

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

- (A) **Applicability.** Every wireless telecommunications facility located within the city limits, whether upon private or public lands, is subject to this section, except that the following facilities are exempt:
- (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 valid 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 water utility; and
 - (4) Any antenna used for AM, FM or TV broadcasting.
- (B) **General Provisions.** The following regulations apply to all wireless telecommunications facilities in all zones, unless otherwise stated.
- (1) Setbacks and Separation:
 - (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 telecommunications 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.
 - (e) 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.
 - (2) Lighting and Signage:
 - (a) Only security lighting or lighting required by a state and/or federal agency is allowed, provided:
 - (i) 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.
 - (ii) 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) **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.
- (4) **Interference:** Every wireless telecommunications facility shall meet the regulations of the Federal Communications Commission, or any successor thereof, regarding physical and electromagnetic interference.
- (5) **Health Issues:** Every wireless telecommunications 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.
- (6) **View corridors:** Only collocations, public utility collocations, and architecturally integrated wireless telecommunications facilities are permitted 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.
- (7) **Open Space:** Only collocations, public utility collocations, and architecturally integrated wireless telecommunications facilities are permitted within 1/4 mile from the property line of any city- owned or operated major public open space and the Petroglyph National Monument.
- (8) **Historic Overlay Zones and Registered Historic Properties:**
 - (a) Only architecturally integrated wireless telecommunications facilities are permitted within any designated Historic Overlay Zone.
 - (b) Wireless telecommunications facilities are strictly prohibited in the H-1 zone.
 - (c) Only architecturally integrated wireless telecommunications facilities are permitted on properties listed on the State Register of Cultural Properties or the Federal Register of Historic Places.

(C) Collocation & Public Utility Collocation:

- (1) Collocations and public utility collocations are encouraged. Such collocations or public utility collocations are not subject to the concealment requirements prescribed by subsection 14-16-3-17(E) below, but shall be done in the least visibly intrusive manner, to blend in with the existing structure and its surroundings. Notwithstanding the foregoing, collocation on a concealed wireless telecommunications facility shall maintain the concealed nature of the facility.
- (2) No new free-standing wireless telecommunications facility shall be permitted unless the Planning Director or 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 wireless telecommunications facility. Evidence which demonstrates that collocation or public utility collocation cannot be used in lieu of new construction to reasonably accommodate the proposed wireless telecommunications facility

shall consist of an affidavit with supporting exhibits submitted by the applicant addressing the following:

- (a) That no existing tower, structure, or public utility structure within a 1/2 mile radius meets the minimum engineering requirements and/or lacks available space to support the proposed wireless telecommunications facility;
 - (b) That collocation or public utility collocation of the proposed wireless 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;
 - (c) That there are other limiting factors that render existing towers, structures, or public utility structures within the 1/2 mile radius unsuitable; or
 - (d) 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 wireless telecommunications facility thereon, or such owners are requiring payments thereof that substantially exceed commercially reasonable rates.
- (3) Unless otherwise specified in this Zoning Code, Public Utility Collocations are permitted in all zoning districts except the H-1 Historic Old Town Zone.
 - (4) 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 10 feet, and a maximum height of 20 feet; and

(D) Application Requirements:

- (1) Applications for Free-Standing Wireless Telecommunications Facilities and Architecturally Integrated Wireless Telecommunications Facilities. In addition to any information otherwise required by the Comprehensive City Zoning Code, each applicant for a new free-standing or architecturally integrated wireless telecommunications facility shall provide the Planning Department with:
 - (a) A map of all existing wireless telecommunications facilities, operated by any carrier, within a 1/2 mile radius of the site;
 - (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 the absence of collocation possibilities as prescribed by subsection 14-16-3-17(C)(2), above;
 - (d) A set of site development plans which, in addition to other requirements in this Zoning Code:
 - (i) 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;

- (ii) 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;
 - (iii) Includes an affidavit explaining what the engineering requirements are and the factual basis for those requirements;
 - (iv) Includes an engineer's or architect's stamp and registration number;
 - (v) Includes the separation distance between any tower and other telecommunications facilities and the owner of those facilities; and
 - (vi) Includes any other information as requested by the Planning Department reasonably needed to evaluate the request;
- (e) Unless the applicant has demonstrated that the free-standing or architecturally integrated wireless telecommunications facility cannot be designed to accommodate future collocations by other users, a letter of intent committing the wireless telecommunications facility owner and his/her/its successors and assigns to allowing shared use of the facility if an additional service provider agrees in writing to meet reasonable terms and conditions of shared use;
- (f) Evidence that the applicant mailed notice by registered or certified mail return receipt requested of the proposed free-standing or architecturally integrated 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. The applicant shall also submit a copy of the notice with its application. In addition to all other relevant information, the notice must include the applicant's contact information and the contact information for the relevant City staff or department where more information may be requested, and must further indicate that the property owner may request to be notified in writing upon the Planning Department's decision on the application. When requested by any person or neighborhood association entitled to notice under this subsection, the wireless telecommunications facility owner or agent shall meet with those persons or 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. The Applicant shall notify those persons who specifically requested the meeting and all neighborhood associations entitled to notice under this subsection of the time and location of the meeting.
- (2) Applications for Collocations, Public Utility Collocations, and Upgrades to Existing Facilities.
- (a) In addition to any information otherwise required by the Comprehensive City Zoning Code, each applicant for a collocation, public utility collocation, or upgrade as described by § 14-16-3-17(D)(3) not resulting in a substantial change, shall provide the Planning Department with:

