

## **ARTICLE 19.**

### **WIRELESS COMMUNICATION FACILITIES**

#### **SECTION 1901. PURPOSE**

This chapter establishes zoning districts and other conditions to regulate the location and design of wireless communication facilities within the community. The regulations are intended to provide standards for wireless communication facilities including towers, alternative tower structures, antennas, and related components for one or more receivers. This chapter is not intended to regulate essential services or public utilities such as utility structures, substations, telephone switching stations, electrical generation facilities and other facilities required for the transmission of power or communications which are regulated pursuant to Section 310.2(a).

These regulations shall provide for the development of wireless communications services to the community while:

1. Protecting residential areas and land uses from the potential adverse impact of towers and antennas;
2. Maximizing use of any new and existing telecommunications towers so as to minimize the need to construct new towers and minimize the total number of towers throughout the city;
3. Encouraging and promoting the location of new telecommunications facilities in areas which are not zoned for residential use;
4. Minimizing adverse visual impact of the wireless communication facilities through design and aesthetics;
5. Enhancing the ability of providers of wireless communications services to provide such services to the community quickly, effectively, and efficiently;
6. Considering public health and safety associated with wireless communication facilities; and
7. Minimizing potential damage to adjacent properties from tower failure through proper engineering.

#### **SECTION 1902. EXEMPTIONS**

The following towers, antennas and wireless communication and related facilities shall be exempt from the requirements of this chapter:

1. Any tower and antenna under seventy (70) feet in total height which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission;
2. Any device designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite service;
3. Any telecommunications facilities owned, operated, or controlled by a governmental entity; or
4. Any cable television headend or hub tower and antenna used solely for cable television services.

### **SECTION 1903. ZONING REGULATION**

Wireless Communication facilities are allowed in the following zoning districts:

1. IP-Industrial Park
2. LI-Light Industry
3. HI-Heavy Industry
4. OS-Open Space Zone

### **SECTION 1904. CONDITIONAL USE PERMIT REQUIRED**

It shall be unlawful for any person, firm or corporation to erect, alter, or relocate within the City of Douglas any wireless communication facility as defined in this chapter, except as hereinafter provided, without first obtaining a Conditional Use Permit following procedures set forth in Section 310.5.

#### **Section 1904.1 Application for Conditional Use Permit**

In addition to information otherwise required, an application for a Conditional Use Permit for a Wireless Communication Facility shall include:

1. The address of the site.
2. The Assessor's Parcel Number of the site and the zoning classification of the site.
3. A map of all properties within three hundred (300) feet of the proposed site together with a mailing list of all property owners within such 300 feet and stamped envelopes pre-addressed to each such property owner.

4. A map of the site including adjacent roadways.
5. Elevation drawings of the exterior of each element of the proposed wireless communication facility, including height from grade to the top of the antenna installation.
6. A complete landscape plan.
7. Method of fencing, coloration, materials, and camouflage.
8. Certification that the applicant is licensed by the FCC to provide the service proposed and that the wireless communication facility, as represented in the application, will comply with all FAA, FCC and other applicable regulations.
9. Certification that the applicant is applying for co-location treatment or a report on why co-location within the area is not a viable alternative.
10. A list of wireless communication facilities with which the proposed site has the potential to interfere, including the name, address and phone number of the owner. Within 10 days following the filing of the application, applicant shall file a certification that each of the owners' facilities noted above has been given written notice of application, to include possible interference with police, fire and emergency public safety communications.
11. The radio frequency range in megahertz, the wattage output of the equipment and the effective radiated power.

#### **SECTION 1905. PREFERENCE CRITERIA**

An applicant who certifies in writing that he will construct a tower suitable for co-location will receive preferential treatment in the final approval of the application for a conditional use permit.

