

ARTICLE 8. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

Section 14-150. Findings.

(1) The Communications Act of 1934 as amended by the Telecommunications Act of 1996 (“the Act”) grants the Federal Communications Commission (FCC) exclusive jurisdiction over: (Ord. 1675, eff., 10-26-01)

(a) The regulation of the environmental effects of radio frequency (RF) emissions from Telecommunications Facilities; and (Ord. 1675, eff., 10-26-01)

(b) The regulation of radio signal interference among users of the RF spectrum. (Ord. 1675, eff., 10-26-01)

(2) The City’s regulation of Towers and Telecommunication Facilities in the City will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act. (Ord. 1675, eff., 10-26-01)

Section 14-151. Purposes.

The general purpose of this Ordinance is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City. Specifically, the purposes of this Ordinance are: (Ord. 1675, eff., 10-26-01)

(1) To regulate the location of Towers and Telecommunications Facilities in the City; (Ord. 1675, eff., 10-26-01)

(2) To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities; (Ord. 1675, eff., 10-26-01)

(3) To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques; (Ord. 1675, eff., 10-26-01)

(4) To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers; (Ord. 1675, eff., 10-26-01)

(5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for new Tower structures to support antenna and Telecommunications Facilities; (Ord. 1675, eff., 10-26-01)

(6) To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and

removed when no longer used or are determined to be structurally unsound; and (Ord. 1675, eff., 10-26-01)

(7) To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses. (Ord. 1675, eff., 10-26-01)

Section 14-152. Definitions.

The following words, terms, and phrases, when use in this Section, except where the context clearly indicates a different meaning: (Ord. 1675, eff., 10-26-01)

(1) *Antenna Support Structure* means any building or structure other than a Tower which can be used for location of Telecommunications Facilities. (Ord. 1675, eff., 10-26-01)

(2) *Applicant* means any Person that applies for a Tower development permit. (Ord. 1675, eff., 10-26-01)

(3) *Application* means process by which the Owner of a parcel for land within the City submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representation, in whatever form or forum, made by the Applicant of the City concerning such a request. (Ord. 1675, eff., 10-26-01)

(4) *Engineer* means any engineer licensed by the State of Colorado. (Ord. 1675, eff., 10-26-01)

(5) *Modification* means repair or restoration of the Tower to the extent that the cost of such repair or restoration is less than fifty percent (50%) of the cost of reconstructing or rebuilding the entire tower. (Ord. 1675, eff., 10-26-01)

(6) *Owner* means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the City who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land. (Ord. 1675, eff., 10-26-01)

(7) *Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit. (Ord. 1675, eff., 10-26-01)

(8) *Stealth* means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such a light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs. (Ord. 1675, eff., 10-26-01)

(9) *Telecommunications Facilities* means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include: (Ord. 1675, eff., 10-26-01)

(a) Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or (Ord. 1675, eff., 10-26-01)

(b) Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category. (Ord. 1675, eff., 10-26-01)

(10) *Tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC. (Ord. 1675, eff., 10-26-01)

Section 14-153. Development of Towers.

(1) A Tower shall be a conditional use in the Industrial Zone District, Community Commercial Zone District, and the Open Zone District. No person shall build, erect, or construct a Tower within the Industrial Zone District, Community Commercial Zone District, or Open Zone District unless a development permit shall have been issued by the Planning, Zoning and Variance Commission. Application shall be made to the Planning Director in the manner provided in this Article. (Ord. 1675, eff., 10-26-01)

(2) No person shall build, erect, or construct a Tower upon any parcel of land within any zone district set forth above unless a development permit shall have been issued by the Planning Director, and the approval of the Planning, Zoning and Variance Commission is obtained. (Ord. 1675, eff., 10-26-01)

