



City of Las Cruces®

Realize Las Cruces Ad Hoc Committee Agenda
March 1, 2023 at 3:00 PM
Room 2007 - A, City Hall
700 N Main St., Las Cruces, NM 88001

- I. Call To Order
- II. Approval Of Minutes
- III. Postponements
- IV. Discussion Items
- IV.I. Section 5-12. Wireless Communication Facilities

Documents:

[LCO DEVELOPMENT CODE \(2023.02.15\) - WCFS \(TRACK CHANGES\).PDF](#)

- V. Upcoming Meeting Discussion Items
To Be Determined
- VI. Public Participation
- VII. Adjournment

Date Posted: February 24, 2023

Sec. 5-12. Wireless Communication Facilities

A. ~~Antenna, Towers, Wireless Communication Structures, and Other Vertical Structures~~ Antennas, and Towers

1. Purpose

The purpose of this section ~~of the zoning code is to address the placement, height, and other restrictions related to all types of communication structures, including antennas, towers, and other vertical structures not related to communications.~~ establish supplementary regulations governing wireless communication facilities, including towers, co-located facilities and antennas. This section also addresses the urban design criteria, special use permit and variance processes, and nonconforming issues for the same structures. This article is intended to address the public health, safety, and general welfare associated with such structures, in accordance with the comprehensive plan and other sections of this Code. These regulations promote the following goals:

- a) Encourage the location of facilities in nonresidential areas to preserve the character of Las Cruces' neighborhoods;
- b) Protect residential areas and land uses from potential adverse impacts of wireless communication facilities;
- c) Prioritize co-location of wireless communication facilities over additional single-use towers;
- d) Minimize the number of new towers;
- e) Encourage the use of minimally visually intrusive technology to the maximum extent technically feasible;
- f) Promote regulatory certainty; and
- g) Allow telecommunications providers to provide services to the community quickly, effectively, and efficiently.

2. Federal Law

The wireless communication facility regulations of this section must be applied within the constraints of the Telecommunications Act of 1996 and Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012.

3. Applicability

This section applies to all towers and antennas located with the City's jurisdiction, except as expressly exempted below.

4. Exemptions

- a) Amateur (Ham) radio antennas;
- b) Microwave reflectors and parabolic antennas;
- c) Antennas and equipment located completely inside of buildings; and
- d) Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance. Minor modifications include the addition of antennas to conforming wireless towers and attached wireless communications facilities that comply with all applicable regulations of this section.

5. General ~~Standards and Construction Provisions~~ Requirements

~~All structure heights shall be measured from the lowest adjacent ground level vertically to the highest point of all structures, whether attached to the ground, the building, or other structure(s).~~

- a) All structures shall be constructed and installed to manufacturer's specification and ~~constructed to withstand a minimum 75-mile per hour (mph) wind, or the minimum wind speed as required by~~ comply with the City's adopted Uniform Building Code, as amended, ~~and required setback provisions as prescribed for the zoning districts below.~~

~~Structures shall be permitted and constructed to meet current, adopted city Building Code requirements.~~

~~All structures shall conform to Federal Communication Commission and/or Federal Aviation Administration regulations, if applicable.~~

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- b) Communication facilities may be considered a principal or accessory use. Another principal or accessory use on the same lot does not preclude installation of a tower on that lot.
- c) Required Approvals
 - i) Except in industrial zoning districts, communication towers must be of a monopole design unless a Special Use Permit is approved (see Sec. 3-4.F. Special Use Permits (SUPs)) allowing an alternative design that is determined to better blend into the surrounding environment or that the required antennas cannot be supported by a monopole.
 - ii) A building permit is required to authorize alteration of existing, or co-location of new communication facilities on existing structures that comply with the requirements of this Code.
- d) Communication structures, towers, and antennas shall comply with the following requirements:
 - i) Business Registration

Business registrations are required for each communication structure for commercial purposes ~~located inside the city limits, regardless whether said structure is freestanding, collocated, facial or roof mounted, or part of an integrated structure or improvement.~~
 - ii) Setbacks and Separation
 - a. Communication structures shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of all residential dwelling structures (e.g., house, apartment, duplex, triplex, quadplex, townhouse, etc.).

~~— Any setback or buffer yard as prescribed within that requires a greater distance than required of this Section, the greater setback shall apply.~~
 - b. Freestanding facilities are prohibited in the following locations:
 - i. Within 100 feet of any property line of any residential zoning district.
 - ii. Within 50 feet of an existing right-of-way.
 - iii. Within any setback established by the applicable zoning district.
 - c. This use is prohibited within 1,000 feet in any direction of any other freestanding wireless communication facility or structure, as measured from the wall or fence of each facility. This requirement does not apply to small wireless facilities within the public right-of-way.
 - iii) Lighting

Towers may not be illuminated by artificial means and may not display strobe lights unless such lighting is expressly required by the Federal Aviation Administration or other federal or state authorities. When incorporated into the approved design of the tower, light fixtures used to illuminate ballfields, parking lots, or similar areas may be attached to the tower.
 - iv) Signage

The use of any portion of a tower for advertising or signs other than warning or equipment information signs is expressly prohibited.
 - v) Maximum Height
 - a. Single-carrier wireless communication facilities: 65 feet.
 - b. Co-locations on any existing unconcealed tower or existing structure: 75 feet.
 - c. Any increase to the height of or a reduction to the setbacks for private purposes in any residential zoning district requires the ~~approval of a variance~~ determination of a hardship by the Planning and Zoning Commission as part of the ~~and not a~~ Special Use Permit approval criteria.

~~e) Abandonment or cessation of use of the communication structure shall require the removal of all facilities associated with the communication structure from the subject property within six months after the abandonment or cessation of use. Foundations for such structures should be altered or removed in order to be visually appealing and safe.~~

Note: Residential (private use) facilities seeking relief currently must use a variance procedure. Commercial facilities follow a SUP process for relief.

