



Environmental Planning Commission

***Agenda Number: 9
Project Number: 1001620
Case Number: 14EPC-40019
April 10, 2014***

Staff Report

<i>Agent</i>	City of Albuquerque Planning Department
<i>Applicant</i>	City of Albuquerque City Council
<i>Request</i>	Amending a portion of Zoning Code §14-16-3-17, Wireless Telecommunications Regulations
<i>Location</i>	City-Wide
<i>Size</i>	N/A
<i>Zoning</i>	N/A

Staff Recommendation

That a recommendation of CONDITIONAL APPROVAL of 14EPC-40019 be forwarded to the City Council based on the Findings beginning on Page 20 and the Conditions beginning on Page 22.

Staff Planner

Catalina Lehner, AICP-Senior Planner

Summary of Analysis

This request is for a recommendation to City Council regarding proposed text amendments to Zoning Code §14-16-3-17(A)(14), a portion of the Wireless Telecommunications Regulations that addresses collocations on public utility structures (usually PNM poles). Bill No. O-14-7 was introduced at City Council on March 3, 2014 and referred to the Planning Department. The EPC is a recommending body; the City Council will make the final decision.

The proposed text amendments intend to limit height increases of public utility poles used for wireless purposes, clarify that wireless structures and equipment should not protrude into public sidewalks, and stipulate that public utility collocations not meeting these criteria may be permitted through another application process.

The genesis of the proposed text amendments is a particular collocation on a PNM pole at 8510 Wyoming Blvd. NE. Neighbors appealed the issuance of a building permit. The appeal is pending and will be heard by the Land Use Hearing Officer (LUHO) on April 27th and then considered by City Council. A Notice of Proposed Rulemaking (NPRM), part of which will clarify Federal guidance regarding collocations, is pending before the Federal Communications Commission (FCC). Until the NPRM is finalized, it is unknown if the proposed text amendments, which address one type of collocation, would be consistent with Federal guidance.

Staff finds that the proposed text amendments, a legislative response to one incident, would create several unintended consequences and would not adequately address the issue as intended. Please refer to Section V of this report for details. Revisions are necessary to avoid such unintended consequences and to not undermine the regulatory intent to encourage collocations in lieu of free-standing towers. Staff recommends that a recommendation of conditional approval, subject to substantive conditions, be forwarded to the Council.

However, if the EPC chooses to recommend deferral or denial, Staff will have appropriate Findings available.

City Departments and other interested agencies reviewed this application from 3/3/14 to 3/14/14. Agency comments used in the preparation of this report begin on Page 25.

I. INTRODUCTION

Request

This request is for a recommendation to City Council regarding Bill No. O-14-7, proposed amendments to the Wireless Telecommunications Regulations (“WT Regulations”). The regulations are found in Section (§) 14-16-3-17 of the Comprehensive Zoning Code of the Albuquerque Code of Ordinances (ROA 1994) and govern Wireless Telecommunications Facilities (WTFs) in the City of Albuquerque.

Specifically, the proposed text amendments are to the WT Regulations Subsection (A)(14), which is titled “Wireless Telecommunications Facility Mounted on Public Utility Structures Including Transmission and Sub-Transmission Line Structures.” Bill No. O-14-7 was introduced at City Council on March 3, 2014.

Intent & Purpose

The proposed text amendments (the “2014 amendments”) to Zoning Code §14-16-3-17(A)(14), Wireless Telecommunications (WT) Regulations, are found in Council Bill O-14-7. The 2014 amendments intend to:

- 1) limit non-neighborhood-noticed height increases to public utility poles for collocation of wireless telecommunication antennas;
- 2) clarify that wireless telecommunication structures and equipment should not protrude into, or create a potential safety issue for, publicly accessible sidewalks; and
- 3) clarify that public utility collocations that cannot satisfy these criteria may otherwise be permitted through the normal (non-expedited) application process, which includes neighborhood notice.

The purpose of the 2014 amendments is to clarify requirements pertaining to collocations on public utility structures and to ensure that collocations on public utility structures, including but not limited to PNM poles, do not substantially change the physical dimensions of the existing structures and/or equipment. The proposed legislation is a response to the case of the “Wilshire WTF” at 8510 Wyoming Blvd. NE (see Section II of this report).

EPC Role

Regarding text amendments to the Zoning Code, the Environmental Planning Commission (EPC) is a recommending body to the City Council. After the EPC hearing, the case will proceed to the Land Use Planning and Zoning Committee (LUPZ) of City Council, and then the Council will make the final decision. This request is a legislative matter that would apply City-wide.

II. BACKGROUND

History

Original Wireless Regulations- In 1999, the City Council adopted the original wireless regulations (O-54-1999, Zoning Code §14-16-3-17) to address Wireless Telecommunications Facilities (WTFs) in the City of Albuquerque. The overarching intent was to protect environmental resources

and visual character by promoting visually unobtrusive wireless facilities, while ensuring provision of telecommunications infrastructure to serve the community. The Ordinance also provided definitions specific to WTFs, amended zoning categories to allow WTFs as a permissive use in most zones, and established standards for review of WTF applications.

2008 Wireless Amendments- In 2006, a proliferation of non-concealed and minimally concealed WTFs prompted the City Council to seek to minimize the impact of WTFs by requiring that all new WTFs use concealed (aka stealth) technology, which refers to a design that hides the facility's antennas. Text amendments to Zoning Code §14-16-3-17, Wireless Telecommunications Regulations, were needed. Council Bill O-06-40 was introduced in August 2006. The EPC considered a floor substitute in August 2007 and, after three deferrals, voted in November 2007 to send an approval recommendation, with conditions, to the City Council (see attachment). The City Council adopted Enactment No. O-2008-005, which amended Zoning Code §14-16-3-17 and resulted in the current wireless regulations (see attachment).

Context

The 2014 amendments were crafted in response to a particular wireless case, sometimes referred to as the "Wilshire WTF", located at 8510 Wyoming Blvd. NE, on the property of a church. In 2011, a wireless provider applied for a collocation on a PNM pole. Zoning Staff approved the application. However, the project did not start and then the building permit expired. In September 2013, the provider paid applicable fees and received a new building permit.

The project was constructed. Wireless antennas were placed on a new, rather than existing, PNM pole. The provider had coordinated with PNM, which built a new, 65 foot tall steel pole upon which the antennas were then placed. This type of "pole swap-out" is done when the existing utility pole cannot structurally accommodate the wireless antennas and/or equipment, and the provider obtains permission from PNM.

In January 2014, Staff became aware of neighbors' concerns alleging that a new, free-standing WTF with non-concealed antennas, which was not hooked-up to existing electrical lines, was built. Concerns included, but were not limited to, tower height, non-concealment, equipment encroachment into the sidewalk and lack of neighborhood notification.

Note: The Noreste Neighborhood Association (NNA) submitted an appeal of the issuance of a building permit for the Wilshire WTF (appeal # AC-14-2). The appeal is scheduled to be heard by the Land Use Hearing Officer (LUHO) on April 27, 2014. The NNA is requesting that the WTF be removed and that proper steps be taken in requesting this facility, including neighborhood notification.

