

§ 14-16-3-17 WIRELESS TELECOMMUNICATIONS REGULATIONS.

(A) Basic Requirements. The following regulations shall apply to all wireless telecommunications facilities in all zones, unless otherwise stated.

(1) Concealment: All wireless telecommunications facilities (WTFs) shall be concealed and be consistent with the definition of a concealed wireless telecommunications facility pursuant to Zoning Code § 14-16-1-5, except for collocations.

(2) Setbacks:

(a) A free-standing wireless telecommunications facility shall be set back a minimum of 100 feet from the property line of a residential zone.

(b) New free-standing wireless telecommunication facilities in public utility substations shall be exempt from the setback requirement if the wireless telecommunications tower is no taller than the existing utility structure within 20 feet of said substation.

(c) A free-standing wireless telecommunications facility shall be set back a minimum of 50 feet from the existing right of way.

(d) Except as stated in (a), (b) and (c) above, setbacks shall conform with the setback requirements of the zone in which the wireless telecommunications facility is located.

(3) Lighting and Signage:

(a) Only security lighting or lighting required by a state and/or federal agency is allowed, provided:

1. The location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises.

2. The lighting shall not have an off-site luminance greater than 1,000 footlamberts; it shall not have an off-site luminance greater than 200 footlamberts measured from any private property in a residential zone.

(b) The only signage that is permitted is that which is required by state or federal law.

(3) Lighting and Signage:

(a) Only security lighting or lighting required by a state and/or federal agency is allowed, provided:

1. The location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises.

2. The lighting shall not have an off-site luminance greater than 1,000 footlamberts; it shall not have an off-site luminance greater than 200 footlamberts measured from any private property in a residential zone.

(b) The only signage that is permitted is that which is required by state or federal law.

(4) Wireless telecommunication equipment leasable area shall:

(a) Not contain more than 400 square feet of gross floor area per

user and shall not be more than nine feet in height.

(b) Maintain the minimum setback and screening requirements of the zone in which it is located or as otherwise defined in this section.

(5) Abandonment: All wireless telecommunications facilities which are not in use for three consecutive months shall be removed by the wireless telecommunications facility owner. This removal shall take place within three months of the end of such three month period. Upon removal, the site shall be revegetated to blend with the existing surrounding vegetation. If there is no vegetation on a wireless telecommunications facility site, the site shall be returned to its preconstruction condition. The facility owner shall notify the city when removal of the facility occurs.

(6) Collocation: No new free-standing wireless telecommunications facility shall be permitted unless the Planning Director or his/her designee determines, upon the applicant's demonstration, that no existing tower, structure or public utility structure can be used in lieu of new construction to accommodate the applicant's proposed telecommunications facility. Evidence submitted to the city which demonstrates that no existing tower, structure, or public utility structure can be used in lieu of new construction to reasonably accommodate the applicant's proposed telecommunications facility shall consist of the following:

(a) That no existing tower, structure, or public utility structure is located within a 1/2 mile radius which meets the applicant's engineering requirements. An affidavit setting forth the asserted engineering requirements and the justification for those asserted requirements shall accompany any application.

(b) That no existing tower, structure, or public utility structure is located within the 1/2 mile radius which has sufficient structural strength or space available to support the applicant's proposed telecommunications facility and related equipment.

(c) That the applicant's proposed telecommunications facility would cause unavoidable electromagnetic interference with the antenna(s) on the existing towers, structures or public utility structures, or the antenna(s) on the existing towers, structures or public utility structures would cause interference with the applicant's proposed telecommunications facility.

(d) That there are other limiting factors that render existing towers, structures, or public utility structures within the 1/2 mile radius unsuitable; or

(e) That the owners of existing towers, structures, or public utility structures within the 1/2 mile radius will not allow the applicant to place its telecommunications facility thereon, or such owners are requiring payments thereof that substantially exceed commercially reasonable rates.

(7) Interference: Every wireless tele- communications facility shall meet the regulations of the Federal Communications Commission, or any successor thereof, regarding physical and electromagnetic interference.

(8) Health Issues: Every wireless tele- communications facility shall meet health and safety standards for electromagnetic field emissions as established by the Federal Communications Commission or any successor thereof, and any other federal or state agency.

(9) View corridors: Only an architecturally integrated wireless telecommunications facility or a wireless telecommunications facility, the antennas of which all are located on existing vertical structures, is allowed within 1/8 mile from the outer edge of the right-of-way of any flood control arroyo designated by the city or the Albuquerque Metropolitan Arroyo Flood Control Authority and identified as part of an existing or future trail system by the city, or the following streets: Alameda Boulevard, Griegos Road, Coors Boulevard, Central Avenue, Unser Boulevard, Sunport Boulevard, Paseo del Norte, Rio Grande Boulevard, Tramway Boulevard, Interstate 25 and Interstate 40. All other wireless telecommunications facilities are prohibited within 1/8 mile of the outer edges of

the right-of-way.