6. ~~Collocation~~Co-location, Facial and Roof Mount, and Integrated Communication Structures Provisions

~~a) Co-locating, facial and roof mounting, or constructing integrated improvements in which communication structures are disguised or made part of a new building or structure, is required for all commercial use communication structures in all zoning districts, historic districts, historic properties, and within 200 feet of historic districts or properties unless evidence is provided that clearly indicates that co-locating, facial or roof mounting, or improvement integration cannot and should not occur. Evidence, may include, but is not limited to, that no other structure suitable for collocation, mounting, or improvement integration exists. All commercial use communication structures shall be co-located or integrated within an existing structure unless evidence is presented demonstrating that such co-location or integration cannot and should not occur. Evidence may include, but is not limited to, that no other structure suitable for co-location exists:~~

- i) Within a one-mile radius to meet the applicant's engineering requirements or structural strength or space availability needs for all improvements;
- ii) In which unavoidable electromagnetic interference would occur between the new and any existing communication structures;
- iii) In which other factors render the use of existing structures unsuitable;
- iv) In which urban design features and aesthetic views would be hampered, beyond the objectives desired with the creation of this requirement, of existing natural and man-made structures; and
- v) Whose owners of existing structures would not allow the placement of the applicant's structure or such owners are requiring payments thereof that substantially exceed commercially reasonable rates; ~~and.~~

~~Cases in which violations of this Code would be created.~~

b) Such evidence shall be presented to the community development department for review and approval by the Community Development Director ~~or designee~~. Such proof may be required as part of the Special Use Permit and/or building permit approval processes, and only then shall an independent, freestanding communication structure be allowed in accordance with other requirements of this Code.

c) ~~Collocation~~Co-location of structures shall be in accordance with the following provisions:

~~Height limit exceptions for collocation only:~~

~~a. If the height of the receiving structure exceeds the maximum height permitted for that type of structure in the parcel's zoning district, then the receiving structure shall be granted a legal nonconforming use certificate and the collocation of the new communication structure shall be allowed by right provided that the addition of the new structure does not increase the height of the receiving structure.~~

~~b. a. If the height of the receiving structure meets or is below the maximum height permitted for that type of structure in the parcel's zoning district, collocation of the new communication structure shall be allowed by right provided that the addition of the new structure does not increase the height by more than 20 feet above the maximum height allowed for that zoning. If the collocation of the new structure will exceed the 20 feet height limit above the maximum allowed height, then applying for, complying with, and receiving approval of a special use permit shall be required.~~

ii) If the receiving structure ~~has~~was previously ~~received~~granted a Special Use Permit for its use and placement, including necessary variances for height and setbacks, the original special use permit does not need to be amended provided all requirements of the original Special Use Permit and this section have been met, ~~including landscaping and screening, and that all height and setback increases are in accordance with limits prescribed within a above.~~

~~a. Technical engineering information will need to be submitted with the building permit application indicating compliance with the building codes and structural provisions to ensure that the receiving structure can support the new communication structure.~~

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- iii) Additional buildings and/or additions to existing equipment and accessory ~~buildings-structures~~ for towers ~~will require compliance to~~ must comply with applicable architectural and urban design criteria for the subject property and ~~must be reflected on necessary special use permits, if applicable. If not reflected on special use permits, amendment provisions must be followed in accordance with~~.
- iv) An unlimited number of communication ~~structures-antennas~~ may be placed on an existing tower and/or other communication structure, provided all other requirements are met, including building codes and urban design criteria.

~~Facial and roof mount placement of structures can be utilized on existing building and structures, not including other communication structures, provided that the addition of the communication structure does not: (1) exceed the maximum height allowed for the receiving structure and/or building, (2) violate setbacks required for that type of structure in that parcel's specific zoning district, and (3) encroach on required setbacks and/or buffer yards from adjacent land uses and zoning districts. Additionally, the proposed communication structure shall be compatible with the integrity and style of architecture of the receiving building and/or structure.~~

~~Facial and roof mounting of structures shall be in accordance with the following provisions:~~

~~Facial and roof mounts must be securely mounted to the structure with approved fasteners in accordance with the current building code, as amended, or other accepted engineering practices for such attachments.~~

- v) If not governed specifically by this section, the building or structure receiving a ~~the facial mount communication structure~~ co-located communication facility must comply with all applicable zoning and building code provisions, if applicable, or other city ordinances and/or state laws related to their placement, use, and construction.
- vi) All ~~facial mounts~~ co-located communication facilities must be an integrated architectural design feature and painted or textured such a color as to blend in with their visual background.
- vii) When roof mounts are used, at a minimum, the first five feet of the communication structure shall be screened from view on all sides ~~through the use of~~ using building design elements, such as varied roof heights and/or parapets.
- viii) ~~Facial~~ Wall mounts cannot project more than three feet from the surface of the ~~facade of the~~ building and the projection cannot violate any of the normally required building setbacks and/or buffer yards. Structures that are attached parallel to a pitched ed roof surface cannot project more than three feet above the surface of such roof.

~~Exception:~~ This does not apply to roof top mounted structures that vertically ascend upward from a flat roof or structures placed at the apex of pitched roofs.

- ix) All ~~facial mount~~ wall-mounted communication structures must maintain a minimum clearance of eight feet above the nearest adjacent ground and/or walking surface.
- x) There shall be no limit on the number of ~~facial~~ wall and roof mount structures, ~~except in items h. and i. below~~, in any zoning district, provided the structure is compatible with and integrated to the architecture of the receiving structure and can be demonstrated in plans to be submitted to the Community Development Department for review and approval.

~~a. In the NCO, Neighborhood Center OverlayTCO, Town Center OverlayMXCO, Mixed Use Corridor Overlayoverlay zones, the number of structures is limited to one facial mounted structure only, and such structure shall be in accordance with design criteria and approval processes for the specific overlay zone and no other communication structure, either for private or commercial purposes, is located on the same parcel. In the Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., the number of commercial communication structures is limited to either one facial mounted structure or one roof mounted structure.~~

~~b. In the LCIIIP, Las Cruces Innovation and Industrial Overlay Zone District, the number of structures is limited to one facial mount and one roof mounted structure, in addition to one structure for use by the property owners, and in accordance with design criteria and approval processes for this zone.~~

7. Stealth Technology

~~The placement~~ use of stealth technology or design techniques is encouraged and ~~of communication structures, for commercial purposes, as an integral part of a building, new, existing, or with improvements, is~~ intended to provide more options for the placement and use of communication structures while integrating or concealing the communication structure into an improvement. ~~This option may be used on privately or city owned property that furthers the needs of both the community and the communication company.~~

Communication structures integrated into public facilities shall be in accordance with the following provisions:

Approval for such facilities shall occur as an agreement between the communication provider and the city council. Such agreement shall serve as a lease to the specific property with clarification as to the type of facility, its use, access to the site, and maintenance provisions. The city shall expect clear indication to the placement of the communication structure(s) within the public facility or improvement, terms for abandonment of the facility, and other minimum guarantees to protect the public health, safety, and welfare. Nothing within the agreement shall mandate the city's acceptance of the proposal and to allow the use of the public facility or to make improvement to allow the accommodation of a private or commercial communication structure(s).