Though the proposed text amendments are a legislative response to this particular case, they would apply City-wide and to all future collocations on all public utility structures (see Section V of this report for unintended consequences).

Zoning

Wireless Telecommunications Facilities (WTFs) are a permissive use in all but the following zones: RO-1 and RO-20 (Rural & Open Zone), RA-1 and RA-2 (Residential Agricultural Zones) and H-1 (Historic Old Town Zone).

WTFs are specifically mentioned in the Zoning Code as permissive uses, some with limitations, in these zones: R-1 (Residential Zone), M-H (Mobile Home Residential Zone), C-1 (Neighborhood Commercial Zone), C-2 (Community Commercial Zone), O-1 (Office & Institution Zone), IP (Industrial Park Zone) and SU-1 (Special Use Zone).

The following zones reference the abovementioned zones, thus making WTFs a permissive use therein: RA-1 and RA-2 (Residential & Agricultural Zones), R-LT, R-T, R-G, R-2, R-3, RC (Residential/ Commercial Zone), R-D (Residential and Related Uses Zone-Developing Area), C-3 (Heavy Commercial Zone) and M-1 (Light Manufacturing) and the M-2 (Heavy Manufacturing).

Some of these, specifically R-1, only allow WTFs that are “concealed or located on a public utility structure.” Note that, for all zones that allow WTFs, the language states that WTFs are a permissive use “provided the requirements of 14-16-3-17 of this Zoning Code are met.” Therefore, if a proposed WTF does not meet the requirements of the WT regulations, it would not be allowed.

Definitions, Zone Code §14-16-1-5

The Definitions section of the Zoning Code contains 19 definitions relevant to WTFs. The following are germane to the proposed text amendments.

- Collocation
- Concealed Wireless Telecommunications Facility (WTF)
- Existing Vertical Structure
- Public Utility Structure
- Structure
- Wireless Telecommunications (WT) Antenna
- Wireless Telecommunications Equipment Building or Cabinet
- Wireless Telecommunications Facility (WTF)

Refer to Section V of this report for a discussion.

Types of WTFs (in brief)

Concealed- Starting in 2008, new Wireless Telecommunications Facilities (WTFs) are required to be concealed, *except for collocations* [Ref: 14-16-3-17(A)(1)]. Concealment is a two-part test: WTFs must be concealed by design pursuant to (A)(1) and by context pursuant to (A)(15)(c)(1-6)-the Criteria for Concealment. Concealed WTFs come in many forms: free-standing tree designs (monopines, monoecalyptus, monopalms), flagpoles and large crosses, in which the antennas are hidden inside. These are examples of free-standing facilities that are concealed.

Other concealed WTFs are not free-standing, but have antennas mounted to another structure. Examples include antennas concealed inside a church steeple, antennas on top of buildings, and panel antennas mounted on a building and painted to match. Building-mounted WTFs and

architecturally integrated WTFs generally provide a greater degree of concealment than free-standing WTFs.

Non-concealed- Stereotypical “cell towers”, often called arrays, consist of a tall steel pole with a ring of non-concealed panel antennas at the top. These existed prior to the 2008 amendments requiring concealment. Lattice towers, which are very tall, grid-like towers (usually guy-wired), existed prior to the original WT regulations.

Collocation refers to more than one WTF on the same structure, or one or more WTFs on a public utility structure. Collocations are not required to be concealed. For example, a wireless provider may install its antennas to occupy the second (or third) spot on an array, or to be located on a PNM pole. These panel antennas would be visible. Concealed collocations occur when a provider occupies a spot on an existing, concealed WTF such as a monopine.

Application Review Process

Pursuant to the WT regulations, Planning Department Staff review and decide applications for wireless telecommunication facilities (WTFs). There are two types of review, depending upon the type of WTF proposed and the subject site’s zoning. A public hearing is not required.

Current Planning Review- Applications for new concealed WTFs, whether free-standing or architecturally integrated, are reviewed by Current Planning Staff who act as the Planning Director’s designee. Applicants are required to submit information requested in the wireless regulations [§14-16-3-17(A)(13)] via a checklist. Supplemental technical information is also required. Please see <http://www.cabq.gov/planning/developers/wireless-telecommunications-facility> for information and forms. The applications are classified as Administrative Amendments, or AAs, for WTFs.

Staff works with the applicant to cure any deficiencies and clarify information so the application can be deemed complete. This process may take a while, depending upon the completeness of the initial application and the response times. A meeting, facilitated or not, may occur if neighbors express concerns and/or request one. Staff issues a decision for approval or denial, substantiated by detailed findings of fact. Once approved, the next step is to go to the Zoning Counter and submit for a building permit. An electrical permit is also required. Since a Certificate of Occupancy (C.O) is not required, a final check of the site is not done to ensure consistency between what was approved and what was actually built.

Zoning Review- The other type of administrative review, is done by Zoning Staff, and is limited to applications for non-concealed collocations (on arrays, lattice towers and public utility structures-typically PNM poles), like-for-like equipment swap-outs, and back-up generator additions. These types of applications do not need review using the criteria for concealment [§14-16-3-17(A)(15)], as done by Current Planning Staff, because they are not concealed WTFs. However, if Zoning Staff believes that an application may affect a WTF’s concealed status and/or the criteria for concealment, they consult Current Planning Staff and the WTF team (Current Planning and Zoning Staff) determines who should handle the application.

III. FEDERAL LAW & WIRELESS REGULATION

Wireless applications are subject to local and Federal regulations. Municipalities are prudent to ensure that their local wireless regulations do not conflict with Federal regulations.

Federal Communications Commission

The Federal Communications Commission (FCC), established by the Communications Act of 1934, regulates the radio, television, wire, satellite and cable industries. The FCC consists of five commissioners appointed by the President and confirmed by the Senate.

The Telecommunications Act of 1996

Overview- In 1996, the Communications Act was amended to include regulation of personal wireless services. Now generally referred to as the Telecommunications Act of 1996 (the “Act”), it covers broadcast services, cable services, video programming and wireless telecommunications. Wireless telecommunications providers are required to comply with the FCC regulations contained therein.

The Act contains important provisions concerning the placement of facilities used to provide personal wireless services. Prior to 1996, many state and local communities had worked closely with wireless service providers on placement plans, but the 1996 law established new responsibilities for communities and for the FCC. The rapid expansion of the wireless industry in the early 1990s made this issue very important.

Section 253- Section 253 of the Act addresses the removal of barriers to entry for the telecommunications industry. With respect to local jurisdiction, Subsection (a) states that in general “no state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” No local statute or regulation can prohibit a wireless company from providing service. In other words, communities are not allowed to outright ban wireless facilities.

Subsection (b) addresses state (or local) regulatory authority, as follows: “Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

The proposed text amendments to Zoning Code §14-16-3-17 do not conflict with Section 253 of the Act. 253(a) protects all wireless carriers by not allowing any state or local regulation to outright prohibit, or have the effect of prohibiting, these services. Limiting height increases for public utility structures and stipulating a 12-month existence prior to use for wireless purposes, would not have the effect of prohibiting service provision- though it would make usage of public utility structures more difficult (see Section V of this report). 253(b) gives local governments authority to regulate the telecommunications industry, as long as it is done in a competitively neutral basis (i.e.-all providers treated equally). Nothing in the proposed text amendments would create an advantage for one wireless provider over another.

