

12-10-14
Clerk's office

O-2014-024

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard J. Berry, Mayor

FROM: Jon K. Zaman, Director of Council Services *OK 12/11/14*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. F/S O-14-7 Amending The Wireless Telecommunication Regulations And Related Definitions In The Zoning Code (Harris, Winter), which was passed at the Council meeting of December 1, 2014 by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

JKZ:mh
Attachment

2014 DEC 17 AM 9:22
RECEIVED
CITY OF ALBUQUERQUE

1 consists of a stand-alone support structure, antenna(s), and associated
2 equipment. The support structure may be a wooden pole, steel monopole,
3 lattice tower, or similar structure.

4 **STRUCTURE, PUBLIC UTILITY** (a “Public Utility Structure”). A structure,
5 owned by a unit of government or by a public utility company, which is an
6 electric switching station; electric substation operating at voltages greater
7 than 50 kilovolts (kV); gas transfer station or border station; lift station, odor
8 control (or chlorine) station, water well or pump station, or water reservoir;
9 streetlight or traffic signal structure; or any other public utility structure
10 controlled by a rank two facility plan.”

11 **SECTION 2. SECTION 14-16-3-17 IS HEREBY AMENDED AS FOLLOWS:**
12 **“§ 14-16-3-17 WIRELESS TELECOMMUNICATIONS REGULATIONS.**

13 (A) **Applicability.** Every wireless telecommunications facility located
14 within the city limits, whether upon private or public lands, is subject to this
15 section, except that the following facilities are exempt:

16 (1) **Amateur Radio Station Operator/Receive-Only Antenna** if owned
17 and operated by a federally licensed amateur radio station operator or used
18 exclusively for a receive-only antenna;

19 (2) **Any existing tower and antenna** provided a valid building permit
20 was issued for the tower or antenna prior to adoption of this section;

21 (3) **Emergency Services.** Wireless telecommunications facilities
22 used exclusively for emergency services including police, fire, and operation
23 of the water utility; and

24 (4) **Any antenna used for AM, FM or TV broadcasting.**

25 (B) **General Provisions.** The following regulations apply to all wireless
26 telecommunications facilities in all zones, unless otherwise stated.

27 (1) **Setbacks and Separation:**

28 (a) **A free-standing wireless telecommunications facility shall be**
29 **set back a minimum of 100 feet from the property line of a residential zone.**

30 (b) **New free-standing wireless telecommunications facilities in**
31 **public utility substations shall be exempt from the setback requirement if the**
32 **wireless telecommunications tower is no taller than the existing utility**
33 **structure within 20 feet of said substation.**

1 (c) A free-standing wireless telecommunications facility shall be
2 set back a minimum of 50 feet from the existing right of way.

3 (d) Except as stated in (a), (b) and (c) above, setbacks shall
4 conform with the setback requirements of the zone in which the wireless
5 telecommunications facility is located.

6 (e) Free-standing wireless telecommunications facilities shall be
7 separated by at least 1,000 feet, as measured from the wall or fence of each
8 free-standing wireless telecommunications facility.

9 (2) Lighting and Signage:

10 (a) Only security lighting or lighting required by a state and/or
11 federal agency is allowed, provided:

12 (i) The location of the lighting fixture together with its cut-off
13 angle shall be such that it does not shine directly on any public right-of-way or
14 any residential premises.

15 (ii) The lighting shall not have an off-site luminance greater
16 than 1,000 footlamberts; it shall not have an off-site luminance greater than
17 200 footlamberts measured from any private property in a residential zone.

18 (b) The only signage that is permitted is that which is required by
19 state or federal law.

20 (3) Abandonment: All wireless telecommunications facilities which
21 are not in use for three consecutive months shall be removed by the wireless
22 telecommunications facility owner. This removal shall take place within three
23 months of the end of such three month period. Upon removal, the site shall be
24 revegetated to blend with the existing surrounding vegetation. If there is no
25 vegetation on a wireless telecommunications facility site, the site shall be
26 returned to its preconstruction condition. The facility owner shall notify the
27 city when removal of the facility occurs.

28 (4) Interference: Every wireless telecommunications facility shall
29 meet the regulations of the Federal Communications Commission, or any
30 successor thereof, regarding physical and electromagnetic interference.

31 (5) Health Issues: Every wireless telecommunications facility shall
32 meet health and safety standards for electromagnetic field emissions as

1 established by the Federal Communications Commission or any successor
2 thereof, and any other federal or state agency.