All such proposals shall be submitted to the city's property manager or designee for review and recommendation to the city council for review and approval. The property manager shall submit the request for review and comments to the community development department, at a minimum, and other city departments, staff, and boards, as the manager determines to be appropriate for review. Such reviews shall be to determine the impacts, if any, on the proposal as it relates to city use and functions of the existing public facility and the facility after the integration of a communication structure, with or without improvement to the public facility. The use of this section shall allow for the violation of standards and requirements for communication structures as allowed within the zoning district in which the public property is located.

Communication structures integrated into private facilities shall be in accordance with the following provisions:

Approval for such facilities shall occur as part of a master plan or site plan approval process. The master plan or site plan approval process shall outline a clear indication to the placement of the communication structure(s) within a facility or improvement, terms for abandonment of the facility, and other minimum guarantees to protect the public health, safety, and welfare.

All such master plans and site plans shall be submitted to the community development department for review and recommendation to the Planning and Zoning Commission for review and approval. Through the master plan or site plan approval process, this section shall allow for the violation of standards and requirements for communication structures as required within the zoning district in which the private property is located, provided that the integrated facility provides an aesthetic benefit to the community versus that of nonintegrated or freestanding communication structures.

- a) Examples of communication structures integrated and/or concealed into public or private facilities [using stealth technology](#) include but are not limited to:
 - i) Flagpoles,
 - ii) Spires, bell towers, and other architectural features added to buildings,
 - iii) Integrated communication structures on utility substations, buildings, and water tanks,
 - iv) Extensions of communication antennas to existing lighting poles at sports facilities, and
 - v) Any other proposed communication structure that is integrated and/or concealed within a building or structure and is approved in accordance with the provisions of this section.

8. Urban Design Criteria — ~~All Communication Structures~~

a) General Provisions

- i) Building architecture, not including the tower, shall be consistent with surrounding structures in both style and construction material.
- ii) Access to all communication structures and associated buildings on the property shall be shown on the Site Plans ~~site plan~~ as part of special use or building permit approval processes.
- iii) No chain link fencing around any communication structures is allowed along arterial or collector streets.
- iv) [All utility buildings and structures accessory to a tower must comply with all applicable requirements of the underlying zoning district. Exterior ground mounted equipment occupying more than 50 square feet, if visible from ground level, must be screened from view of abutting property used or zoned for residential purposes by a screening wall or fence in accordance with the screening standards for mechanical and utility equipment in Sec. 5-9.D.5.](#)

~~Commercial Provisions~~

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~~If a tower site or any other communication structure for commercial purposes is being built, it must conform to all city design standards, including landscaping as required within this Code and other city codes.~~

~~Opaque buffers are required for any freestanding tower, antenna, and other communication structure, and associated equipment buildings adjacent to single family residential zones unless there is no reasonable expectation that the adjacent property will be used for single family residential purposes.~~

~~Semi-opaque buffers are required for any freestanding tower, antenna, and other communication structure, and associated equipment buildings adjacent to all other residential zoning districts and the office zones unless there is no reasonable expectation that the adjacent property will be used for residential zoning district or office zoning district purposes.~~

- v) Equipment buildings associated with communication structures shall follow an architectural style, construction materials, and colors similar to existing buildings within the neighborhood; ~~i.e. b~~ Building facades for tower accessory buildings-structures and the first 20 feet of towers shall be painted earth-tones or similar colors to existing structures within the neighborhood and constructed of similar building materials.

~~On-site driving aisle and parking stalls shall be required for all commercial communication structures. Driving aisles shall be at least 12 feet in width and such length to provide access to the nearest public street or paved right-of-way. At least one parking stall shall be provided on the site and shall be 12 feet in width and 19 feet in length. Paved connection between the driving aisle and parking stall shall be provided.~~

- vi) Antennas or other radiating/receiving devices are not required to have architectural treatments or other design features, such as painting and texturing, applied as required within this Code, as such treatments would interfere with the operation of the device. Such treatments are required of the supporting structure, including towers, and not the radiating/receiving device.

b) Towers and Other Communication Structures in Residential Provisions-Districts

In addition to a) General Provisions above, communication structures located within residential districts are also subject to the following:

- i) All private communication structures on residentially zoned property ~~are encouraged to~~ shall either be painted or treated the same color as the primary structure or the surface in which the structure is attached. This includes painting or screening roof-mounted communication structures.

Screening and/or painting of roof-mounted structures is ~~encouraged~~ required on all sides the residential property in which a communication structure is to be or is placed.

~~Placement Provisions—Freestanding communication structures and other vertical structures.~~

~~Towers and other communication structures, and satellite service devices in residential zoning districts (Error! Reference source not found.; Error! Reference source not found.; Error! Reference source not found.; Error! Reference source not found.; MHR, Manufactured Housing District).~~

- ~~ii) Setbacks: Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of any and all residential dwelling structures (e.g., house, apartment, duplex, triplex, quadplex, townhouse, etc). Private communication structures in these zones may pursue a variance from the Planning and Zoning Commission for increases in height and reductions in required setbacks.~~

~~Structures for commercial purposes shall be permitted only in accordance with facial and roof mount, improvement integration, and urban design provisions of this Section.~~

Maximum Permitted Heights

Zoning District	Towers	Other Communication Structures
OS, Open Space District	Prohibited	Prohibited
Error! Reference source not found.; Error! Reference source not found.; Error! Reference source not found.; MHR, Manufactured Housing District; DDC, Downtown Development Code	65' For noncommercial use only*	65' For noncommercial use only*
CR, Commercial/Retail District	65'	65'
LI, Light Industrial District; HI, Heavy Industrial District	200'	200'
NCO, Neighborhood Center Overlay; TCO, Town Center Overlay; MXCO, Mixed Use Corridor Overlay	Maximum building height and noncommercial use only	Maximum building height and noncommercial use only
LCIP, Las Cruces Innovation and Industrial Overlay Zone District	Limited placement @ 65'	Maximum building height