Section 704- Section 704 of the Act governs federal, state and local government oversight of the siting of personal wireless service facilities. The Act established a comprehensive framework for the exercise of jurisdiction by state and local zoning authorities over the placement, construction and modification of facilities such as towers for cellular, personal communications service (PCS), and specialized mobile radio (SMR) transmitters.

With respect to local jurisdiction, Section 704(a)(7)(A) states that the Act shall not “limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities.” Subsection (B), however, establishes the following limitations on local authority:

- (B)(i) Regulation of the placement, construction and modification of personal wireless service facilities shall not “unreasonably discriminate among providers of functionally equivalent services”, such as cellular, wide-area SMR and broadband PCS, and “shall not prohibit or have the effect of prohibiting the provision of personal wireless service.”
- (B)(ii) For a request for authorization to place, construct or modify personal wireless service facilities, the local authority must act upon the request in a reasonable amount of time.
- (B)(iii) Any decision to deny a request for authorization to place, construct or modify personal wireless service facilities “shall be in writing and supported by substantial evidence.”
- (B)(iv) A local government cannot regulate the placement, construction and modification of personal wireless service facilities “on the basis of environmental effects of radio frequency emissions”, to the extent that the facilities comply with FCC regulations.
- (B)(v) A party that is aggrieved by any local government decision that is inconsistent with Section 704 can begin an action in Court and may petition the FCC for relief.

The proposed text amendments are an example of local authority over decisions regarding placement, construction and modification of a certain type of wireless facility. The current regulations do not facilitate discrimination between wireless providers, do not have the effect of prohibiting wireless service, and do address application review time and compliance with FCC regulations regarding radio frequency (rf) emissions. Staff substantiates, in writing, decisions for denial and for approval.

Notice of Proposed Rulemaking (NPRM)- In Very Brief

On September 26, 2013, the FCC released a Notice of Proposed Rulemaking on the acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (“NPRM”). The FCC requested final comments by March 5, 2014, and is expected to rule on the NPRM possibly by the end of the summer (2014).

This 86-page document raises four issues. A portion of two of the issues is relevant to the proposed text amendments: how the FCC should interpret 1) Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, and 2) certain issues related to the Federal Shot Clock Rule.

- 1) Section 6409(a), which was inserted in the abovementioned bill as a rider in 2012, in brief, states that a local government “may not deny, and shall approve” any modification to an

existing wireless tower provided that it does not “substantially change” its physical dimensions. The FCC proposes to clarify what substantial change means. Two proposed, Federal tests for substantial change are an increase in tower height of more than 10% and the installation of no more than four equipment cabinets. These tests are echoed in the proposed text amendments (Lines 26 & 27 of Page 1 and Lines 1-5 of Page 2) in anticipation of them being approved, though the NPRM is still pending.

- 2) One relevant issue is how “collocation” should be defined under the Shot Clock Rule. Related to this is whether the FCC should define collocation to not involve a substantial increase in the size of the tower. The text amendments propose to limit collocations on public utility poles to only collocations without substantial change in dimensions, but would allow those with substantial changes in dimensions to be approved through a different administrative process than they normally would be- though Staff would not have the authority to overlook regulatory requirements (see Section V of this report for an explanation).

IV. ANALYSIS OF COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES & PLANS

Applicable ordinances, plans, and policies are in regular text followed by Staff analysis in ***bold italics***.

Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter.” [emphasis added]

Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, *ensure the proper use and development of land*, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and *shall enact ordinances* and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer City policy in this area.” [emphasis added]

Adding provisions to the ROA 1994 via text amendments is an exercise in local government (City Charter, Article 1). Limiting height increases for public utility structures and stipulating a 12-month existence prior to use for wireless purposes generally expresses the Council’s desire to ensure the proper use and development of land and promote and maintain an aesthetic urban environment (City Charter, Article IX).

Comprehensive City Zoning Code

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City's general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Amendment Process (summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

The proposed text amendments to Zoning Code §14-16-3-17(A)(14) of the Wireless Telecommunications Regulations, is an exercise of local regulatory authority. The application was duly filed in accordance with Zoning Code requirements. Subsequent hearing and recommendation by the EPC will precede a final decision by the City Council, as required.

Albuquerque/Bernalillo County Comprehensive Plan

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies are used to evaluate development proposals. Applicable goals and policies include:

Land Use

Section II.B.5- Developing and Established Urban Areas, Goal: The Goal is "to create a quality urban environment, which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment."

By limiting height increases for WTFs collocated on public utility structures, the proposed text amendments would generally help contribute to a pleasing built environment. However, the "existence clock" and potential procedural change could dis-incentivize collocation on public utility structures. A potential outcome is the proliferation of free-standing tower WTFs, which is contrary to the existing Wireless Regulations and could detract from a quality urban environment and pleasing built environment. The request conflicts with the Developing and Established Urban Area Goal.

C. Environmental Protection & Heritage Conservation

8. Developed Landscape (Section II.C.8)

The Goal is to maintain and improve the natural and the developed landscapes' quality.

Policy II.C.8c: Incidental structures such as signs, guywires, poles, fireplugs, street furniture and overhead utility wires shall be designed for minimal visual intrusion and mobility impediment to pedestrians.

The proposed text amendments are intended to, among other things, maintain the quality of the natural and developed landscape by limiting height increases for collocations on public utility facilities. Generally, the request furthers the Developed Landscape Goal, although the existing regulations already do this adequately and without unintended consequences. The request furthers Policy 8c because it states that any equipment shall not protrude into a publicly accessible sidewalk.

Community Resource Management

Economic Development Goal: The Goal is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

The proposed text amendments, which would have the effect of dis-incentivizing collocated WTFs on public utility structures (see Section V of this report), could have adverse effects on economic development. This is because collocations, and small cell sites, are relatively easy to deploy in contrast to new, free-standing tower WTFs. Providing wireless coverage using existing structures, as favored in the current regulations, is a “win” for the community because the WTFs are less noticeable and a “win” for the industry because they are quicker and less expensive to deploy. The request generally conflicts with the Economic Development Goal.

Facility Plan: Electric System Transmission & Generation (2010-2020)

The Electric Facilities Plan (Rank II) addresses the electric transmission system (not distribution to customers and rates). In 1971, the Albuquerque City Council and the Bernalillo County Board of Commissioners (BCC) adopted the first Electric Facilities Plan, which was subsequently amended in 1972, 1981, 1985, 1995, 2005 (County only) and 2011.

The City Council adopted the Rank II Facility Plan: Electric System Transmission & Generation (2010-2020) (the “2010 Electric Facilities Plan”) via Bill No. R-11-311 on February 22, 2012. The 2010 Electric Facilities Plan describes the electric transmission and generation system serving the City of Albuquerque and unincorporated Bernalillo County. Main components are a projects list for 2010-2020, a review process table, location standards for transmission line corridors, design standards for electric transmission facilities and examples of generation technologies. The Plan contains a goal and five objectives.