3 (6) View corridors: Only collocations, public utility collocations,
4 and architecturally integrated wireless telecommunications facilities are
5 permitted within 1/8 mile from the outer edge of the right-of-way of any flood
6 control arroyo designated by the city or the Albuquerque Metropolitan Arroyo
7 Flood Control Authority and identified as part of an existing or future trail
8 system by the city, or the following streets: Alameda Boulevard, Griegos
9 Road, Coors Boulevard, Central Avenue, Unser Boulevard, Sunport Boulevard,
10 Paseo del Norte, Rio Grande Boulevard, Tramway Boulevard, Interstate 25 and
11 Interstate 40.

12 (7) Open Space: Only collocations, public utility collocations, and
13 architecturally integrated wireless telecommunications facilities are permitted
14 within 1/4 mile from the property line of any city- owned or operated major
15 public open space and the Petroglyph National Monument.

16 (8) Historic Overlay Zones and Registered Historic Properties:

17 (a) Only architecturally integrated wireless telecommunications
18 facilities are permitted within any designated Historic Overlay Zone.

19 (b) Wireless telecommunications facilities are strictly prohibited
20 in the H-1 zone.

21 (c) Only architecturally integrated wireless telecommunications
22 facilities are permitted on properties listed on the State Register of Cultural
23 Properties or the Federal Register of Historic Places.

24 (C) Collocation & Public Utility Collocation:

25 (1) Collocations and public utility collocations are encouraged.
26 Such collocations or public utility collocations are not subject to the
27 concealment requirements prescribed by subsection 14-16-3-17(E) below, but
28 shall be done in the least visibly intrusive manner, to blend in with the existing
29 structure and its surroundings. Notwithstanding the foregoing, collocation on
30 a concealed wireless telecommunications facility shall maintain the concealed
31 nature of the facility.

32 (2) No new free-standing wireless telecommunications facility shall
33 be permitted unless the Planning Director or designee determines, upon the

1 applicant's demonstration, that no existing tower, structure or public utility
2 structure can be used in lieu of new construction to accommodate the
3 applicant's proposed wireless telecommunications facility. Evidence which
4 demonstrates that collocation or public utility collocation cannot be used in
5 lieu of new construction to reasonably accommodate the proposed wireless
6 telecommunications facility shall consist of an affidavit with supporting
7 exhibits submitted by the applicant addressing the following:

8 (a) That no existing tower, structure, or public utility structure
9 within a 1/2 mile radius meets the minimum engineering requirements and/or
10 lacks available space to support the proposed wireless telecommunications
11 facility;

12 (b) That collocation or public utility collocation of the proposed
13 wireless telecommunications facility would cause unavoidable
14 electromagnetic interference with the antenna(s) on the existing towers,
15 structures or public utility structures, or the antenna(s) on the existing towers,
16 structures or public utility structures would cause interference with the
17 applicant's proposed telecommunications facility;

18 (c) That there are other limiting factors that render existing
19 towers, structures, or public utility structures within the 1/2 mile radius
20 unsuitable; or

21 (d) That the owners of existing towers, structures, or public
22 utility structures within the 1/2 mile radius will not allow the applicant to place
23 its wireless telecommunications facility thereon, or such owners are requiring
24 payments thereof that substantially exceed commercially reasonable rates.

25 (3) Unless otherwise specified in this Zoning Code, Public Utility
26 Collocations are permitted in all zoning districts except the H-1 Historic Old
27 Town Zone.

28 (4) When mounted on a transmission or sub-transmission line
29 structure, the equipment cabinet(s) shall be not more than 3 feet x 4 feet x 18
30 inches deep, at a minimum height of 10 feet, and a maximum height of 20 feet;
31 and

32 (D) Application Requirements:

1 **(1) Applications for Free-Standing Wireless Telecommunications**
2 **Facilities and Architecturally Integrated Wireless Telecommunications**
3 **Facilities. In addition to any information otherwise required by the**
4 **Comprehensive City Zoning Code, each applicant for a new free-standing or**
5 **architecturally integrated wireless telecommunications facility shall provide**
6 **the Planning Department with:**

7 **(a) A map of all existing wireless telecommunications facilities,**
8 **operated by any carrier, within a ½ mile radius of the site;**

9 **(b) The zone map(s) specific to the application, from the city's**
10 **Zone Atlas, drawn to scale, showing land uses and zoning designations,**
11 **including those outside the city limits;**