~~* Structures for commercial purposes will be permitted only in accordance with facial and roof mount, improvement integration, and urban design provisions of this section.~~

c) Towers and Other Communication Structures in ~~the Commercial Zoning Districts (CR, Commercial/Retail District).~~

i) Additional Setbacks for Antennas, Communication Structures, and Satellite Service Devices:

~~Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of the primary building structure. If the antenna, communication structure, or satellite service device is the primary structure or use of the property, then such structure shall be within the primary buildable area, including all equipment buildings.~~

- a. Structures shall be set back at least one foot for each one foot in height from any residential dwelling structure on any adjacent parcel.
- b. Equipment and accessory ~~buildings-structures~~ shall conform to building and accessory ~~building-structure~~ maximum heights and minimum setbacks for the parcel's specific zoning district.

ii) Additional Setbacks and Placement Restriction for Towers:

- a. Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the rear of the primary building structure. If there is no primary building, then the tower must be within the primary buildable area.
- b. Towers shall also be set back one foot for each one foot in height plus 10% of the total height from any residential use on any adjacent or the same parcel.
- c. Towers shall not be constructed on lots adjacent to property zoned **INSERT APPROPRIATE RESIDENTIAL DISTRICTS**, unless approved through the Special Use Permit process (see Sec. 3-4.F. Special Use Permits (SUPs)).
- d. A Special Use Permit may be granted to permit tower height greater than what is allowed. ~~The special use permit process shall be used to determine tower height greater than what is allowed.~~ The Special Use Permit process shall also be used for any ~~variances-deviations~~ related to setbacks and/or buffer yards.

d) Towers and Other Communication Structures in Industrial Zoning Districts ~~(LI, Light Industrial District; HI, Heavy Industrial District).~~

i) Additional Setbacks for Antennas, Communication Structures, and Satellite Service Devices:

~~Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of the primary building structure. If the antenna, communication structure, and satellite service device is the primary structure or use of the property, then such structure shall be within the primary buildable area, including all equipment buildings.~~

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- a. Structures shall be set back at least one foot for each one foot in height from any residential dwelling structure on any adjacent parcel.
- b. Equipment and accessory ~~buildings-structures~~ shall conform to building and accessory ~~building-structure~~ maximum heights and minimum setbacks for the parcel's specific zoning district.
- ii) Additional Setbacks and Placement Restrictions for Towers:

~~Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the rear of the primary building structure. If the tower shall be the only or primary structure on the parcel, the tower must be within the primary buildable area or setbacks.~~

 - a. Towers shall be set back one foot for each one foot in height plus 10% of the total height from any residential zone and/or use.
 - b. Towers shall not be constructed on lots adjacent to property zoned- **INSERT APPROPRIATE RESIDENTIAL DISTRICTS**, unless approved through the Special Use Permit process (see Sec. 3-4.F. Special Use Permits (SUPs)).
 - c. A Special Use Permit may be granted to permit tower height greater than what is allowed. ~~The special use permit process shall be used to determine tower height greater than what is allowed.~~ The Special Use Permit process shall also be used for any ~~variances~~ deviations related to setbacks and/or buffer yards.
- ~~e) Towers and other communication structures located in historic districts or on historic properties and all properties within 200 feet of a historic district or property. The 200-foot distance is based on minimal property notification requirements for this Code and the maximum height allowed for any tower without a special use permit. Historic district or properties include any district or property listed or identified on any of the national, state, or local register of historic places, if any.~~
 - i) ~~All communication structures, not including towers:~~
 - a. ~~All structures, not including towers, shall not exceed 65 feet if located in a historic district or on a historic property. Any request for these structures to exceed the maximum building height shall require a special use permit.~~
 - b. ~~These structures shall follow placement and setback provisions for the zoning district for the specific type of structure.~~
 - ii) ~~Placement restriction for towers:~~
 - a. ~~Towers shall not be permitted unless located within the LI, Light Industrial District or HI, Heavy Industrial District zoning district.~~
 - b. ~~Within historic districts or on historic properties:~~
 - i. ~~Towers shall not exceed 65 feet in height.~~
 - ii. ~~Any tower height greater than 65 feet shall require a special use permit and the maximum tower height shall be determined as part of the special use permit process.~~
 - iii. ~~No tower shall exceed 200 feet if located in a historic district or on historic property. Moreover, the special use permit process cannot be used to obtain a tower height variance greater than 200 feet.~~
 - c. ~~Within 200 feet of a historic district or property:~~
 - i. ~~Towers shall not exceed 65 feet in height.~~
 - ii. ~~Any tower height greater than 65 feet shall require a special use permit and the maximum tower height shall be determined as part of the special use permit process.~~
 - d. ~~These structures shall follow placement and setback provisions for the zoning district for the specific type of structure.~~
9. Special ~~use provisions~~ Use Permit Review Criteria for all commercial communication structures. All special use permit requests for any type of commercial communication structure shall follow submittal requirements as required within the special use section of this Code, including the established fee and within the established submittal deadlines.
 - a) The regulations within this subsection apply ~~Additional provisions~~ for all commercial communication structures that require the approval of a Special Use Permit.
 - b) Factors to be Considered

In addition to any other applicable requirements, the following factors must be considered in a decision to approve or deny a special use permit for a wireless communications tower:

- i) Height of the proposed tower;
- ii) Proximity of the tower to residential structures, residential district boundaries and existing towers;
- iii) Nature of uses on adjacent and nearby properties;
- iv) Surrounding topography;
- v) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- vi) The total number and size of antennas proposed and the ability of the proposed tower to accommodate co-location;
- vii) Architectural design of utility buildings and accessory structures to blend with the surrounding environment;
- viii) Proposed ingress and egress;
- ix) The need for a tower within the immediate geographic area to provide an acceptable level of communications service to the area;
- ~~i)x) The size of the tract and the most likely future development as indicated by the Elevate comprehensive plan, planned infrastructure, topography and other physical considerations.~~
- ~~ii) A complete description of the commercial communication service to be provided or received and the proposed service area for commercial purposes.~~
- ~~iii) A technical analysis prepared by a professional engineer for the proposed site. The analysis shall include:~~
- ~~iv) A comprehensive statement and justification for the proposed structure location and site.~~
- ~~v) A communication coverage pattern calculation for the proposed structure location at:~~
- ~~vi) The maximum height allowed for the respective zoning district for the site.~~
- ~~vii) The proposed height.~~
- ~~viii) At a mid point height between the proposed height and the maximum height allowed for the zoning district of the site.~~
- ~~ix) Analytical evidence demonstrating that no other location or height exists to provide the commercial communication service including cellular or similar communication service.~~
- ~~x) As part of the review of the special use permit application for commercial communication structures, the applicant is required to pay the established special use permit fee and all expenses associated with the city hiring a qualified expert to review and provide written recommendation to the Planning and Zoning Commission of the technical information submitted as part of the application.~~

10. Removal of Abandoned Antenna and Towers

Abandonment or cessation of use of the communication structure shall require the removal of all facilities associated with the communication structure from the subject property within six months after the abandonment or cessation of use. Foundations for such structures should be altered or removed to be visually appealing and safe.