(3) Development permits shall be issued by the Planning Director upon approval of an application to develop a Tower by the Planning, Zoning and Variance Commission and payment of a permit fee of \$750.00. Development permits for new or modified monopole Towers shall be effective for the period of construction plus a period of five (5) years after certification pursuant to Section 14-165(1). Development permits for new or modified lattice and guyed Towers shall be effective for the period of construction plus a period of two (2) years after certification pursuant to Section 14-165(1). Subsequent permits shall be issued for the periods of time coinciding with the certification schedule set forth in Section 14-165(1). The fee for any such permit shall be \$500.00. (Ord. 1675, eff., 10-26-01)

(4) Towers shall be permitted to a height of fifty (50) feet in accordance with Section 14-167. (Ord. 1675, eff., 10-26-01)

(5) No new Tower shall be built, constructed, or erected in the City unless the Tower is capable of supporting another Person's operating Telecommunications Facilities comparable in weight, size and surface to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. (Ord. 1675, eff., 10-26-01)

(6) An application to develop a Tower shall include: (Ord. 1675, eff., 10-26-01)

(a) The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land

upon which the Tower is to be located, the written consent of the Owner shall be contained in the Application. (Ord. 1675, eff., 10-26-01)

(b) The legal description and address of the parcel of land upon which the Tower is to be located. (Ord. 1675, eff., 10-26-01)

(c) The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including City-owned property. (Ord. 1675, eff., 10-26-01)

(d) A description of the design plan proposed by the Applicant. The Applicant must identify its utilization of the most recent technological design, including micro cell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of micro cell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services. (Ord. 1675, eff., 10-26-01)

(e) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to obtain permission to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by the City or other Persons located within a one-half (½) mile radius of the proposed Tower site. (Ord. 1675, eff., 10-26-01)

(f) Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications cannot be installed or collocated on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site. (Ord. 1675, eff., 10-26-01)

(g) A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties. (Ord. 1675, eff., 10-26-01)

(h) Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in Section 14-155. (Ord. 1675, eff., 10-26-01)

(i) Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Chief and the Building Inspector that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous material such as LP gas, propane, natural gas, or corrosive or other dangerous chemicals. (Ord. 1675, eff., 10-26-01)

(j) In order to assist City staff and the Planning, Zoning and Variance Commission in evaluating visual impact, the Applicant shall submit color photo simulations showing the proposed site of the Tower with a photo-realistic representation of the proposed Tower as it would appear viewed from the closest residential properties and from adjacent roadways. (Ord. 1675, eff., 10-26-01)

(7) The Application to develop a Tower shall be accompanied by payment of an application fee of \$250.00. (Ord. 1675, eff., 10-26-01)

(8) The Planning Director or the Planning, Zoning and Variance Commission may require an Applicant to supplement any information that it considers inadequate or that the Applicant has failed to supply. An Application may be denied on the basis that the Applicant has not satisfactorily provided the information required in this subsection. Applications shall be reviewed by the City in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial. (Ord. 1675, eff., 10-26-01)

Section 14-154. Setbacks.

(1) All Towers up to thirty-five (35) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zone district. Towers in excess of thirty-five (35) feet in height shall be set back one (1) additional foot per such foot of Tower height in excess of thirty-five (35) feet. (Ord. 1675, eff., 10-26-01)

(2) Setback requirements for Towers shall be measured from the base of the Tower or the furthest point of projection of the Tower to the property line of the parcel of land on which it is located. (Ord. 1675, eff., 10-26-01)

(3) Setback requirements may be modified, as provided in Section 14-167 (2)(a) when placement of a Tower in a location which will reduce the visual impact can be accomplished, such as adjacent to trees which may visually hide the Tower. (Ord. 1675, eff., 10-26-01)

Section 14-155. Structural requirements.

All Towers must be designed and certified by an Engineer to be structurally sound and, at a minimum, in conformance with the Uniform Building Code, and any other standards outlined in this Article. All Towers in operation shall be fixed to land. (Ord. 1675, eff., 10-26-01)

Section 14-156. Separation or buffer requirements.

