallest reasonable silhouette, profile, or cross-section.
 - d. Facilities shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting, unless required by the FAA or other state or local requirement.
 - e. All equipment enclosures, fencing and other improvements accessory to a Facility shall be designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground mounted equipment shall be screened from view by suitable vegetation.

- f. Screening vegetation shall be provided for service road cuts and site grading, where it does not already exist and/or replacement of existing vegetation.
- g. No grading shall occur on slopes in excess of 30%.

17.3.6 Antenna Support Structures, Antenna Towers, Antennas, and all other associated Structures comprising the Personal Wireless Service Facility shall conform to the following height requirements:

- a. No Structure or tower shall be of a type or height or placed in a location that the FAA would require the tower to be lighted or painted.
- b. To the greatest extent possible, no part of a Facility shall break the skyline as seen from Bridger Canyon Road (Highway 86), Jackson Creek Road, or Kelly Canyon Road.
- c. The maximum height of all Antennas and Structures shall be determined as a condition of approval, except that no Antenna or Structure, unless otherwise approved by the Planning and Zoning Commission, shall exceed more than 40 feet above the average height of a mature vegetative canopy and 100 feet in total.
- d. The mature vegetative canopy shall not be harvested or otherwise removed unless necessary to prevent interference or degradation of wireless services. Should the mature vegetative canopy be destroyed by wildfire or other means caused by Applicant or related to the Personal Wireless Service Facility, Applicant shall replant evergreen trees at least 10 feet in height in the location of the preexisting vegetation.

17.3.7 Setbacks and Spacing

- a. Antenna Support Structures and Antenna Towers shall observe the setbacks of the district in which they are located, including but not limited to setbacks from boundaries, creeks, watercourses, and roads.
- b. Antenna Towers and Antenna Support Structures shall observe additional setbacks of 150% of the Tower height from parcel boundaries, unless otherwise approved by the Planning and Zoning Commission.

- c. The Planning and Zoning Commission may increase setbacks from property lines for Personal Wireless Service Facilities to further mitigate adverse impacts.

17.3.8 Facilities shall be designed structurally, electrically, mechanically and in all respects to accommodate both the Applicant's Antennas and comparable Antennas for at least one additional user.

17.3.9 An application for a new Antenna Tower shall not be approved unless the Applicant demonstrates that existing or approved towers, buildings, or alternative structures more than thirty (30) feet in height (after first considering electric transmission towers) within a one mile search radius of the proposed Tower site cannot accommodate equipment planned for the proposed Tower and provide functionally equivalent coverage to a specified service area. The Applicant should provide evidence of the effort made to locate on an existing facility including a coverage/interference analysis, capacity analysis, and technological feasibility, and a brief statement as to any other reasons for success or failure in locating on an existing tower or structure.

17.4 Conditional Use Permits (Personal Wireless Communication Facilities)

17.4.1 Applicant Requirements.

- a. The Applicant must currently be licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more current FCC licensees to utilize the proposed Personal Wireless Service Facility.
- b. The Applicant shall at all times maintain in force general liability insurance in the minimum amount of \$1,500,000, covering any liability arising out of the placement, construction, or modification of the Personal Wireless Services Facility. The Applicant, or its successor or assign, shall maintain such coverage in full force until such time as all above-ground portions of the Facility have been removed.

17.4.2 Bond Requirement.

- a. A bond in an amount determined sufficient by the Planning and Zoning Commission may be required as a condition of approval or renewal of a Conditional Use Permit for a Personal Wireless Service Facility to cover the cost of the Facility's removal, potential site remediation, and/or satisfaction of the conditions and requirements contained in this Regulation.

- b. If a bond is required, the bond shall be forfeited if any removal and remediation work required of the Applicant is not completed within the timeframe required by Section 17.7.