~~10. Flexible development standards. See 0... Deviating from specific development requirements may not be permitted in the event that a special use permit is required or approval of a variance by the Planning and Zoning Commission as referenced in this section.~~

B. Small Wireless Communication Facilities Within Public Rights-of-Way

1. Purpose

- a) To establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole;
- b) To prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

This sub-section is replicated (almost verbatim) from the NM Municipal League model ordinance for small cells dated 2018.

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- c) To prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- d) To prevent interference with the facilities and operations of facilities lawfully located in rights-of-way;
- e) To preserve the character of the neighborhoods in which facilities are installed;
- f) To facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services;
- g) To ensure City zoning regulations are applied consistently with federal and state telecommunications laws, rules, and regulations of the Federal Communications Commission ("FCC") and controlling court decisions; and
- h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to,
 - i) Prohibit or effectively prohibit the provision of personal wireless services,
 - ii) Unreasonably discriminate among functionally equivalent service providers, or
 - iii) Regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the FCC.

2. Exempt Facilities

The following are exempt from this section:

- a) FCC licensed amateur (ham) radio facilities;
- b) Satellite earth stations, dishes or antennas used for private television reception not exceeding one meter in diameter; and
- c) A temporary, commercial wireless communication facility installed for providing coverage of a special event such as news coverage or sporting event, subject to approval by the City. The facility shall be exempt from the provisions of this section for up to one week before and after the duration of the special event.

3. Permitted Use; Application and Fees

a) Permitted Use

~~Collocation~~Co-location of a small wireless facility or a new or modified utility pole for the ~~collocation~~co-location of a small wireless facility shall be a permitted use subject to the other requirements of this chapter.

b) Permit Required

No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore.

c) Permit Application

All small wireless facility applications for permits filed pursuant to this section shall be on a form, paper or electronic, provided by the City.

d) Application Requirements

The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

- i) The applicant's name, address, telephone number, and email address;
- ii) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
- iii) A general description of the proposed work and the purposes and intent of the small wireless facility, including but not limited to whether a ~~collocation~~co-location on an existing pole or a new pole is proposed, the proposed height of the application, and the proposed location's distance from the nearest existing utility pole. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- iv) A small wireless facility shall comply with all applicable codes.

e) Routine Maintenance and Replacement

The City may not require an application, approval or permit or impose a fee, rate, or other charge for the routine maintenance of a small wireless facility or the replacement of a small wireless facility with one that is similar in size to, the same size as or smaller than it as long as the wireless provider notifies the City of the replacement at least ten days before the replacement. The City may require a permit for routine maintenance or replacement of a small wireless facility in the rights-of-way that affect traffic patterns or require lane closures.

f) Application Fees

The City may charge an applicant an application fee in accordance with the City's adopted Fee Schedule.

4. Permit Applications

a) Review of Small Wireless Facility Applications

- i) The City shall review the application for a small wireless facility permit in light of its conformity with applicable regulations of this section, and other applicable local ordinances, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:
- a. Within 30 days of receiving an Application, the City must determine and notify the applicant whether the application is complete. If an application is incomplete, the City must specifically identify the missing information in writing. The processing deadline is tolled from the date the City sends the notice of incompleteness to the date the applicant provides the missing information. The processing deadline may also be tolled by agreement of the applicant and the City. The application is deemed complete if the applicant is not notified within the 30-day period subject to tolling.
 - b. Make its final decision to approve or deny the application within 60 days of receipt of a completed application for a ~~collocation~~co-location or 90 days of receipt of a completed application for a new pole, subject to the tolling provisions herein; and
 - c. Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, if any, including specific code provisions on which the denial was based, and send the documentation to the applicant. In the 60 days after the City receives an application to co-locate a small wireless facility, the City may provide public notice of the application and an opportunity for written public comment on the application, submit the written public comment to the applicant and request that the applicant respond to it. If the City determines that applicable codes or laws require that a utility pole or wireless support structure be replaced before an application for ~~collocation~~co-location is approved, the City may condition approval of the application on that replacement. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial. The City may require the applicant to certify that the small wireless facilities to be ~~collocate~~co-locate conform with the FCC's regulations concerning radio frequency emissions.
- ii) If the City fails to act on an application within the applicable 60- or 90-day review period, subject to tolling, the application is deemed approved. The City may also request an extension of the applicable day period, and the City and the applicant may agree to extend that period. An applicant shall not unreasonably deny a City's request to extend the period.
- iii) The City may only deny a completed application to ~~collocate~~co-locate small wireless facilities if the application does not conform with applicable codes or local laws concerning:
- a. Public safety;
 - b. Design for utility poles to the extent that the standards are objective;
 - c. Stealth and concealment but only to the extent that the restrictions are reasonable and permitted; and
 - d. The spacing of ground-mounted equipment in a right-of-way; or
 - e. If there is non-conformance with design, historic, or other regulated area district requirements.
- iv) An applicant seeking to ~~collocate~~co-locate small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single permit for multiple small wireless facilities. Provided, that the City's denial of one or more small wireless facilities in a consolidated application shall not delay the processing of any other small wireless facilities submitted in the same application.

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- v) The City may require an applicant to obtain one or more permits to ~~collocate~~co-locate a small wireless facility in a right-of-way if the requirement is of general applicability to users of the right-of-way. An applicant seeking to ~~collocate~~co-locate within the City up to 25 small wireless facilities, all of which are substantially the same type, on substantially the same types of structures, may file a consolidated application for the ~~collocation~~co-location of the facilities. An applicant shall not file with the City more than one consolidated application in any five-business-day period. The applicant shall include in a consolidated application an attestation that, unless a delay in ~~collocation~~co-location is caused by the lack of commercial power or fiber at the site, the ~~collocation~~co-location will begin within 180 days after the permit issuance date. The City and provider may subsequently agree to extend that period.