12 **(c) Evidence that demonstrates the absence of collocation**
13 **possibilities as prescribed by subsection 14-16-3-17(C)(2), above;**

14 **(d) A set of site development plans which, in addition to other**
15 **requirements in this Zoning Code:**

16 **(i) Includes a scaled site development plan clearly indicating**
17 **the location, type, color and height of any proposed wireless**
18 **telecommunications facility, on-site land uses and zoning, adjacent land uses**
19 **and zoning (including when adjacent to other jurisdictions), Comprehensive**
20 **Plan classification of the site, adjacent roadways, proposed means of access,**
21 **setbacks from property lines, elevation drawings of any wireless**
22 **telecommunications facility, topography, parking and other information**
23 **deemed necessary by the Planning Department to assess compliance with this**
24 **section;**

25 **(ii) Describes the facility's capacity, including a notarized**
26 **statement from the applicant which declares the number and type(s) of**
27 **antenna(s) that it can accommodate, or an explanation why the facility cannot**
28 **be designed to accommodate other users;**

29 **(iii) Includes an affidavit explaining what the engineering**
30 **requirements are and the factual basis for those requirements;**

31 **(iv) Includes an engineer's or architect's stamp and**
32 **registration number;**

1 (v) Includes the separation distance between any tower and
2 other telecommunications facilities and the owner of those facilities; and
3 (vi) Includes any other information as requested by the
4 Planning Department reasonably needed to evaluate the request;
5 (e) Unless the applicant has demonstrated that the free-standing
6 or architecturally integrated wireless telecommunications facility cannot be
7 designed to accommodate future collocations by other users, a letter of intent
8 committing the wireless telecommunications facility owner and his/her/its
9 successors and assigns to allowing shared use of the facility if an additional
10 service provider agrees in writing to meet reasonable terms and conditions of
11 shared use;
12 (f) Evidence that the applicant mailed notice by registered or
13 certified mail return receipt requested of the proposed free-standing or
14 architecturally integrated wireless telecommunications facility to adjacent
15 property owners that would be entitled to notice of a zone map amendment
16 and to recognized neighborhood associations within a 1/4 mile radius. The
17 applicant shall also submit a copy of the notice with its application. In
18 addition to all other relevant information, the notice must include the
19 applicant's contact information and the contact information for the relevant
20 City staff or department where more information may be requested, and must
21 further indicate that the property owner may request to be notified in writing
22 upon the Planning Department's decision on the application. When requested
23 by any person or neighborhood association entitled to notice under this
24 subsection, the wireless telecommunications facility owner or agent shall
25 meet with those persons or association representatives to provide a selection
26 of alternative concealed facility designs deemed both technically feasible and
27 aesthetically non-intrusive, seeking to reach a mutual agreement concerning
28 the most acceptable design. The Applicant shall notify those persons who
29 specifically requested the meeting and all neighborhood associations entitled
30 to notice under this subsection of the time and location of the meeting.
31 (2) Applications for Collocations, Public Utility Collocations, and
32 Upgrades to Existing Facilities.

1 (a) In addition to any information otherwise required by the
2 Comprehensive City Zoning Code, each applicant for a collocation, public
3 utility collocation, or upgrade as described by § 14-16-3-17(D)(3) not resulting
4 in a substantial change, shall provide the Planning Department with:

5 (i) Documentation establishing that the installer has
6 permission from the structure owner and property owner, if not the same, to
7 install the wireless telecommunications antenna(s) and any associated
8 buildings, cabinets or equipment at the site;

9 (ii) The zone map(s) specific to the application, from the city's
10 Zone Atlas;

11 (iii) A set of site development plans with an engineer's or
12 architect's stamp and registration number which, in addition to other
13 requirements in this Zoning Code includes a scaled site development plan
14 clearly indicating the location, type, and height of the existing wireless
15 telecommunications facility and the proposed wireless telecommunications
16 facility, adjacent roadways, and elevation drawings of the wireless
17 telecommunications facility as existing and as proposed;

18 (iv) A signed statement from the public utility or owner of the
19 tower certifying the dimensions of the tower as originally installed or
20 permitted, inclusive of any modifications that were approved prior to February
21 22, 2012 (date of the Spectrum Act);

22 (v) An affidavit explaining the engineering requirements and the
23 factual basis for those requirements; and

24 (vi) Any other information requested by the Planning
25 Department reasonably needed to evaluate the request.