The Plan does not specifically address the use of a utility pole for WT purposes. The review process table (p. 20) lists an “insignificant action” as, for example, replacing 8 or fewer structures in the same locations within the same easement with structures of a different size and/or material, and that such action is to be approved by the Planning Director’s designee. Assuming that usage of one utility pole for wireless purposes would be an “insignificant action”, there is no conflict with the current administrative process for WTFs because both are reviewed and approved administratively.

V. UNINTENDED CONSEQUENCES

It is critical to think through the unintended consequences of implementing the proposed text amendments to avoid potential problems, mis-aligned expectations and internal inconsistencies in the future. This analysis provides the reasoning behind the suggested “conditions for recommendation of approval” (detailed in Section VI of this report and available upon request).

Definition Concerns

Without clarification, conflicts between the proposed text amendments and existing definitions in Zoning Code §14-16-1-5 could complicate implementation later.

A) Zoning Staff point out that the definition of “structure” excludes a public utility pole or line. “Public utility structure” is also a defined term and should be used consistently throughout the proposed text amendments instead of “structure”, which is too broad a term.

STRUCTURE. Anything constructed or erected above ground level which requires location on the ground or attached to something having a location on the ground but not including a tent, vehicle, vegetation, or public utility pole or line.

PUBLIC UTILITY STRUCTURE. A structure, owned by a unit of government or by a public utility company, which is an electric switching station; electric substation operating at voltages greater than 50 kilovolts (kV); gas transfer station or border station; city-owned lift station, odor control (or chlorine) station, water well or pump station, or water reservoir; or any other public utility structure controlled by a rank two facility plan.

B) Proposing a timeframe for which a public utility structure must exist may create a conflict with the definition of Existing Vertical Structure.

EXISTING VERTICAL STRUCTURE. Any tower for which a building permit has been issued, including a tower or antenna for which a permit has been issued by the city but has not been constructed so long as approval by the city has not expired, including a tower and antenna that has been given an interim approval prior to the effective date of Ordinance 9-1999 and not found by the city to be contrary to the purposes of Ordinance 9-1999, or any other vertical structure.*

**the original WT regulations*

For instance, if a public utility pole is replaced by a larger public utility pole that will be used as a WT tower, and a building permit is obtained, then the public utility structure can be considered “any tower for which a building permit has been issued.” Therefore, according to this definition, the tower “exists” even if it has not been built yet. Would the date of building permit issuance be when the proposed “12 month existence clock” starts, in accordance with the definition? If so, a provider could wait until the eleventh month and construct the tower and it would seem to neighbors that the tower had only existed for one month.

The public is likely to be upset because of a reasonable expectation that the tower would have had to physically exist to start the clock when, pursuant to the above definition, this is not the case.

Staff suggests that the proposed text amendments specify when the “existence clock” starts, regardless of the number of months the clock contains, and that it possibly refer to physical existence of the tower. This is preferable to amending the definition of Existing Vertical Structure in §14-16-1-5, Definitions, though perhaps the definition should be amended to avoid creating an inconsistency between portions of the Zoning Code. However, amending the definition could have implications beyond the scope of the wireless regulations. Staff would need to investigate further.

The “existence clock” idea could be difficult to administer and enforce. A related issue is that, once the “existence clock” start date is established, how will it be tracked and monitored? Staff can verify when a building permit was issued, but it would be more difficult to determine when construction of the “any tower” was completed. A Certificate of Occupancy is not required for WT towers (they are not occupied), so there is no final inspection by Staff. The date of final establishment is not trackable through current administrative processes. Only the applicant, or another agency, will know the date when the “any tower” is powered up and operating. Staff will have to rely on them for this information and require documentation indicating the date.

Regulatory Intent & Wireless Deployment

The clear and overarching intent of the wireless regulations, since the original regulations 1999, is to promote collocations on existing structures (including public utility structures) in lieu of new, free-standing tower WTFs. The regulations support this intent in several ways.

First, collocations are not required to use concealed technology. When the requirement for “concealment by design” was adopted in January 2008, collocations were exempted as a way of offering an incentive to pursue collocations. Non-concealed collocations, which go on existing, non-concealed arrays, old lattice towers and public utility structures, can be approved relatively quickly by Zoning Staff and are not subject to the application process that new, free-standing WTFs are. Therefore, a provider can save time and money, the City gets wireless service by utilizing an existing structure, and neighbors are not impacted by a new, free-standing tower WTF.

Without this incentive, it’s possible that many more free-standing towers would have existed. New, free-standing WTFs typically cause much more neighborhood concern than do collocations on existing structures because they introduce a new, 65 or 75 foot tall, free-standing structure to an area.

Second, §14-16-3-17(A)(6) states that an applicant must demonstrate that “no existing tower, structure or public utility structure can be used in lieu of new construction” to accommodate a proposed WTF. Five types of evidence are required, including an affidavit setting forth the asserted engineering requirements (added with the 2008 amendments). Applicants for new, free-standing WTFs are also required to fill out a supplemental technical application. Detailed technical information related to project purpose, coverage maps and substantiation of a provider’s claims is required. *Note: this information is invaluable should the City go to Federal court regarding a WTF decision.*

Third, new free-standing WTFs are subject to additional requirements such as landscaping and screening with a solid fence or wall [subsection (A)(16)]. The intent is to make it simpler and faster

to do a collocation than to meet these, and other requirements, for new, free-standing WTFs. By removing the incentives mentioned, the proposed text amendments would give providers a reason to assert that, by placing more requirements on collocations, they might as well pursue free-standing tower WTFs.

In sum, Staff believes that the proposed text amendments as written would potentially have the unintended effect of dis-incentivizing collocations and that, in doing so, the intent of the wireless regulations that has been in place since 1999 would be undermined. The result, over time, is likely to be the proliferation of new, free-standing tower WTFs. Public dis-satisfaction, appeals, and increased costs for the City and providers are likely by-products.

Zoning & Enforcement Implications

Zoning Staff, who work with collocations on public utility structures, raise several important points regarding enforcement of the proposed text amendments.

Zoning Code §14-16-1-4(C) states that public utility lines and poles located in public rights-of-way are not regulated by the Code. This exclusion is also in the definition of “structure” in §14-16-1-5, Definitions. However, structures that meet the definition of “Public Utility Structure” are regulated. Additional information may be needed to determine the location of a public utility structure proposed to be used for wireless purposes.

Regarding the proposed, new (14)(b), Zoning Staff note that any determination regarding the required 12-month minimum time period of an existing line structure’s height and dimension, prior to the addition of antennas, will be based solely on information provided by the applicant. Zoning Staff is unaware if these measurements are recorded or easily available to the City for existing line structures. Also, when there are reports of an increase in pole height, Zoning Staff would not necessarily be able to determine if the increase is due to maintenance, repair and/or improvements for improved service, or specifically to attach WT antennas.

Zoning Staff comment that the proposed, new subsection (14)(b)(iii) could be interpreted as prohibiting any wireless telecommunications antennas or equipment within the right-of-way, including those above a sidewalk or street. Clarification is needed to specify if “shall not protrude” refers to air space as well as ground space and what “publicly-accessible sidewalk or driving lane” means.

It would also be difficult for Zoning and Current Planning Staff to know what the “minimum safety distance called for by the equipment manufacturer or installer” is. Staff is not aware of such a minimum safety distance, and is unsure how it would relate to required setbacks. Also, the information would likely be provided by the applicant and Staff would possibly need an independent source of information for verification.