5. ~~Small Wireless Facilities in the ROW~~; Maximum Height; Other Requirements

a) Maximum Size of Permitted Use

Small wireless facilities, and new or modified utility poles for the ~~collocation~~co-location of small wireless facilities, may be placed in the rights-of-way as a permitted use contingent upon the approval of an application by the City and subject to the following requirements:

- i) A new replacement or modified utility pole associated with the ~~collocation~~co-location of a small wireless facility in the right-of-way is not subject to zoning review and approval, except for that which pertains to under-grounding prohibitions, unless the utility pole is higher than whichever of the following is greater:
 - a. Ten (10) feet plus the height in feet of the tallest existing utility pole excluding a utility pole supporting wireless facilities that is in place on the effective date of the Act, located within 500 feet of the new, replacement or modified utility pole, in the same right-of-way, and 50 or fewer feet above ground level or
 - b. Fifty (50) feet.
- ii) New small wireless facilities in the rights-of-way may not extend:
 - a. More than ten feet above an existing utility pole in the rights-of-way in place as of the effective date of this section; or
 - b. More than ten feet above the height for a new utility pole.
- iii) A small wireless facility ~~collocate~~co-located on a utility pole or wireless support structure that extends ten or fewer feet above the pole or structure in a right-of-way in any zone is classified as a permitted use and is not subject to zoning review or approval.

a. Application Required for a Utility Pole

An application for the installation of a new, replacement or modified utility pole for the ~~collocation~~co-location of a small wireless facility in the right-of-way is required. The application shall be approved unless the installation does not conform with:

- i. Applicable codes or laws regarding public safety, design, or under-grounding prohibitions if those regulations require under-grounding by a date certain within one year after the application, include a waiver of zoning or other processes and allow the replacement of utility poles;
- ii. Federal or state standards for pedestrian access or movement;
- iii. Design or historic district requirements;
- iv. Contractual requirements between the City and a private property owner concerning the design of utility poles in the right-of-way; or
- v. The City's laws concerning public safety and reasonable minimum spacing requirements for new utility poles in the rights-of-way.

b. Application Processing

An application for a permit to install a new, replacement or modified utility pole for the ~~collocation~~co-location of a small wireless facility shall be processed within 150 days after receipt of the application. If the City fails to act on the application within that time period, the application is deemed approved. The application fee shall be as established by the adopted Fee Schedule.

Installation, modification or replacement shall begin within 180 days after the permit issuance unless the City and wireless provider agree to extend that time or a delay is caused by a lack of commercial power or fiber at the site.

The new, modified or replacement utility pole may be maintained for ten years and the permit will be renewed for one ten-year period unless the utility pole does not conform with applicable codes or local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

c. Zoning

Any wireless provider that seeks to install, modify, operate or replace a utility pole in the rights-of-way that exceeds the height or size limits contained in this Chapter shall be subject to applicable zoning requirements.

d. Decorative Poles

A wireless provider shall be permitted to replace a decorative pole when necessary to ~~relocate~~co-locate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole being replaced and shall be subject to local approval, which shall not be unreasonably denied.

e. Underground ~~District~~Utilities

In areas designated solely for underground or buried cable and utility facilities, the City shall allow replacement of City poles in the designated area. The wireless provider is permitted to seek a waiver of the undergrounding requirements for the placement of a new utility pole to support small wireless facilities.

f. Historic and Design Districts

The City may require ~~as they pertain to~~ small wireless facilities located in design districts or historic districts reasonable, technically feasible, non-discriminatory and technologically neutral design and/or concealment measures and reasonable measures for conforming to the design aesthetics of design districts or historic districts. Any such measures may not have the effect of prohibiting a wireless provider's technology.

6. Effect of Permit

a) Authority Granted

A permit from the City authorizes an applicant to undertake only certain activities in accordance with this chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

b) Permit Duration

Work described in a permit granted pursuant to this section shall be completed within 180 days of the permit issuance date unless the City and applicant agree to extend this period due to delay caused by the lack of commercial power or communications facilities. Subject to applicable relocation requirements and the applicant's right to terminate ~~collocation~~co-location at any time, the permit is valid for a period of ten years, and will be renewed for one ten-year term unless the City finds that the small wireless facility does not conform with applicable codes and local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

7. Removal, Relocation, or Modification of Small Wireless Facilities in the ~~ROW~~Right-of-Way.

a) Notice

Within 90 days following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.

b) Emergency Removal

The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

c) Abandonment of Facilities

Upon abandonment of a small wireless facility or utility pole within the rights-of-way of the City, the wireless provider shall notify the City in writing of its intention to discontinue use of a small wireless facility or utility pole. The notice shall inform

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the City of the time and the way in which the small wireless facility or utility pole will be removed. The wireless provider is responsible for the costs of the removal. The City may require the wireless provider to return the property to its pre-installation condition according to the City's reasonable and nondiscriminatory requirements and specifications. If the wireless provider does not complete the removal within 45 days after notice, the City may complete the removal and assess the costs of removal against the wireless provider. The permit for the small wireless facility or utility pole expires upon removal.

d) Damage and Repair

The City may require a wireless provider or the provider's contractor to repair all damage to the City's property or rights-of-way caused by the activities of the wireless provider or contractor and return the property and rights-of-way to their pre-damage condition according to the City's requirements and specifications upon written notice of the requirements to the provider. If the wireless provider fails to make the repairs within a reasonable period after receiving the notice, the City may effectuate those repairs and charge the provider the reasonable, documented cost of such repairs.

8. Rates

a) Annual Rate for Use of Right-of-Way

The City may charge a wireless provider for the provider's use of the right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or in collocating a small wireless facility in the right-of-way an annual rate of **\$250.00** multiplied by the number of small wireless facilities placed by the wireless provider in the City's right-of-way.

b) Annual Rate Increase for Use of Right-of-Way

The City may adjust the annual rate, but no more often than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent Consumer Price Index for all urban consumers for New Mexico, as published by the United States Department of Labor. The City shall notify all wireless providers charged the pre-adjusted rate of the prospective adjustment and shall make the adjustment effective 60 days or more following that notice.

c) Annual Rate for Use of City Utility Poles

The rate for ~~collocation~~co-location of a small wireless facility on a City utility pole in the right-of-way shall be **\$20.00** per year.