1. The policy of this chapter shall be to encourage co-location.
  - a. Preference – an applicant who certifies in writing that he will construct a tower suitable for co-locating and as a condition of permit approval executes a written agreement (Co-location Agreement) with the City consenting to application of the terms of this provision shall receive preferential treatment for a final approval of the application as well as height bonus to the maximum height allowed by Section 1910, after an application, fee and all required documentation and information are filed. (*amended by Ord. No. 08-925, 2008*)
  - b. Height Bonus for Co-Location - the height of telecommunications towers accommodating wireless communications facilities of more

than one service provider or additional user may be extended by a height bonus of ten (10) feet per additional user, up to a maximum of fifty (50) bonus feet, subject to a finding that such bonus will not adversely affect the visual aspect of properties in the vicinity of the tower, or unduly restrict the sightline of people residing in the vicinity of the tower. (*amended by Ord. No. 08-925, 2008*)

- c. The Co-location Agreement shall provide for at least the following:
  - i. The applicant shall accept for co-location any FCC licensed wireless communication provider (“Additional User”) using any compatible technology on commercially reasonable terms considering all of the factors a reasonable tower leasing company would deem relevant in entering into such an agreement.
  - ii. Any Additional User seeking co-location shall submit specifications for its equipment and use (“Request”) to the applicant and applicant shall, within thirty (30) days thereafter, respond to such party in writing (“Response”) furnishing all technical requirements, which must be resolved before co-location. Copies of any such requests shall be sent to the City Manager.
  - iii. Applicant and the Additional User shall, thereafter in good faith, attempt to resolve any technical or business terms. If, after thirty (30) days from the Response the Additional User believes the Applicant has not negotiated in good faith, Additional User may submit in writing, a request for arbitration to applicant and the American Arbitration Association, which shall designate a person knowledgeable in co-location of wireless communication carriers to act as arbitrator and decide all issues between the parties. Such arbitration shall be held within thirty (30) days of the request for arbitration. Upon the written agreement of both parties, a different procedure for binding dispute resolution may be used. The result of the arbitration may not be appealed.
  - iv. The lease or other agreement containing the business terms proposed by the applicant for co-location shall be submitted with the Additional User’s Permit.
  - v. The City shall not be a party to any contract between the applicant and the additional user, shall not be a

required party, and shall not be made a party to any dispute or arbitration and applicant shall indemnify, defend and hold the City harmless from any cost, including reasonable attorney fees, associated with such matters.

- d. An applicant for an Additional User's Permit shall be granted the permit to use an existing structure without needing a separate Conditional Use Permit if the primary user has been issued a Conditional Use Permit.

#### **SECTION 1906. STATE AND FEDERAL REQUIREMENTS**

All proposed wireless communication facilities and all related components shall meet or exceed all standards set by the Federal Communication Commission (FCC), Federal Aviation Administration (FAA), and any other agency of the state or federal government with the authority to regulate them or their components. Owners will be responsible for ensuring compliance if mandated standards change.

#### **SECTION 1907. NON INTERFERENCE WITH PUBLIC SAFETY**

No wireless communication transmitter, receptor, or other facility shall interfere with police, fire, and emergency public safety communications. The City Manager is authorized to determine whether any transmitter, receptor, or other facility has interfered with public safety communications or is reasonably believed to be an imminent threat to public safety communications. Upon making that determination, the City Manager shall notify the provider responsible for that facility to take necessary action.

#### **SECTION 1908. APPEARANCE**

Wireless communication facilities and components, including but not limited to towers and antennas, either shall maintain a galvanized steel finish or, shall conform to any applicable standards of the FCC, FAA, or other regulatory agencies, or be painted to reduce visual obtrusiveness and blend with the surrounding setting. Antenna and related materials attached to alternative tower structures shall be a color compatible with the supporting structure while being visibly unobtrusive. Towers shall not be artificially lighted, unless required by the FAA or other applicable governmental authority. Landscaping shall be used to effectively buffer the view of the wireless communication facility. Efforts shall be made to preserve native vegetation on the site or replace vegetation that is removed. The wireless communication facility shall not be placed in a direct line of sight with historic districts as designated by the City or by any state or federal law or agency.

#### **SECTION 1909. SIGN REGULATIONS**

No signs shall be allowed on a tower or antenna, other than warning signs placed no higher than six (6) feet above the base of the structure.