Administrative Processes & Regulations

Staff would like to point out some substantive difficulties with the language as proposed when it comes to administrative process. The proposed text amendments would require that an application for a WTF on a public utility structure that does not meet the requirements of subsection (A)(14),

which pertains to public utility structures, go through the Current Planning review process rather than be reviewed at the Zoning Front Counter.

This would put Zoning Staff in the position of referring an application to Current Planning instead of denying the application for non-compliance, and making it seem to the applicant that they could possibly get relief from regulatory requirements by going through a more detailed and longer administrative process that includes, among other things, neighborhood notification and supplemental technical information. For instance, if Zoning Staff notices that a proposed WTF does not comply with the requirement that antennas not protrude more than two feet from the public utility structure they're mounted on, and the applicant does not want to make a revision, Zoning Staff would have to deny the application due to non-compliance.

Current Planning Staff would review the application and find the same non-compliance. What option would Current Planning Staff have other than to deny the application, for the same reason as Zoning Staff denied it? Though the administrative review process would be different, the bottom line is that Current Planning Staff does not have the authority to overlook regulatory requirements of subsection (A)(14).

However, the application could invoke the (seldom used) Waiver provisions in §14-16-3-17(C), which would allow the EPC to waive requirements over which it has authority- except for height. However, the EPC process includes a public hearing and takes at least 6 weeks from start to finish and the outcome is not guaranteed. In sum, the proposed language would create unnecessary delays in the process, unrealistic expectations for applicants and more work with the same result.

VI. PROPOSED TEXT AMENDMENTS & DISCUSSION

The proposed text amendments are to Zoning Code §14-16-3-17(A)(14), a portion of the Wireless Telecommunications Regulations. Staff suggests revisions to the proposed language to avoid the unintended consequences discussed in Section V of this report.

New language is [underlined and bracketed]. Deleted language is [~~underlined, bracketed and struck through~~]. Planning Staff analysis is in ***Bolded Italics***; suggestions (additions and deletions) are in grey highlighting. Page references are to the proposed Bill (see attachment). The suggested revisions are classified as substantive or minor.

SUGGESTED, SUBSTANTIVE REVISIONS

1. Page 1, Lines 16-19 (change is on Line 18): suggest replacement

~~[(b) The public utility structure, including a transmission or sub-transmission line structure, must have been in existence at its present height and dimension for at least the twelve consecutive months prior to the proposed addition of wireless telecommunication antennas.]~~ replace with a new (f), Line 17, p. 2

[(f) The applicant shall provide evidence at the time of application, including but not limited to, verification by the facility owner that an existing public utility structure to be used for collocation of WT antennas functions as a public utility structure. If a new public utility structure and/or pole is

to be used for wireless purposes, the applicant must provide evidence at the time of application to fully explain and demonstrate how the new public utility structure and/or pole will function as such. The information is subject to Staff approval, and may not be accepted if it is insufficient.]

The new subsection (14)(b) proposes to establish a definite timeframe for which a public utility structure must exist prior to considering it “existing” for collocation purposes. A twelve (12) month “existence clock” is proposed. The intent is to ensure that a public utility structure, typically a PNM pole, be built as an electrical pole and function as such prior to the collocation of wireless telecommunication (WT) antennas, and to discourage the reverse-construction of new, free-standing WTFs used for electrical purposes seemingly after-the-fact.

Staff does not think that the timeframe, or “existence clock” idea will achieve this intent. First, a free-standing, swap-out pole could be built and the twelve months waited out- and then the pole would exist at its “present” dimensions, even if those dimensions are much taller and wider than the pole that existed previously. The date of beginning the “existence clock” is difficult to establish because of conflict with the definition of Existing Vertical Structure, and would also be difficult to track and enforce upon (see Section V of this report-unintended consequences).

Staff believes that the intent can be achieved by requiring the applicant to provide evidence, in the form of verification by the facility owner and subject to Staff approval, that an existing public utility structure to be used for collocation of WT antennas indeed functions as a public utility structure. In the case of “swap-out” public utility poles, the applicant must provide documentation at the time of application to fully explain and demonstrate how the new public utility pole will function as a public utility pole. This could be a new application requirement, which would have the effect of making the relevant information known at the time of application when it’s still possible to do something about it (ex. a “back-door” request for a new, free-standing WTF could be denied).

If using an “existence clock” is desired (though Staff does not suggest it for the aforementioned reasons), 12 months, as opposed to 24, 6, 3 or 1, seems arbitrary. Perhaps 3 months (90 days) would be appropriate. The Federal “Shot Clock” rule allows 90 days for approval of collocation requests and the wireless industry operates on quarters (3 months equals one quarter), so there is some related precedence for 3 months.

2. Page 1, Line 23:

[(d) Any physical alterations or replacements of any public utility structure or...] suggest revision

Adding “public utility” to structure is important for clarity and consistency within subsection (A)(14), especially since the definition of structure does not include public utility structure.

3. Page 1, Lines 26-27 & Page 2, Lines 1 & 2: suggest keeping as is

[(i) The height of the public utility structure, including a transmission or sub-transmission line structure, shall not be increased by more than ten feet for purposes of accommodating the wireless telecommunications antennas.]

Staff points out that the pending Federal Notice of Proposed Rulemaking (NPRM) suggests that a substantial change in tower height is no more than a 10% change. Ten feet, however, would be more effective and would not penalize the shortest towers. For instance, if a public utility structure is 45 feet tall, the allowable change (using %) would be 4.5 feet for a total of 49.5 feet instead of 55 feet that would be allowed with the 10 foot maximum. The 10 foot maximum would also be easier to implement than a percentage.

4. Page 2, Lines 2 & 3: suggest keeping as is

[...The height increase authorized by this subsection may be exercised no more than once per public utility structure;...]

If the height limitation of 10 feet is included, it's critical to include the "no more than once" language. Without it, it would be possible for a provider to collocate on a public utility structure with a height increase of 10 feet and, after that approval, turn around and apply for another collocation with a height increase of 10 feet (for a total 20 foot increase), and so on. The language that limits the height increase to one occurrence per public utility structure is necessary to avoid "serial increases" in height. However, the Zoning Code (by individual zones) limits allowable height for WTFs to 65 feet for a single carrier and 75 feet for more than one carrier on the same structure.

The Federal NPRM seeks to clarify the portion of 6409(a) pertaining to "substantial change in physical dimensions" regarding, among other things, the fact that it does not mention or prohibit serial increases of dimensions.

5. Page 2, Lines 4 & 5: suggest added language

[(ii) No more than four new equipment cabinets or one new equipment shelter may be added , not to exceed 400 sf of gross floor area; and

The proposed language mirrors language proposed in the pending NPRM, in the portion regarding what constitutes a substantial change in physical dimensions. Staff points out that it's premature to adopt this (and the above) language locally when it may or may not be adopted, in its present or revised form, at the Federal level.

It's unclear why four equipment cabinets. Though one equipment shelter makes more sense, both are less meaningful without an associated size limitation. For instance, one very large equipment shelter could take up as much room as two small ones. Also, the equipment cabinets and equipment shelter are not the same as the enclosure area or the lease area.