(10) **Open Space:** Only an architecturally integrated wireless telecommunications facility or a wireless telecommunications facility, the antennas of which all are located on existing vertical structures is allowed within 1/4 mile from the property line of any city- owned major public open space and the Petroglyph National Monument.

(11) **Historic Overlay Zones:**

(a) Only a concealed wireless telecommunications facility that is architecturally integrated is allowed within neighborhoods which are included in an Historic Overlay Zone, including, but not limited to: 8th & Forester, Huning Highlands, 4th Ward, and Old Town (except within H-1 zone, in which all wireless telecommunications facilities are prohibited).

(b) Only a concealed wireless telecommunications facility that is architecturally integrated is allowed within neighborhoods listed on the State Register of Cultural Properties or the Federal Register of Historic Places, as defined by their Neighborhood Association Boundaries, pursuant to the requirements of Ordinance 14-1987, including, but not limited to: College View, Silver Hill, and Spruce Park.

(12) **Collocation:** Placing additional antennas on existing non concealed wireless telecommunication towers and existing concealed wireless telecommunication facilities shall be allowed and encouraged. Such collocation shall be done in the least visibly intrusive manner, to blend in with the existing structure and its surroundings.

(13) **Application Requirements:** In addition to information already required by the Comprehensive City Zoning Code, each applicant for a wireless telecommunications facility shall provide the Planning Department with:

(a) Each wireless telecommunications provider and/or owner, not later than June 1, 2008, shall include an inventory set of data of all of the said provider's and/or owner's existing wireless telecommunications facilities and approved sites for facilities that are either within the city or within 1,000 feet of the border thereof.

(b) The zone map(s) specific to the application, from the city's Zone Atlas, drawn to scale, showing land uses and zoning designations, including those outside the city limits.

(c) Evidence that demonstrates collocation possibilities as described in § 14-16-3-17(A)(5).

(d) A set of site development plans which, in addition to other requirements in this Zoning Code:

1. Includes a scaled site development plan clearly indicating the location, type, color and height of any proposed wireless telecommunications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other jurisdictions), Comprehensive Plan classification of the site, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of any wireless telecommunications facility, topography, parking and other information deemed necessary by the Planning Department to assess compliance with this section;

2. Describes the facility's capacity, including a notarized statement from the applicant which declares the number and type(s) of antenna(s) that it can accommodate, or an explanation why the facility cannot be designed to accommodate other users;

3. Includes an affidavit explaining what the engineering requirements are and the factual basis for those requirements;

4. Includes an engineer's or architect's stamp and registration number;

5. Includes the separation distance between any tower and other telecommunications facilities and the owner of those facilities; and

6. Includes any other information as requested by the Planning Department needed to evaluate the request;

(e) A letter of intent committing the wireless telecommunications facility owner and his/her/its successors to allowing shared use of the facility if an additional user agrees in writing to meet reasonable terms and conditions of shared use.

(f) Evidence that recognized neighborhood associations, as defined in the Neighborhood Recognition Ordinance, have been notified in writing. The applicant shall provide mailed notice of a proposed wireless telecommunications facility to adjacent property owners that would be entitled to notice of a zone map amendment and to recognized neighborhood associations within a 1/4 mile radius.

(g) When requested by interested neighborhood association representatives, the wireless telecommunications facility owner or agent shall meet with those association representatives to provide a selection of alternative concealed facility designs deemed both technically feasible and aesthetically non-intrusive, seeking to reach a mutual agreement concerning the most acceptable design.

(14) Wireless Telecommunications Facility Mounted on Public Utility Structures Including Transmission and Sub-Transmission Line Structures:

(a) A wireless telecommunications facility, the antennas of which all are mounted on a public utility structure, including a transmission or sub-

transmission line structure is permitted in all zoning districts except the H-1 Historic Old Town Zone, unless otherwise specified in this Zoning Code.

(b) Antennas shall not protrude more than 2 feet horizontally from the public utility structure including a transmission or sub-transmission line structure.

(c) When mounted on a transmission or sub-transmission line structure, the equipment cabinet(s) shall be not more than 3 feet x 4 feet x 18 inches deep, at a minimum height of 12 feet, and a maximum height of 16 feet.

(d) The installer shall provide documentation to the Zoning Enforcement Officer establishing that the installer has permission from the structure owner to install the antenna(s) on the public utility structure (including the transmission and sub- transmission structure.)

(e) The Planning Director shall review and approve the installation of the antenna(s). The Director's decision shall be subject to appeal pursuant to the appeal provisions of the Zoning Code.