**SECTION 1910. MAXIMUM HEIGHT REQUIREMENTS**

No tower shall exceed a height of two hundred (200) feet from grade in the following zones, Heavy Industry, Industrial Park, and Light Industry, and no tower shall exceed a height of one hundred and fifty (150) feet from grade in Open Space zones, unless granted a height bonus of up to fifty (50) additional feet for co-location, subject to the provisions of Section 1905.1(b). (*amended by Ord. No. 08-925, 2008*)

**SECTION 1911. SECURITY FENCING/ANTI-CLIMBING DEVICES**

All wireless communication facilities shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall also be equipped with appropriate anti-climbing devices or other similar protective devices designed to prevent tower access.

**SECTION 1912. ENGINEERED DESIGN**

Any information of an engineering nature that the applicant submits, whether civil, mechanical, structural or electrical, shall be certified by an Arizona Licensed Professional Engineer.

**SECTION 1913. MODIFICATIONS**

Any modification to an existing facility shall require the existing facility to comply with all terms of this chapter and all other applicable codes and regulations.

**SECTION 1914. NUISANCES**

Wireless communication facilities, including without limitation, power source, ventilation and cooling, shall be operated at all times within the limits of Chapter 8.28 of the Douglas Municipal Code regulating noise.

**SECTION 1915. MAINTENANCE**

Maintenance shall be in compliance with standards contained in applicable City building codes and the applicable health and safety standards established by the FCC, the City, or other government bodies having jurisdiction, as amended from time to time. Facilities not in compliance shall be removed at the owner's expense, if not brought into compliance within thirty (30) days after written demand by the City.

**SECTION 1916. REMOVAL**

Any wireless communication facility for which the use is discontinued for twelve (12) months or more shall be removed, and the property may be restored to its condition prior to the location of the facility, all at the expense of the owner. The City may require financial assurances to ensure compliance with this provision. An owner desiring an extension of the twelve-month limit may apply for one with the City.

#### **SECTION 1917. PRE-EXISTING TOWERS/NON CONFORMING USES**

All wireless communication facilities operative before the adoption of this chapter shall be allowed to continue their present usage as a nonconforming use and shall be treated as such. Routine maintenance, including replacement with a new tower or antenna of like construction and height, shall be permitted on such existing wireless communication facilities. New construction other than routine maintenance shall comply with the requirements of this chapter. Placement of an antenna on a nonconforming structure shall not be considered an expansion of the nonconforming structure. Altering the existing facility to make it suitable for co-location shall not be considered an expansion of the nonconforming structure.

#### **SECTION 1918. DEFINITIONS**

Telecommunications-related terms shall have the following meanings as used in this chapter:

1. *Alternative Tower Structures* are components not generally designed for use as a communication device or antenna support including but not limited to church steeples, ball park light poles, and water towers.
2. *Antenna* means any exterior device for transmitting and receiving wireless communication and mounted on a tower, alternative tower structure, building or structure and used for transmitting and receiving wireless communication for a fee to more than one (1) provider at a time.
3. *Certification* means a written statement of the fact to be certified made under oath by the applicant and notarized.
4. *Co-location* means use by two (2) or more wireless communication providers located on the same tower or alternative tower structure.
5. *Monopole tower* means a telecommunications tower consisting of a single pole, constructed without guy wires or ground anchors.
6. *Tower* means a structure, such as a lattice tower, guy tower, or monopole tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, on which is located one or more antennas intended for transmitting or receiving analog, digital, microwave, cellular, telephone, personal wireless services or similar forms of electronic communication. The term includes microwave towers, common carrier towers, and cellular telephone towers.

7. *Wireless Communication* means any technology for transmitting communications through the air.
8. *Wireless Communication Facility* means any staffed or un-staffed facility designed and constructed for the purpose of being or of supporting one or more antennas or other communication structures which enable the transmission or reception of wireless communication signals including but not limited to AM/FM, SHORTWAVE, VHF, UHF, TV, TELECOMMUNICATIONS, CELLULAR, PERSONAL COMMUNICATION SERVICES, SPECIALIZED MOBILE RADIO, ENHANCED SPECIALIZED MOBILE RADIO, PAGING, TELEVISION AND RADIO BROADCASTING, and signals ranging from 30 hertz to 300 gigahertz. Facility structures may include but are not limited to towers, antennas, receptors, transmitters, and other related equipment.

(Ord. 05-882 § 2, 2005)