9. Attachment to or Utility Poles in the Right-of-Way-

a) Placement of Small Wireless Facilities and Poles

Subject to the approval of an application by the City, a wireless provider may ~~collocate~~co-locate small wireless facilities and construct, install, modify, mount, maintain, operate and replace utility poles associated with the ~~collocation~~co-location of a small wireless facility along, across, on or under City right-of-way. The City shall not enter into an exclusive agreement with a wireless provider for the use of a right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or collocating a small wireless facility on a utility pole or wireless support structure.

b) Review of Applications

The City shall process an application for approval to ~~collocate~~co-locate a small wireless facility on a City utility pole in accordance with this section. The City may condition the issuance of a permit on the wireless provider's replacement of the City utility pole if applicable codes or local laws concerning public safety require that replacement. The City shall process an application for a permit to install a replacement City pole in accordance with this section. The City shall retain ownership of the replacement utility pole.

10. Proper Placement

a) A wireless provider that deploys a utility pole or small wireless facility in a right-of-way shall construct, maintain and locate it so as not to obstruct travel or any intersection visibility (see **Sec. 5-4.H. Clear Sight Triangle**), endanger the public or interfere with another utility facility in the right-of-way. The wireless provider's operation of a small wireless facility in the right-of-way shall not interfere with the City's public safety communications. The wireless provider shall comply with the National Electric Safety Code and all applicable laws. The City may, through its Public Works Department, adopt reasonable regulations concerning the separation of the wireless provider's utility poles and small wireless facilities from other utility facilities in the right-of-way.

b) If the City determines that a utility pole or the wireless support structure of a wireless provider must be relocated to accommodate a public project, the provider shall assume the cost of relocating the wireless facility deployed on the pole or structure.

- c) Without the City's written consent, a wireless provider shall not install a new utility pole in a right-of-way adjacent to a street or thoroughfare that is 50 feet wide or less and adjacent to single family residential lots or other multifamily residences or to undeveloped land designated for residential use by zoning or deed restrictions.
- d) Exempt From Zoning Review
 - i) Small wireless facilities, Distributed Antennae Systems (DAS) and other similar networks on poles in public rights-of-way, on City-owned property, on private property, or on other structures, including stealth facilities, monopoles or replacement poles under 50 feet that are located in the public rights-of-way for placement of small wireless facilities, DAS and other similar networks, are exempt from zoning review and shall be subject only to encroachment or building permits by administrative review.
 - ii) Notwithstanding any other provision of this section, the City may not require an applicant or provider to submit an application or pay a rate for:
 - a. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
 - b. Replacing or upgrading a small wireless facility, DAS, other similar network with a facility that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
 - c. Temporary small wireless facilities, DAS or communications facilities placed for a period of not more than:
 - i. Twenty-one days for temporary uses related to special events;
 - ii. Ninety days for temporary uses related to repair facilities; or
 - iii. Not more than 90 days at any location within the City after declaration of an emergency or a disaster by the Governor of New Mexico.
 - iii) For purposes of the foregoing exemptions, a small wireless facility, DAS, other similar network, or pole is considered to be "substantially similar" if:
 - a. The new or upgraded facility, including the antenna or other equipment element, will not be more than ten percent larger on a one-time basis than the existing facility, provided that the increase may not result in the facilities exceeding the size limitations provided elsewhere in this chapter;
 - b. The new or upgraded pole will not be higher than the existing pole;
 - c. The replacement or upgrade does not include replacement of an existing service pole;
 - d. The replacement or upgrade does not defeat existing concealment elements of the existing pole; and
 - e. The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the small wireless facility or pole as approved by the City.
- e) ~~Collocation~~Co-location
 Support structures for small wireless facilities or similar networks shall be capable of accommodating the ~~collocation~~co-location of other service providers.
- f) Signage
 Signs located at the small wireless facilities, DAS, and similar networks shall be limited to ownership and contact information, FCC Antenna registration number (if required) and any other information as required by an applicable governmental authority. Commercial advertising is strictly prohibited.
- g) Accessory Equipment
 Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment in support of the operation of the small wireless facility or its support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

11. General Requirements for Towers and Poles

- a) Inventory of Existing Sites

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Each applicant for a pole or tower exceeding the height limitation of the affected zoning district shall provide to the City Planner an inventory of its existing poles or towers that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each pole or tower. The applicant shall only be required to provide this information in its first application following implementation of this section, and not thereafter. The City Planner may share such information with other applicants applying for permits under this section or other organizations seeking to locate poles or towers within the jurisdiction of the City, provided, however, that the City Planner is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- i) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
- ii) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- iii) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

b) Lighting

Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

c) State or Federal Requirements

All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency.

d) Building Codes; Standards

To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower at the owner's expense.

e) Visual Impact

All towers and antennas, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the structure or equipment. Such equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such enclosures shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.

f) Use of Stealth Design

Concealment techniques in design districts and historic districts must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, ~~so as to~~ be visually unobtrusive.

g) Building-Mounted Equipment

- i) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

- ii) All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.
 - iii) Antenna arrays and supporting transmission equipment shall be installed ~~so as to~~ camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.
- h) Pole-Mounted or Tower-Mounted Transmission Equipment
- All pole-mounted or tower-mounted transmission equipment shall be mounted as close as possible to the pole or tower ~~so as to~~ reduce the overall visual profile to the maximum extent feasible consistent with safety standards.
- i) Concealment of Pole-Mounted Small Wireless Facilities Equipment
- All pole-mounted equipment must be reasonably concealed to the extent technically feasible in a manner that minimizes the visual impact of the pole-mounted equipment. The concealment method and materials must receive prior written approval by the City, not to be unreasonably withheld. Antenna size limitations are exclusive of any concealment materials or fabrication. Concealment materials shall have a color and finish consistent and appropriate with the pole on which they are mounted.
- j) Accessory Equipment
- All accessory equipment located at the base of a small wireless facility shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the small wireless facility.
- k) Site Design Flexibility
- Individual small wireless facility sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the small wireless facility and supporting equipment may be installed ~~so as to~~ best camouflage, disguise them, or conceal them, to make them more closely compatible with and blend into the setting or host structure.
- l) Structural Assessment
- The owner of a proposed tower shall have a structural assessment of the tower conducted by a professional engineer, licensed in the State of New Mexico, which shall be submitted with the application for a permit.
- m) Radio Frequency Emissions Compliance Report
- A written report will be prepared, signed and sealed by a New Mexico-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed small wireless facility demonstrates compliance with the exposure limits established by the FCC. The employee of the applicant must be qualified in the field of RF emissions and provide satisfactory evidence of his/her qualifications to the City.
- n) Residential Provisions
- i) All small wireless facilities on residentially zoned property are encouraged to either be painted or treated the same color as the primary structure or the surface to which the facilities are attached. This includes painting or screening roof-mounted communication structures.
 - ii) Screening or painting of roof-mounted structures is required on all sides of the residential property in which a small wireless facility is to be or is placed.
- o) Screening of Ground-Mounted Equipment
- Ground equipment and equipment enclosures shall be screened by a screen wall, painted, and/or landscaped.
- i) Screening and equipment enclosures shall blend with or enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the reasonable discretion of the City.
 - ii) When trees, bushes, rocks, and other forms of landscaping are used for screening, such landscaping must match the predominant landscaping form and species within one block of the facilities.
- p) Additional Screening Requirements