(1) For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower. Tower separation distances from residentially zoned lands shall be measured from the base of a Tower to the closest point of residentially zoned property. The minimum Tower separation distances from residentially zoned land and from other Towers shall be calculated and applied irrespective of City jurisdictional boundaries. (Ord. 1675, eff., 10-26-01)

(2) Towers shall be separated from all residentially zoned lands by a minimum of two hundred (200) feet. (Ord. 1675, eff., 10-26-01)

(3) Proposed Towers must meet the following minimum separation requirements from existing

Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Article. (Ord. 1675, eff., 10-26-01)

(a) Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet. (Ord. 1675, eff., 10-26-01)

(b) Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of one thousand five hundred (1,500) feet. (Ord. 1675, eff., 10-26-01)

(c) Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet. (Ord. 1675, eff., 10-26-01)

Section 14-157. Method of determining Tower height.

Measurement of Tower height for the purpose of determining compliance with the requirements of this Article shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto. Tower height shall be measured from grade. (Ord. 1675, eff., 10-26-01)

Section 14-158. Illumination.

Towers shall not be artificially lighted except as required by the Federal Aviation Association (FAA). Upon commencement of construction of a Tower, in cases where there are residentially uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. (Ord. 1675, eff., 10-26-01)

Section 14-159. Exterior finish.

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body. (Ord. 1675, eff., 10-26-01)

Section 14-160. Landscaping.

All landscaping on a parcel of land containing Towers, Antenna Support Structures, or Telecommunications Facilities shall be in accordance with the applicable landscaping requirements in the zone district where the Tower, Antenna Support Structure, or Telecommunications Facilities are located. The City may require landscaping in excess of the requirements in the City's Code of Ordinances in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing. (Ord. 1675, eff., 10-26-01)

Section 14-161. Access.

A parcel of land upon which a Tower is located must provide access to at least one (1) paved

vehicular parking space on site. (Ord. 1675, eff., 10-26-01)

Section 14-162. Stealth Design.

All towers are encouraged to use stealth design. Stealth design will be required when determined appropriate by the Planning, Zoning and Variance Commission. (Ord. 1675, eff., 10-26-01)

Section 14-163 Telecommunications Facilities on Antenna Support Structures.

Any Telecommunications Facilities which are not attached to a Tower may be permitted as a conditional use of any Antenna Support Structure, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications Facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the Planning Director, establish the following at the time plans are submitted for a building permit: (Ord. 1675, eff., 10-26-01)

(1) That the height from grade of the Telecommunications Facilities shall not exceed the height from grade of the Antenna Support Structure by more than (20) feet; (Ord. 1675, eff., 10-26-01)

(2) That any Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, are set back one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the Telecommunications Facilities. This setback requirement shall not apply to Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the City. Setback requirements shall not apply to Stealth antennas which are mounted to the exterior of Antenna Support Structures below the primary roof, but which do not protrude more than eighteen (18) inches from the side of such an Antenna Support Structure. (Ord. 1675, eff., 10-26-01)

Section 14-164. Modifications of Towers.

(1) A Tower existing prior to the effective date of this Ordinance, which was in compliance with the City's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified without complying with any of the additional requirements of this Article except Section 14-156, 14-165 and 14-166, provided: (Ord. 1675, eff., 10-26-01)

(a) The Tower is being modified for the sole purpose of accommodating, within six (6) months of the completion of the modification, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower. (Ord. 1675, eff., 10-26-01)

(b) An application for a development permit is made to the Planning, Zoning and Variance Commission which shall have the authority to issue a development permit. The grant of a development permit pursuant to this Section allowing modification of an existing nonconforming Tower shall not be considered a determination that the modified Tower is conforming. (Ord. 1675, eff., 10-26-01)

(2) Except as provided in this Article, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance. (Ord. 1675, eff., 10-26-01)

Section 14-165. Certifications and inspections.

(1) All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the Uniform Building Code and all other construction standards set forth in the City's Code of Ordinances and federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to Section 14-153 and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an application pursuant to Section 14-153 and every two (2) years thereafter. For existing lattice or guyed Towers, certification shall be submitted within sixty (60) day of the affective date of this Ordinance and then every two (2) years thereafter. The Tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized. (Ord. 1675, eff., 10-26-01)

(2) The City or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with the Uniform Building Code and all other construction standards provided by the City Code and federal and state law. (Ord. 1675, eff., 10-26-01)

(3) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the City shall be born by the Tower owner. (Ord. 1675, eff., 10-26-01)

Section 14-166. Maintenance.