If the intent is to use less ground space for WTFs collocated on public utility facilities, a numerical standard could be proposed for the enclosure area, specific to this type of WTF. The

wireless regulations require that no more than 400 sf of gross floor area is allowed for the equipment cabinets or shelter for all WTFs, within the enclosure area. Staff is suggesting added language for clarity and consistency. In the alternative, area limitations could perhaps be specified through the leasing process.

6. Page 2, Lines 6-9: suggest additional language

[(iii) New or altered public utility structures and/or equipment shall not protrude into any publicly accessible sidewalk or driving lane, and shall be sited no closer to these than the minimum safety distance called for by the equipment manufacturer or installer. The applicant shall provide written information demonstrating the minimum safety distance in feet.]

Staff finds that expressly prohibiting intrusion into publicly accessible sidewalks is beneficial for the sake of clarity and public safety, but has concerns about the second half of the sentence. First, “publicly accessible sidewalk” is not necessarily a public sidewalk; it could be private. It appears that the intention is to address sidewalks in the public right-of-way. If so, clarification is needed.

Second, how is City Staff going to know what the “minimum safety distance called for by the equipment manufacturer or installer” is? Potentially an applicant could produce information that Staff wouldn’t be able to verify, and maybe would have to take the applicant’s word as correct. Third, would there be conflicts between the minimum safety distance and required setbacks pursuant to the Zoning Code and/or an SU-1 site development plan? Which would prevail and why? Staff proposes additional language to address these issues.

7. Page 2, Lines 20-24: suggest replacement

[(h) Any proposed wireless telecommunication structure facility proposed to be mounted on a public utility structure, [that] [which] does not meet the requirements of this subsection ‘(14)’ [,] may otherwise be permitted through the application process prescribed under subsection ‘(13)’.] at p. 2, line 20

[(h) Pursuant to (A)(13) of these regulations, the applicant shall notify recognized neighborhood associations and property owners regarding an application for a wireless telecommunications facility, the antennas of which are all mounted on a public utility structure.]

Staff would like to point out a major difficulty. The proposed language would require that an application for a WTF on a public utility structure that does not meet the requirements of subsection (A)(14) (which pertains to public utility structures) could be approved through a different administrative process than what it would normally be subject to.

Non-concealed collocations, including those on public utility structures, are reviewed at the Zoning Front Counter. If an application is non-compliant, Zoning Staff would refer it to Current Planning Staff for review.

Zoning Staff would have to refer it to Current Planning Staff instead of denying the application based on non-compliance. Current Planning Staff would review the application and find the same non-compliance, which would also result in denial of the application.

Double-review of an application would create unnecessary procedural delays and more work with the same result- and perhaps with an unrealistic expectation that different review processes can yield different results using the same regulations. Inconsistency is undesirable, and the bottom line is that Staff does not have the authority to overlook regulatory requirements.*

**triple review if going to the EPC to request a waiver*

→ Please see Section V of this report for more discussion of unintended consequences.

If the intent is to ensure that neighborhoods and property owners are notified of collocations on public utility structures, then language can be added as shown above and Zoning Staff and applicants can be informed of the new requirement. The other information required in (A)(13) is geared more toward free-standing facilities and is not as critical for collocations on public utility structures.

SUGGESTED, MINOR REVISIONS

1. Page 1, Lines 3-4:

REQUIRE THAT COLLOCATIONS ~~[USING]~~ ~~[ON]~~ PUBLIC UTILITY STRUCTURES DO NOT SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSION~~[(S)]~~ OF THE

Usually the terminology for collocation is “on” rather than “using”. See also the definition of Collocation in §14-16-1-5.

2. Page 1, Line 14; Page 2, Lines 20- 23: **changes needed only if this sub-section is retained as written**

Transmission line structure [.] is permitted in all zoning districts except the H-1

[(h) Any ~~[proposed]~~ wireless telecommunication ~~structure~~ ~~facility~~ proposed to be mounted on ~~[a]~~ public utility structure, including a transmission of sub-transmission line structure, ~~[that]~~ ~~[which]~~ does not meet the requirements of this subsection ‘(14)’ [.] may otherwise be permitted through the application process

Minor grammatical suggestions. For substantive issues, see the previous page of this report. Staff suggests replacement of the proposed language.

VII. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

Zoning Staff note that the definition of “structure” does not include a public utility pole. They suggest clarification regarding what is allowed in the public right-of-way; public utility lines poles are often in the right-of-way and are not regulated by the Zoning Code. PNM comments that the term “equipment” is undefined and requests deletion of proposed subsections (A)(14)(d)(ii) and (iii), citing conflict with the franchise agreement with the City, among other things.

Long-Range Planning Staff comment that the requirement that a utility pole be in place for one year may discourage co-location, and that section (d)(iii) may be unnecessary because structures

are generally not permitted to encroach into the public right of way without an encroachment agreement. The agency comment period was from 3/3/14 to 3/14/14. Agency comments begin on p. 25 of this report.

VIII. NEIGHBORHOOD & OTHER CONCERNS

City-wide notification to all registered neighborhood association and coalition representatives was sent on March 19, 2014 via email by the Office of Neighborhood Coordination (ONC). A summary of the text amendments and Planning Staff's contact information were included. Staff received some e-mail inquiries and phone calls, mostly requesting clarification. A copy of the text amendments and the current regulations, for context, were sent as requested. As of this writing, no written comments from neighborhood representatives have been submitted. Staff is aware of one non-facilitated meeting, attended by Council Services Staff.

Industry representatives (Verizon) were aware of the proposed text amendments and contacted Staff, who held a conference call. Staff sent a copy of the proposed text amendments and the current regulations to AT&T, the other provider that has been active recently in Albuquerque (the last submittal from a carrier other than Verizon or AT&T, that Current Planning has reviewed, was in the Spring of 2011).

Verizon submitted comments that are general regarding Federal law and specific to the proposed text amendments (see attachment). They believe that further regulation is unnecessary except to adapt local regulation to Federal requirements, and seem to be fine with the "application process prescribed under subsection (13)".

Staff coordinated with Council Services and City Legal Staff regarding the first draft of the proposed text amendments, which resulted in Bill No. O-14-7. Staff would like to continue the dialogue regarding potential, unintended consequences discovered during analysis of the proposed legislation.

IX. CONCLUSION

The proposed text amendments, found in Council Bill O-14-7, are to Zoning Code §14-16-3-17(A)(14), a portion of the Wireless Telecommunications (WT) Regulations pertaining to collocations on public utility structures. The intent is to 1) limit non-neighborhood-noticed height increases to public utility poles for collocations; 2) not allow such WTFs (including equipment) to protrude into publicly accessible sidewalks; and 3) specify that public utility collocations not meeting these criteria can be permitted through the normal application process.

The genesis of the proposed text amendments is the case of the "Wilshire WTF". Non-concealed WT antennas were placed on a new, not existing structure that was not hooked-up to existing electrical lines. The Noreste Neighborhood Association (NNA) appealed of the issuance of a building permit (appeal # AC-14-2). Many factors distinguish this case from other collocations on PNM poles, which have been used frequently and without incident.