17.4.3 Submittal Requirements. An application for a Conditional Use Permit shall include:

- a. A completed conditional use application form and a development plan, prepared by the Applicant or Applicant's agent.
- b. Cover letter describing the project.
- c. Plans for reclamation of all disturbances associated with project(s), including re-vegetation and noxious weed control.
- d. Copies of Applicant's FCC licenses or binding commitments from an FCC licensee.
- e. Evidence of the liability insurance prescribed in Section 17.4.1 above.
- f. The Lease, if applicable, or proof of ownership of the real property on which the Personal Wireless Service Facility will be located.
- g. Evidence documenting the infeasibility of locating the planned Personal Wireless Service Facility upon an existing or approved tower, building or other structure.
- h. Elevation plans of the Personal Wireless Service Facility with scaled dimensions.
- i. A site development plan prepared by a Montana registered land surveyor, architect or professional engineer, containing the following information:
 - 1) Vicinity maps, including:
 - a) Scale and north arrow.
 - b) The location of all Towers and electric transmission towers within one mile.
 - c) A copy of the section of the 1:24,000 USGS quadrangle showing the proposed site and latitude and longitude coordinates.
 - 2) A detailed site map, including:

- a) Scale and north arrow.
 - b) The name, address and telephone number, signature and seal of the professional preparing the site development plan.
 - c) All identifiable Structures located on the parcel, all private and public roads, highways and underground and overhead utilities.
 - d) Surveyed boundary lines, and corners of the parcel containing the proposed Antenna Tower construction and its fall zone.
 - e) The ground elevation of the proposed Antenna Tower's base and all proposed Antenna Support Structures.
 - f) Location and size of all proposed Structures and access to any Personal Wireless Service Facility, including existing roads and any roads proposed to be constructed in connection with construction or operation of the Personal Wireless Service Facility.
 - g) Delineation of vegetative cover and slopes in excess of 30%.
 - h) Proposed landscaping including a legend providing a description of plant materials shown on the plan, including typical symbols, names (common and/or botanical name), locations, quantities, container or caliper sizes at installation, heights, spread, and spacing.
 - i) Description of all adjacent land uses and property owner names.
- j. Federal Certifications.
- 1) FAA certification that the proposed Personal Wireless Service Facility has received a "Determination of No Hazard to Air Navigation" and that the Facility and Antenna Towers do not require lighting where such is required by the FAA.
 - 2) If applicable, FCC or other applicable federal agency certification that the maximum radio frequency and electromagnetic frequency emissions meet federal standards. A condition of approval shall require the Applicant to

continue to provide this certification on an annual basis to the Planning Department.

- k. Upon direction of the County Planning Department, a proposed mock-up, balloon, or similar test to demonstrate the height, silhouette, or profile of the proposed Personal Wireless Service Facility.
- l. Any additional information as deemed necessary by the Planning Department during any pre-application reviews.

17.4.4 Review Time for Submittals

- a. Within thirty (30) days of the receipt of an application, the Planning Department shall notify an Applicant in writing that its application is:
 - 1) Complete; or
 - 2) Incomplete, including the specific reasons why the application is incomplete and does not meet the submittal requirements.
- b. If the Planning Department informs the Applicant that its application is incomplete within thirty (30) days, the overall timeframe for review is suspended until the Applicant provides the requested information.

17.4.5 Conditional Use Permit Approval.

- a. Applications for a Personal Wireless Service Facility Conditional Use Permit may be approved, conditionally approved, or denied by the Bridger Canyon Planning and Zoning Commission. The Commission may make the granting of the Personal Wireless Service Facility CUP subject to reasonable limitations or conditions, as allowed by all applicable laws and regulations, as it deems necessary or appropriate to protect the health, safety, and general welfare of the citizens of the County and the Bridger Canyon Zoning District; to mitigate or avoid any and all adverse impacts; and to make the proposed Personal Wireless Service Facility conditional use more compatible and consistent with the intent of the Bridger Canyon General Plan and Development Guide and Zoning Regulation.
- b. Timing.
 - 1) An application shall be approved, conditionally approved, or denied within 150 days of its submittal to the Planning Department.

- 2) The 150-day period may be extended by mutual written consent of the Applicant and the Planning Department.
 - 3) If an application is incomplete as filed, the 150-day timeframe does not include the time the Applicant takes to respond to the Planning Department's requests for additional information.
- c. Notice of the public hearing to consider the application shall be provided according to the procedure in Section 18.3.6 Conditional Use Permits in this Regulation. In addition, notices advertising the scheduled public hearing for a proposed Personal Wireless Service Facility shall be posted in at least three (3) locations visible to the public on or near the parcel containing the proposed Facility, or on a nearby public road. Such signs shall be posted at least fifteen (15) days prior to any public hearing.
- d. Approval Criteria. The Bridger Canyon Planning and Zoning Commission may grant a permit for a use classified as a Personal Wireless Service Facility Conditional Use Permit only if it is found, in addition to the requirements of Section 18.3 of these Regulations that:
- 1) The use conforms to the objectives of the Bridger Canyon General Plan and Development Guide and the intent of these Regulations;
 - 2) The use will not adversely affect nearby properties, residents, natural resources or views;
 - 3) The use meets the standards in Section 17.3 and meets the density, height, setback, lighting, and all other regulations of the district in which it is located, unless otherwise expressly provided in these Regulations;
 - 4) The use increases availability of or access to communications services to residents of and visitors in the Zoning District.
 - 5) The decision to grant or deny conditional approval of the use would not:
 - a) Unreasonably discriminate among providers of functionally equivalent services;
 - b) Prohibit or have the effect of prohibiting the provision of Personal Wireless Services;
 - 6) A public hearing, after notice has been given and has been held.