26 (b) If the proposed collocation, public utility collocation, or
27 upgrade will result in a substantial change to the existing wireless
28 telecommunications facility or public utility structure as described by
29 subsection 14-16-3-17(D)(3) it shall be permitted only upon the applicant's
30 receipt of a waiver pursuant to § 14-16-3-17(G). If such a waiver is required, the
31 application will be deemed incomplete until such time as the waiver is
32 approved.

1 (c) The Planning Director or designee shall review applications
2 for the proposed collocations or public utility collocations. Applications for
3 collocations meeting the relevant requirements of this § 14-16-3-17 and not
4 resulting in a substantial change shall be approved. The Director's decision is
5 subject to appeal pursuant to the appeal provisions of the Zoning Code.

6 (3) Upgrade; Substantial Change.

7 (a) For purposes of this section, an "upgrade" is the
8 replacement, or addition of wireless telecommunications antenna(s) or
9 equipment, but does not include routine maintenance.

10 (b) For purposes of this section, a "substantial change" to a
11 wireless telecommunications facility or public utility structure includes any
12 upgrade or physical alteration to an existing public utility structure or existing
13 wireless telecommunications facility that meets any of the following criteria:

14 (i) For wireless telecommunications towers other than
15 wireless telecommunications towers in the public right-of-way, it increases the
16 height of the wireless telecommunications tower by more than 10% or by the
17 height of one additional antenna array with separation from the nearest
18 existing antenna not to exceed twenty feet, whichever is greater; for wireless
19 telecommunications facilities in the public-right-of way or for public utility
20 structures, it increases the height of the structure by more than 10% or ten
21 feet, whichever is greater;

22 (A) Changes in height are to be measured from the
23 dimension of the tower as originally installed or permitted, inclusive of any
24 modifications that were approved prior to February 22, 2012.

25 (ii) For wireless telecommunications towers other than
26 wireless telecommunications towers in the public right-of-way, it involves
27 adding an appurtenance to the body of the tower that would protrude from the
28 edge of the tower more than twenty feet, or more than the width of the tower
29 structure at the level of the appurtenance, whichever is greater; for wireless
30 telecommunications facilities in the public-right-of way or for public utility
31 structures, it involves adding an appurtenance to the body of the structure
32 that would protrude from the edge of the structure by more than six feet;

1 (iii) For wireless telecommunications facilities other than
2 wireless telecommunications facilities in the public right-of-way, it would
3 increase the number of equipment cabinets beyond a maximum of four; for
4 wireless telecommunications facilities in the public-right-of way or for public
5 utility structures, it involves the installation of any new equipment cabinets on
6 the ground if there are no pre-existing ground cabinets associated with the
7 structure, or involves installation of ground cabinets that are more than 10%
8 larger in height or overall volume than any other ground cabinets associated
9 with the structure;

10 (iv) It entails excavation or deployment beyond the current
11 site;

12 (v) It would defeat the concealment requirements of
13 subsection 14-16-3-17; or

14 (vi) It does not comply with the conditions associated with the
15 siting approval of the construction or modification of the eligible support
16 structure or base station equipment, provided however that this limitation
17 does not apply to any modification that is non-compliant only in a manner that
18 would not exceed the thresholds identified in the above subsections (i)
19 through (iv).

20 (E) Concealment:

21 (1) All proposed wireless telecommunications facilities, excluding
22 collocations, public utility collocations, and upgrades that do not result in a
23 substantial change shall use concealed technology and shall be:

24 (a) The least visually and physically intrusive as possible and
25 have the least adverse visual effect on the environment and its character, on
26 existing vegetation, and on the residences in the area of the wireless
27 telecommunications facility;

28 (b) Aesthetically integrated with existing buildings, structures,
29 and landscaping, to blend in with the nature and character of the built and
30 natural environment and take into consideration height, color, style, massing,
31 placement, design, and shape;

1 (c) Located to avoid a dominant silhouette of a wireless
2 telecommunications facility on escarpments and mesas, and to preserve
3 designated view corridors; and

4 (d) To the extent feasible without impacting functionality, located
5 in areas where the existing topography, vegetation, buildings, or other
6 structures provide the greatest amount of screening, and sited so as to not
7 stand out of the landscape as a wireless telecommunications facility.