The EPC is a recommending body to the City Council, and can recommend one of the following:

An Approval recommendation with Conditions- the proposed legislation would be forwarded with conditions, as outlined in alternate findings and conditions, to mitigate unintended consequences (see Section V of this report), clarify procedures and create internal consistency. Portions of the proposed language would be suggested to change significantly.

A Deferral recommendation- the proposed legislation would be forwarded with findings explaining the reasons for deferral. The appeal of the “Wilshire WTF”, the reason for the proposed text amendments, is pending and will be heard by the LUHO on April 27th. A satisfactory remedy could result. Legislation pertaining to collocations is pending at the Federal level; until the Federal requirements are finalized, adoption of additional, local regulations regarding collocations is premature and could create inconsistencies with Federal regulations.

A Denial recommendation- the proposed legislation would be forwarded with findings explaining the reasons for denial, including the likely, unintended consequences if the legislation is implemented. It could be early Fall before Federal requirements are finalized. The proposed text amendments should be revisited with these in mind, and perhaps also taking into account the outcome of the pending appeal.

The proposed text amendments are a legislative response to one, particular case. It is important to understand that they would apply City-wide and to all future collocations on all public utility structures and, as written, would result in a number of unintended consequences that could undermine the intent of the WT regulations as a whole (see Section V of this report).

FINDINGS- 14EPC-40019, April 10, 2014-Text Amendments Zoning Code §14-16-3-17, Wireless Telecommunication Regulations

1. This request is for a recommendation to City Council regarding Bill No. O-14-7, introduced at City Council on March 3, 2014. O-14-7 contains proposed text amendments to Zoning Code §14-16-3-17(A)(14), the portion of the Wireless Telecommunications Regulations pertaining to Wireless Telecommunications Facilities (WTFs) mounted on public utility structures.
2. The genesis of the proposed text amendments is one case—the “Wilshire WTF” at 8510 Wyoming Blvd. NE. Non-concealed WT antennas were placed on a new, not existing, 65’ tall structure, not connected to existing electrical lines, and encroaching into the sidewalk. The purpose of the proposed text amendments is to ensure that collocations on public utility structures, including but not limited to PNM poles, do not substantially change the physical dimensions of the existing structures and/or equipment.
3. The intent of the proposed text amendments is to: 1) limit non-neighborhood-noticed height increases to public utility poles for collocations; 2) not allow such WTFs (including equipment) to protrude into publicly accessible sidewalks; and 3) specify that public utility collocations not meeting these criteria can be permitted through the normal application process.
4. The Environmental Planning Commission (EPC) is a recommending body to the City Council, which will make the final decision. This request is a legislative matter that would apply City-wide.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. The proposed text amendments do not conflict with Section 253 or Section 704 of the Federal Telecommunications Act of 1996. Limiting height increases for public utility structures and stipulating a 12-month existence prior to use for wireless purposes would not prohibit or have the effect of prohibiting service provision, though it would make usage of public utility structures more difficult [253(a)]. The proposed text amendments would not create an advantage for one wireless provider over another; regulation would be competitively neutral [253(b)]. Local authority over wireless facilities, in accordance with the limitations in 704(a)(7)(B), would be preserved.
7. Achievement of the City Charter:

Adding provisions to the ROA 1994 via text amendments is an exercise in local government (City Charter, Article 1). Limiting height increases for public utility structures and stipulating a 12-month existence prior to use for wireless purposes generally expresses the Council’s desire to

ensure the proper use and development of land and promote and maintain an aesthetic urban environment (City Charter, Article IX).

8. The intent of the Zoning Code:

The proposed text amendments to Zoning Code §14-16-3-17(A)(14), a portion of the Wireless Telecommunications Regulations, was duly filed in accordance with Zoning Code requirements. Subsequent hearing and recommendation by the EPC will precede a final decision by the City Council, as required. The overarching intent of the Zoning Code is fulfilled.

9. The proposed text amendments *further* the following Comprehensive Plan Goal and policy:

- A. Developed Landscape Goal. The proposed text amendments would generally maintain the quality of the natural and developed landscape by limiting height increases for collocations on public utility facilities.
- B. Policy II.C.8c: The proposed text amendments also would not allow any equipment to protrude into a publicly accessible sidewalk.

10. Part of the Federal Communications Commission's (FCC's) pending Notice of Proposed Rulemaking on the acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies ("NPRM") is relevant to the proposed text amendments:

- A. The FCC proposes to clarify what substantial change means under 6409(a) of the Middle Class Tax Relief and Job Creation Act. Two proposed tests for substantial change are an increase in tower height of more than 10% and the installation of no more than four equipment cabinets. These tests are in the proposed text amendments, though the NPRM is still pending, and
- B. How "collocation" and "substantial change" should be defined under the Shot Clock Rule is still pending. The text amendments propose to limit collocations on public utility poles to only collocations without substantial change in dimensions, but would allow those with substantial changes in dimensions to be approved through a different internal process—though Staff would not have the authority to overlook regulatory requirements. The FCC is expected to rule on the NPRM possibly by the end of the summer 2014.

11. The Noreste Neighborhood Association (NNA) appealed the building permit for the Wilshire WTF (AC-14-2). This case is being addressed through the appeal process and is scheduled to be heard by the Land Use Hearing Officer (LUHO) on April 27, 2014. Many factors distinguish this case from other collocations on PNM poles, which have been used frequently and without incident. However, the proposed text amendments, a legislative response to this particular case, would apply City-wide and to all future collocations on all public utility structures.

12. Without the suggested conditions of approval, Staff finds that the proposed text amendments would not address the issues as intended and would create unintended consequences regarding Definitions, Regulatory Intent & Wireless Deployment, Zoning & Enforcement Implications, and Administrative Processes & Regulations.
13. The suggested conditions of approval are also necessary to ensure that the proposed text amendments do not undermine the intent of the Wireless Telecommunication Regulations, which has been in place since 1999, to encourage collocations in lieu of free-standing tower WTFs.
14. Notification to all registered neighborhood association and coalition representatives was sent on March 19, 2014 via email by the Office of Neighborhood Coordination (ONC). Staff received some e-mail inquiries and phone calls, mostly requesting clarification. As of this writing, no written comments from neighborhood representatives have been received. Staff is aware of one non-facilitated meeting, attended by Council Services Staff.
15. Industry representatives (Verizon) were aware of the proposed text amendments and contacted Staff. Staff sent the proposed text amendments to AT&T, the other provider that has been active recently in Albuquerque (the last submittal from another carrier was in the Spring of 2011). Verizon submitted a letter stating that further regulation is unnecessary except to adapt to Federal requirements, and seems to be fine with the existing application process in subsection (A)(13).

RECOMMENDATION- 14EPC-40019, April 10, 2014

That a recommendation of CONDITIONAL APPROVAL of 14EPC-40019, Text Amendments to Zoning Code §14-16-3-17(A)(14), the portion of the Wireless Telecommunication Regulations pertaining to collocations on public utility structures, be forwarded to the City Council based on the preceding Findings and subject to the following conditions of approval.