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Any new, modified, or replacement poles installed in the right-of-way in conjunction with the installation of a small wireless facility, including any ground mounted equipment, electrical service meter, and screening shall:

- i) Be designed to blend in with the surrounding streetscape with minimal visual impact;
- ii) Satisfy all required Americans with Disabilities Act requirements;
- iii) Not impair or interfere with line-of-sight visibility; and
- iv) Not block or obstruct existing roadway, or commercial signage.

12. Preferred ~~Tower~~ Locations

- a) New small wireless facilities must, to the maximum extent feasible, ~~collocate~~co-locate on existing towers or other structures of a similar height to avoid construction of new towers.
- b) The City encourages all new towers to follow siting priorities, from most-preferred (i) to least-preferred (viii):
 - i) City-owned or operated property or facilities, not including rights-of-way;
 - ii) Commercial and industrial zones;
 - iii) Office zones;
 - iv) Other non-residential zones;
 - v) City rights-of-way in non-residential zones;
 - vi) City rights-of-way in residential zones;
 - vii) Parcels of land in residential zones;
 - viii) Designated design or historic districts.

c) ~~Collocation~~Co-location Consent

A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to ~~collocate~~co-locate with the proposed small wireless facility whenever technically and economically feasible and aesthetically desirable.

d) Documentation

Applications submitted under this section for small wireless facilities shall include the following materials:

- i) A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view.
- ii) A written analysis that explains how the proposed design complies with the applicable design standards under this section to the maximum extent feasible. A design justification must identify all applicable design standards under this section and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
- iii) A noise study, if requested by the City.
- iv) A scaled site plan clearly indicating the location, type, height and width of the proposed small wireless facilities, on-site land uses and zoning, adjacent land uses and zoning, separation distances, adjacent roadways, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings of the proposed small wireless facilities and any other structures, topography and utility runs.
- v) The setback distance between the proposed small wireless facility and the nearest residential unit, platted residentially zoned properties, and un-platted residentially zoned properties.
- vi) The separation distance from other poles and towers within one mile of the subject pole or tower, shall be shown on an updated site plan or map.
- vii) If applicable, the method of camouflage and illumination.
- viii) A written statement of purpose which shall minimally include:
 - a. A description of the technical objective to be achieved;

- b. A to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and
- c. Full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by a New Mexico-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

13. Independent Technical and Legal Review

- a) Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of independent experts of its choice to provide technical and legal evaluations of permit applications for small wireless facilities and poles. The expert's review may include, but is not limited to
 - i) The accuracy and completeness of the items submitted with the application;
 - ii) The applicability of analysis and techniques and methodologies proposed by the applicant;
 - iii) The validity of conclusions reached by the applicant; and
 - iv) Whether the proposed small wireless facilities comply with the applicable approval criteria set forth in this section.
- b) The applicant shall pay the actual, direct and reasonable cost for any independent consultant fees through a deposit, paid within ten days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within 30 days after the final permit is released or, if no final permit is released, within 30 days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City.

14. Installation Safety Review

- a) For the period beginning on the date a permit is issued and ending on the date the permitted work is accepted, the City may perform a safety review of construction, reconstruction or installation of all small wireless facilities and poles as it deems necessary to ensure compliance with this section and the Municipal Codes. All City plans, reviews, inspections, standards, and other rights and actions related to the wireless provider's improvements are for the City's sole and exclusive benefit and neither the wireless provider nor any other person may rely on the City's safety reviews or have any rights related to the reviews. The preceding sentence does not prevent the wireless provider from relying on consents, permits, or approvals the City may grant based on the City's plans, reviews, and inspections. As a condition of obtaining the permits authorized by this section, the wireless provider grants the City the right to access the wireless provider's small wireless facilities and poles. Except for emergencies, this right of access is limited to dates and times agreed to by the parties.
- b) The City may recover the City's costs incurred to perform such safety reviews.

15. Final Inspection

- a) A certificate of completion will only be granted upon satisfactory evidence that the small wireless facilities were installed in substantial compliance with the approved plans.
- b) If it is found that the small wireless facilities installation does not substantially comply with the approved plans, the applicant shall make any and all such changes required to bring the facilities into compliance promptly and in any event prior to putting the facilities in operation.

16. Compliance

- a) All small wireless facilities must comply with all standards and regulations of the FCC and any state or other federal government agency with the authority to regulate those facilities.
- b) The site and small wireless facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- c) If any FCC, state or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within 30 days of receiving notice of such revocation.

17. Indemnification

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Sec. 5-12. Wireless Communication Facilities

Each permit issued for small wireless facilities located in City right-of-way or other City property shall be deemed to have as a condition of the permit a requirement that the wireless provider defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the construction, performance, operation, maintenance, repair, replacement, removal, or restoration of the small wireless facilities.

18. Laws, Rules, and Regulations

This section shall be subject to all applicable laws, rules, and regulations now or hereafter enacted.

19. Severability

The various parts, sentences, paragraphs, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the section shall not be affected thereby.

20. Conflicts

In the event of a conflict between the provisions of this Section and the Wireless Consumer Advanced Infrastructure Investment Act ("Act"), the Act shall control. Any ordinance or parts thereof or other provisions of this Development Code in conflict with the provisions of this section are hereby repealed to the extent of such conflict.