8 (2) Consistent with federal law, these concealment requirements
9 shall not be administered so as to have the effect of prohibiting the provision
10 of wireless telecommunication services.

11 (3) The Planning Director or his/her designee shall determine
12 whether the requirements prescribed by this subsection are sufficiently
13 satisfied subject to review pursuant to the appeal provisions of the Zoning
14 Code.

15 (F) Landscaping and Screening:

16 (1) All free-standing wireless telecommunications facilities shall
17 include landscaping planted and maintained according to a Landscaping Plan
18 approved by the Planning Director or his/her designee; however, the Planning
19 Commission may waive this requirement where the Planning Commission
20 finds this requirement is not useful to achieving the intent of this Zoning
21 Code.

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

27 (G) Waiver:

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

33 (a) Is in the best interest of the community as a whole;

- 1 (b) Will expedite the approval of an antenna, tower, or tower
2 alternative;
- 3 (c) Will not jeopardize public health, safety and welfare;
- 4 (d) Will either ameliorate the adverse impacts of antenna and
5 tower proliferation or the adverse impact of requiring new construction of
6 towers or antenna(s); and
- 7 (e) Will better serve the purposes of this section.
- 8 (2) The facts to be considered by the Planning Commission in
9 reviewing an application for a waiver shall include:
- 10 (a) The height of the proposed tower;
- 11 (b) The proximity of the tower antenna to residential structures
12 and residential district boundaries;
- 13 (c) The nature of uses on adjacent and nearby properties;
- 14 (d) The surrounding topography;
- 15 (e) The surrounding vegetation and foliage;
- 16 (f) The design of the tower or antenna, with particular reference
17 to design characteristics that have the effect of reducing or eliminating any
18 visual obtrusiveness;
- 19 (g) The proposed ingress and egress;
- 20 (h) The availability of suitable existing towers or other
21 structures; and
- 22 (i) Such other factors as may be relevant.
- 23 (H) Fees. The Mayor shall set a fee of \$3,000 per application for a
24 proposed wireless telecommunications facility to cover reasonable
25 administrative expenses based on approximate city costs incidental to the
26 processing of applications for siting wireless telecommunications facilities.
27 The fee for an application for a collocation shall be \$2,000. Such fees may be
28 increased every two years based on Consumer Price Index (CPI) increases.
- 29 (I) Review Time. The administrative review time shall not exceed 60
30 days for a complete application. If a notice of deficiency is sent to the
31 applicant, the application is not complete until such deficiency is corrected to
32 the satisfaction of the Director. If the deficiencies are not corrected within 60

1 days of notice of the deficiencies the application shall be deemed withdrawn
2 and no further action will be taken on it.

3 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph,
4 sentence, clause, word or phrase of this ordinance is for any reason held to be
5 invalid or unenforceable by any court of competent jurisdiction, such decision
6 shall not affect the validity of the remaining provisions of this ordinance. The
7 Council hereby declares that it would have passed this ordinance and each
8 section, paragraph, sentence, clause, word or phrase thereof irrespective of
9 any provisions being declared unconstitutional or otherwise invalid.

10 SECTION 4. COMPILATION. Sections 1 and 2 of this ordinance shall
11 amend, be incorporated in and made part of the Revised Ordinances of
12 Albuquerque, New Mexico, 1994.

13 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
14 days after publication by title and general summary.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

1 PASSED AND ADOPTED THIS 1st DAY OF December 2014
2 BY A VOTE OF: 9 FOR 0 AGAINST.


3

4

5

6

7



Rey Garduño, President
City Council

8

9

10

11

12

13 APPROVED THIS 16th DAY OF December, 2014

14

15

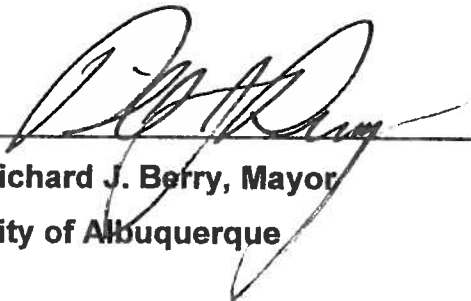
16

17 Bill No. F/S O-14-7

18

19

20



Richard J. Berry, Mayor
City of Albuquerque

21

22

23

24

25

26 ATTEST:

27

28



Trina M. Gurule, Acting City Clerk

29

30

31

32

33

[+Bracketed/Underscored Material+] - New
[-Bracketed/Strikethrough Material-] - Deletion