(1) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods, materials, and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. (Ord. 1675, eff., 10-26-01)

(2) Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that will not interfere with the use of other property. (Ord. 1675, eff., 10-26-01)

(3) All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. (Ord. 1675, eff., 10-26-01)

(4) All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel. (Ord. 1675, eff., 10-26-01)

(5) All Towers shall maintain compliance with current emission standards of the FCC. (Ord. 1675, eff., 10-26-01)

(6) In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued, at least thirty (30) days prior to the date of discontinuance. (Ord. 1675, eff., 10-26-01)

Section 14-167. Criteria for Site Plan Development Modifications.

(1) Notwithstanding the Tower requirements provided in this Article, a modification to the requirements may be approved by Planning, Zoning and Variance Commission as a conditional use in accordance with the following: (Ord. 1675, eff., 10-26-01)

(a) In addition to the requirement for a Tower Application, the Application for modification shall include the following: (Ord. 1675, eff., 10-26-01)

(I) A description of how the plan addresses any adverse impacts that might occur as a result of approving the modification. (Ord. 1675, eff., 10-26-01)

(II) A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification. (Ord. 1675, eff., 10-26-01)

(III) A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationships to surrounding rights-of-way and properties. (Ord. 1675, eff., 10-26-01)

(IV) For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate any agreement for collocation, and the result of such attempts. (Ord. 1675, eff., 10-26-01)

(V) The Planning, Zoning and Variance Commission may require the Application to be reviewed by an independent Engineer at the Applicant's expense to determine whether the antenna study supports the basis for the modification requested. (Ord. 1675, eff., 10-26-01)

(b) The Planning, Zoning and Variance Commission shall consider the Application for modification based on the following criteria: (Ord. 1675, eff., 10-26-01)

(I) That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties. (Ord. 1675, eff., 10-26-01)

(II) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification. (Ord. 1675, eff., 10-26-01)

(III) In addition, the Commission may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts in connection with the approval of the modification. (Ord. 1675, eff., 10-26-01)

(2) In addition to the requirements of subparagraph (1) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following: (Ord. 1675, eff., 10-26-01)

(a) In the case of a requested modification to the setback requirement contained in Section 14-154, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located, and no reasonable alternative exists. (Ord. 1675, eff., 10-26-01)

(b) In the case of a request for modification to the separation and buffer requirements from other Towers of Section 14-156, that the proposed site is zoned "Industrial" and the proposed site is at least double the minimum standard for separation from residentially zoned lands provided for in Section 14-156. (Ord. 1675, eff., 10-26-01)

(c) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of Section 14-156, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping, stealth towers, and other buffers to screen the Tower from being visible to residentially zoned property. (Ord. 1675, eff., 10-26-01)

(d) In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to: (I) facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or (II) to meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented within written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved. (Ord. 1675, eff., 10-26-01)

Section 14-168. Abandonment.

(1) If any Tower shall cease to be used for a period of 365 consecutive days, the Planning Director

shall notify the Owner, with a copy of the Applicant, that the site will be subject to a determination by the City Council that such site has been abandoned. The Owner shall have thirty (30) days from the receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the City Council shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower. (Ord. 1675, eff., 10-26-01)

(2) To secure the obligation set forth in this Section, the Applicant and/or Owner shall post bond in an amount determined by City Council based on the estimated cost of removal of the Tower. (Ord. 1675, eff., 10-26-01)

Section 14-169. Severability.

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, but shall remain in full force and effect. (Ord. 1675, eff., 10-26-01)

Section 14-170. Conflicts.

That all provision of the Code of Ordinances in conflict herewith are hereby repealed. (Ord. 1675, eff., 10-26-01)