(15) Concealed Wireless Telecommunica- tions Facility:

(a) All proposed wireless telecommunications facilities, excluding collocations of antennas on existing towers, shall use concealed technology. Consistent with federal law, the requirement shall not have the effect of prohibiting the provision of wireless services.

(b) A wireless telecommunications facility shall be the least visually and physically intrusive that is possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.

(c) A concealed wireless telecommuni- cations facility shall:

1. Be aesthetically integrated with existing buildings, structures, and landscaping, to blend in with the nature and character of the built and natural environment and take into consideration height, color, style, massing, placement, design, and shape.

2. Be located to avoid a dominant silhouette of a wireless telecommunications facility on escarpments and mesas, and to preserve view corridors.

3. Be located on existing vertical infrastructure, such as utility poles and public utility structures, including transmission and sub-transmission line structures, if possible.

4. Be located in areas where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

5. Not be a readily visible wireless telecommunications facility.

6. Be subject to the landscaping and screening requirements of § 14-16-3-17 if required.

(d) Applicant shall provide mailed notice of a proposed wireless telecommunications facility to property owners that would be entitled to notice of a zone map amendment and to recognized neighborhood associations within a 1/4 mile radius, and shall present written documentation verifying such mailed notice to the Planning Director or his/her designee.

(e) The Planning Director or his/her designee shall decide whether the facility is "concealed." The Planning Director's decision shall be subject to review pursuant to the appeal provisions of the Zoning Code.

(16) Landscaping and Screening: The following regulations shall apply to landscaping and screening:

(a) A free-standing wireless telecommunications facility shall include landscaping planted and maintained according to a Landscaping Plan approved by the Planning Director or his/her designee; however, the Planning Commission may waive this requirement where the Planning Commission finds this requirement is not useful to achieving the intent of this Zoning Code.

(b) A free-standing wireless telecommunications facility shall be surrounded by solid fence or wall, at least six feet high and not more than nine feet high, and landscaping to properly screen ground equipment facilities from public view. Chain link with slats shall not constitute a solid fence or wall.

(17) Horizontal Separation of Free-Standing Wireless Telecommunications Facilities: Free-standing wireless telecommunications facilities shall be separated by at least 1,000 feet, as measured from the wall or fence of each free-standing wireless telecommunications facility.

(B) Exclusions. Every wireless telecommunications facility located within the city limits, whether upon private or public lands, shall be subject to this section. The following facilities shall be exempted from the provisions of this section.

(1) Amateur Radio Station Operator/Receive Only Antenna if owned and operated by a federally licensed amateur radio station operator or used exclusively for a receive-only antenna;

(2) Any existing tower and antenna provided a building permit was issued for the tower or antenna prior to adoption of this section;

(3) Emergency Services. Wireless telecommunications facilities used exclusively for emergency services including police, fire, and operation of the city water utility; and

(4) Any antenna used for AM, FM or TV broadcasting.

(C) Waiver:

(1) The Planning Commission, after a public hearing by the Planning Commission subject to notice required for a special exception, may grant a waiver of those requirements over which the Planning Commission has review authority except for height. A waiver shall be granted only if the Planning Commission finds in writing that the waiver:

(a) Is in the best interest of the community as a whole;

(b) Will expedite the approval of an antenna, tower, or tower alternative;

(c) Will not jeopardize public health, safety and welfare;

(d) Will either ameliorate the adverse impacts of antenna and tower proliferation or the adverse impact of requiring new construction of towers or antennas; and

(e) Will better serve the purposes of this section.

(2) The facts to be considered by the Planning Commission in reviewing an application for a waiver shall include:

- (a) The height of the proposed tower;
 - (b) The proximity of the tower antenna to residential structures and residential district boundaries;
 - (c) The nature of uses on adjacent and nearby properties;
 - (d) The surrounding topography;
 - (e) The surrounding vegetation and foliage;
 - (f) The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness;
 - (g) The proposed ingress and egress;
 - (h) The availability of suitable existing towers or other structures;
- and
- (i) Such other factors as may be relevant.

(D) Fees. The Mayor shall set a fee of \$3,000 per application for a proposed wireless telecommunication facility to cover reasonable administrative expenses based on approximate city costs incidental to the processing of applications for siting wireless telecommunications facilities. The fee for an application for a collocation shall be \$2,000. Such fees may be increased every two years based on Consumer Price Index (CPI) increases.

(E) Review Time. The administrative review time shall not exceed 60

days for a complete application. If a notice of deficiency is sent to the applicant, the application is not complete until such deficiency is corrected to the satisfaction of the Director. If the deficiencies are not corrected within 60 days of notice of the deficiencies the application shall be deemed withdrawn and no further action will be taken on it.

(Ord. 9-1999; Am. Ord. 12-2002; Am. Ord. 50-2002; Am. Ord. 5-2008)