- (i) Documentation establishing that the installer has permission from the structure owner and property owner, if not the same, to install the wireless telecommunications antenna(s) and any associated buildings, cabinets or equipment at the site;
 - (ii) The zone map(s) specific to the application, from the city's Zone Atlas;
 - (iii) A set of site development plans with an engineer's or architect's stamp and registration number which, in addition to other requirements in this Zoning Code includes a scaled site development plan clearly indicating the location, type, and height of the existing wireless telecommunications facility and the proposed wireless telecommunications facility, adjacent roadways, and elevation drawings of the wireless telecommunications facility as existing and as proposed;
 - (iv) A signed statement from the public utility or owner of the tower certifying the dimensions of the tower as originally installed or permitted, inclusive of any modifications that were approved prior to February 22, 2012 (date of the Spectrum Act);
 - (v) An affidavit explaining the engineering requirements and the factual basis for those requirements; and
 - (vi) Any other information requested by the Planning Department reasonably needed to evaluate the request.
- (b) If the proposed collocation, public utility collocation, or upgrade will result in a substantial change to the existing wireless telecommunications facility or public utility structure as described by subsection 14-16-3-17(D)(3) it shall be permitted only upon the applicant's receipt of a waiver pursuant to § 14-16-3-17(G). If such a waiver is required, the application will be deemed incomplete until such time as the waiver is approved.
- (c) The Planning Director or designee shall review applications for the proposed collocations or public utility collocations. Applications for collocations meeting the relevant requirements of this § 14-16-3-17 and not resulting in a substantial change shall be approved. The Director's decision is subject to appeal pursuant to the appeal provisions of the Zoning Code.
- (3) Upgrade; Substantial Change.
- (a) For purposes of this section, an "upgrade" is the replacement, or addition of wireless telecommunications antenna(s) or equipment, but does not include routine maintenance.
 - (b) For purposes of this section, a "substantial change" to a wireless telecommunications facility or public utility structure includes any upgrade or physical alteration to an existing public utility structure or existing wireless telecommunications facility that meets any of the following criteria:
 - (i) For wireless telecommunications towers other than wireless telecommunications towers in the public right-of-way, it increases the height of the wireless telecommunications tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for wireless telecommunications facilities in

the public-right-of way or for public utility structures, it increases the height of the structure by more than 10% or ten feet, whichever is greater;

- (A) Changes in height are to be measured from the dimension of the tower as originally installed or permitted, inclusive of any modifications that were approved prior to February 22, 2012.
- (ii) For wireless telecommunications towers other than wireless telecommunications towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for wireless telecommunications facilities in the public-right-of way or for public utility structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For wireless telecommunications facilities other than wireless telecommunications facilities in the public right-of-way, it would increase the number of equipment cabinets beyond a maximum of four; for wireless telecommunications facilities in the public-right-of way or for public utility structures, it involves the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails excavation or deployment beyond the current site;
- (v) It would defeat the concealment requirements of subsection 14-16-3-17; or
- (vi) It does not comply with the conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in the above subsections (i) through (iv).

(E) Concealment:

- (1) All proposed wireless telecommunications facilities, excluding collocations, public utility collocations, and upgrades that do not result in a substantial change shall use concealed technology and shall be:
 - (a) The least visually and physically intrusive as possible and 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;
 - (b) 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;
 - (c) Located to avoid a dominant silhouette of a wireless telecommunications facility on escarpments and mesas, and to preserve designated view corridors; and

- (d) To the extent feasible without impacting functionality, located in areas where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening, and sited so as to not stand out of the landscape as a wireless telecommunications facility.
- (2) Consistent with federal law, these concealment requirements shall not be administered so as to have the effect of prohibiting the provision of wireless telecommunication services.
- (3) The Planning Director or his/her designee shall determine whether the requirements prescribed by this subsection are sufficiently satisfied subject to review pursuant to the appeal provisions of the Zoning Code.

(F) Landscaping and Screening:

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

(G) Waiver:

- (1) The Planning Commission, after a public hearing noticed as required for a special exception, may grant a waiver of those requirements over which the Planning Commission has review authority except for allowed maximum height. A waiver shall be granted only if the Planning Commission finds in writing that the waiver substantially:
 - (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 antenna(s); 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.

(H) Fees. The Mayor shall set a fee of \$3,000 per application for a proposed wireless telecommunications 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.

(I) 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; 2014)