- e. A decision to deny an application for a Personal Wireless Service Facility shall not be made on the basis of the environmental effects of radio frequency emissions to the extent that the facility complies with the FCC's regulations concerning emissions.
- f. The decision to approve, conditionally approve, or deny an application for a Personal Wireless Service Facility shall be in writing and supported by substantial evidence contained in a written record.
- g. Upon approval of a Conditional Use Permit for a Personal Wireless Service Facility, the site development plan shall be recorded with the Gallatin County Clerk and Recorder.

17.4.6 A Conditional Use Permit for a Personal Wireless Service Facility shall have a time limit of no more than five years from the date of issuance. Prior to the end of the five-year period, the applicant and/or structure owner shall be responsible for submitting an application for renewal to the Gallatin County Planning Department. Extension requests do not require public notification. Approvals to extension requests shall be issued in writing upon a determination by the Planning Director that:

- a. The applicant has demonstrated that changes in technology have not eliminated the need for the Facility as approved;
- b. Renewal of the Conditional Use Permit shall be based on compliance with the conditions of approval; and
- c. The Tower and Facility shall be maintained and kept in good repair.

17.4.7 Prior to the transfer of ownership of an existing tower and related facilities, the Applicant shall submit an application to the Planning Department for transfer of the original Conditional Use Permit and provide a statement from the new owner/operator that they agree to abide by all conditions of the issued Conditional Use Permit.

17.5 Requests for Modifications

17.5.1 A request for Modification of an existing Antenna Tower or base station shall be made in writing to the Planning Department.

17.5.2 The Planning Director shall approve a request for Modification if the Modification does not substantially change the physical dimensions of the existing Antenna Tower or base station.

17.5.3 The Planning Director shall base the decision to approve or deny a request for Modification on applicable Telecommunications Laws.

17.5.4 The approval of a Request for Modification may be conditioned on the Applicant's compliance with the standards and regulations for Personal Wireless Service Facilities;

17.5.5 Review Time for Submittals

- a. If the Planning Department requires additional information from the Applicant to consider its request for a Modification, it shall notify the Applicant within thirty (30) days from the time it receives the request that the request as submitted is incomplete.
- b. If the Planning Department informs the Applicant that its request is incomplete within thirty (30) days, the overall timeframe for review is suspended until the Applicant provides the requested information.
- c. A request for Modification shall be approved or denied within 90 days of its submittal to the Planning Department. The 90-day timeframe does not include the time that the Applicant takes to respond to the Planning Department's requests for additional information.
- d. The 90-day period may be extended by mutual written consent of the Applicant and the Planning Department.

17.6 Appeals

Any person adversely affected by any final action or failure to act by Gallatin County or any instrumentality thereof regarding the placement, construction, or modification of a Personal Wireless Service Facility may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.

17.7 Abandonment and Removal

- a. If at any time the use of an approved Personal Wireless Service Facility is discontinued for ninety (90) consecutive days, the Planning Director may declare the facility to be abandoned.
- b. Upon the Planning Director's declaration that a facility is abandoned, the Planning Director shall provide the Applicant with written notice that it shall either (1) continue use of the facility within ninety (90) days or (2) dismantle and remove the facility within ninety (90) days.
- c. Within ninety (90) days of the removal of a facility, the Applicant shall reclaim any area disturbed by the Facility to the satisfaction of the Planning Director and as required by any applicable local, state, or federal law.
- d. If reactivation, remediation, or dismantling does not occur as required herein, Gallatin County may conduct the work or contract to have the work performed and assess the owner or operator for all costs associated with such work.
- e. The Planning Director may grant an Applicant's request for an extension of the time limits provided in subsection (b) upon the Applicant's showing of good cause.