CONDITIONS OF APPROVAL-14EPC-40019, April 10, 2014-Text Amendments to Zoning Code §14-16-3-17, Wireless Telecommunication Regulations

SUGGESTED, SUBSTANTIVE REVISIONS

1. Page 1, Lines 16-19 (change is on Line 18):

~~[(b) The public utility structure, including a transmission or sub-transmission line structure, must have been in existence at its present height and dimension for at least the twelve consecutive months prior to the proposed addition of wireless telecommunication antennas.]~~

replace with a new (f), Line 17,
p. 2

[(f) The applicant shall provide evidence at the time of application, including but not limited to, verification by the facility owner that an existing public utility structure to be used for collocation of WT antennas functions as a public utility structure. If a new public utility structure and/or pole is to be used for wireless purposes, the applicant must provide evidence at the time of application to fully explain and demonstrate how the new public utility structure and/or pole will function as such. The information is subject to Staff approval, and may not be accepted if it is insufficient.]

2. Page 1, Line 23:

[(d) Any physical alterations or replacements of any public utility structure or...]

3. Page 2, Lines 4 & 5:

[(ii) No more than four new equipment cabinets or one new equipment shelter may be added , not to exceed 400 sf of gross floor area; and

4. Page 2, Lines 6-9:

[(iii) New or altered public utility structures and/or equipment shall not protrude into any publicly accessible sidewalk or driving lane, and shall be sited no closer to these than the minimum safety distance called for by the equipment manufacturer or installer. The applicant shall provide written information demonstrating the minimum safety distance in feet.]

5. Page 2, Lines 20-24:

[(h) Any proposed wireless telecommunication structure facility proposed to be mounted on a public utility structure, [that] [which] does not meet the requirements of this subsection ‘(14)’ [,] may otherwise be permitted through the application process prescribed under subsection ‘(13)’-.] at p. 2, line 20

[(h) Pursuant to (A)(13) of these regulations, the applicant shall notify recognized neighborhood associations and property owners regarding an application for a wireless telecommunications facility, the antennas of which are all mounted on a public utility structure.]

SUGGESTED, MINOR REVISIONS

6. Page 1, Lines 3-4:

REQUIRE THAT COLLOCATIONS [USING] [ON] PUBLIC UTILITY STRUCTURES DO NOT SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSION[(S)] OF THE

-
7. Page 1, Line 14; Page 2, Lines 20- 23: see Finding #5

changes needed only if this sub-section is retained as written

Transmission line structure [.] is permitted in all zoning districts except the H-1

[(h) Any ~~proposed~~ wireless telecommunication ~~structure~~ ~~facility~~ proposed to be mounted on [a] public utility structure, including a transmission of sub-transmission line structure, ~~that~~ ~~which~~ does not meet the requirements of this subsection '(14)' [.] may otherwise be permitted through the application process.

Catalina Lehner, AICP
Senior Planner

cc: COA City Council, Attn: Chris Melendrez, PO Box 1293, Albuquerque, NM 87103
COA Legal Department, Attn: Jenica Jacobi, PO Box 1293, Albuquerque, NM 87103
COA Planning, Attn: Brennon Williams, 600 2nd St. NW, Albuquerque, NM 87103

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement

1. Consistency with Section 14-16-1-4(C) of the Zoning Code is needed as public utility lines and poles are often located within public rights-of-way and not regulated by the code. This exclusion is also mirrored in the definition of “structure” in Section 14-16-1-5.
2. Ref. (14)(b): Any determination regarding the required 12-month minimum time period of an existing line structure’s height and dimension prior to the addition of antennas will be based solely on an applicant’s statement to this effect. Our office is unaware if these measurements are recorded or easily available to the city for existing line structures. Additionally, “structure” as defined by the code excludes a public utility pole or line.
3. Ref. (14)(d)(i): Any proposed increase in pole height that is reported to be unrelated to accommodating the placement of antennas will be accepted. Our office will be unable to determine when an increase in pole height is due to necessary maintenance, repair and/or improvements related to customer service supply or merely to attach wireless telecommunications antennas. Additionally, “structure” as defined by the code excludes a public utility pole or line.
4. Ref. (14)(b)(iii): Clarification may be needed to this portion of the proposed legislation as new or altered structures/equipment may be legally placed within the right-of-way. As written, this section could be interpreted as prohibiting any wireless telecommunications antennas or equipment within the right-of-way, including those above a sidewalk or street.

Office of Neighborhood Coordination

No comments received. Note: City-wide notification to all registered neighborhood association and coalition representatives was sent on March 19, 2014 via email.

Long Range Planning

The requirement that a utility pole be in place for one year may discourage co-location. If the concern is about structures near residential areas, the ordinance should be amended to address those points. Structures are generally not permitted to encroach into the public right of way without an encroachment agreement; so section d iii may be unnecessary.

Metropolitan Redevelopment

No comments received.

CITY ENGINEER

Transportation Development Services:

Transportation Development (City Engineer/Planning Department):

- No comments received.

Hydrology Development (City Engineer/Planning Department):

Hydrology has no adverse comment.

Transportation Planning (Department of Municipal Development):

- No comments received.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

WATER UTILITY AUTHORITY

Utility Services

No comments received.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

No comments received.

Environmental Services Division

No comments received.

PARKS AND RECREATION

Planning and Design

No comments received.

Open Space Division

No comments received.

POLICE DEPARTMENT/Planning

No comments received.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

It's ok as always as long as it doesn't hinder any refuse service.

FIRE DEPARTMENT/Planning

No comments received.

TRANSIT DEPARTMENT

No comments received.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

No comments received.

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS (APS)

No comments received.

MID-REGION COUNCIL OF GOVERNMENTS

No comments received.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

No comments received.

PUBLIC SERVICE COMPANY OF NEW MEXICO

1. Page 1 beginning on line 16 (b) is in conflict with page 1 beginning on line 26 (d)(i) PNM maintains the ability to change out its infrastructure at any time.
2. In the title, line 5 on page 1, the use of the word "equipment" is unclear and undefined. It is assumed that the term "equipment" is referring to wireless telecommunications equipment and should be clarified by inserting "wireless telecommunications" before "equipment" on line 5.
3. Delete section 14-16-3-17(A)(14)(d)(ii). PNM does not allow any equipment cabinets or equipment shelter attachments to their transmission or subtransmission pole structures are allowed. Any addition within a substation (public utility structure by definition) should not have an impact on the public.

4. §14-16-3-17(A)(14)(d)(iii) Delete this section. The proposed new language in §14-16-3-17(A)(14)(d)(iii) on page 2 of the draft amendment, lines 6 through 9, is in conflict with the franchise agreement between PNM and City of Albuquerque which grants franchise rights to the utility for the use of public rights-of-way for placement of its electric facilities and is further restricted by Traffic Division with the requirement to be a minimum 18 inches from back of curb. Focus on WTF equipment and not utility structure for protrusion in sidewalks. Unclear on why driving lane is included as Traffic Division would not allow any intrusion into a driving lane.

5. For reference, definition from Zone code:

PUBLIC UTILITY STRUCTURE. A structure, owned by a unit of government or by a public utility company, which is an electric switching station; electric substation operating at voltages greater than 50 kilovolts (kV); gas transfer station or border station; city-owned lift station, odor control (or chlorine) station, water well or pump station, or water reservoir; or any other public utility structure controlled by a rank two facility plan.