



***Environmental
Planning
Commission***

***Agenda Number: 3
Project Number: 1001620
Case Number: 06EPC 01144
October 11, 2007***

Supplemental Staff Report

Agent City of Albuquerque Planning Department

Applicant City of Albuquerque City Council

Request Amending portions of Zoning Code §14-16-3-17, Wireless Telecommunications Regulations, and §14-16-1-5 (Definitions), §14-16-2-15 (O-1 zone), §14-16-2-16 (C-1 zone), §14-16-2-17 (C-2 zone), §14-16-2-19 (IP zone), and §14-16-2-22 (SU-1 zone).

Location City-Wide

Staff Recommendation

That a recommendation of APPROVAL of 07EPC 01144 be forwarded to the City Council based on the Findings beginning on Page 9 and the Conditions of Approval beginning on Page 11.

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, Wireless Telecommunications Regulations. The proposed text amendments intend to minimize the visual impacts of Wireless Telecommunications Facilities (WTFs) by requiring that all new WTFs (except collocations) use a design that conceals their antennas.

This request was deferred in June 2007 by the applicant and in August and September by the EPC. A floor substituted version of the bill (F/S O-06-40), quite different than the original, had been introduced at City Council in April 2007. Staff's analysis is based on F/S O-06-40. No new information has been received from City Council.

Staff finds that a great deal of revision is necessary to avoid internal inconsistencies and potential loopholes that would render the Wireless Telecommunications Regulations more permissive than the current regulations and would make implementation more difficult. Staff's proposed conditions, which are a "middle-of-the-road" compromise between neighborhood and industry concerns, will remedy these deficiencies.

In August, the proposed text amendments were re-advertised and Staff conducted a workshop as requested. Some neighborhood input, and additional industry input, was received. In September, Staff became aware of an inaccuracy in the legal ad. The EPC deferred the request to the October special hearing to allow for re-advertisement. A correct re-advertisement has occurred. The industry provided an additional letter of input. The City attorney's response to industry concerns, many of which continue to be legal in nature, has also been received and serves to clarify the City's position.

City Departments and other interested agencies reviewed this application from 8/7/06 to 8/18/06 (O-06-40) and 5/7/07 to 5/18/07 (F/S O-06-40). Agency comments begin on Page 35 of the original Staff report (August 2007).

Originally scheduled for the June 21, 2007 EPC hearing*, this request (F/S O-06-40) was deferred by the applicant for 60 days. This request was then considered at the August 16, 2007 EPC hearing, when the EPC voted to defer it for 30 more days so that: 1) Staff could obtain additional input, especially from the neighborhoods, and meet with interested parties and 2) the request could be re-advertised to include citations for the associated Zoning Code sections that would be modified.

*O-06-40 first entered the EPC process last fall and was scheduled for the September 21, 2006 hearing.

⇒ Please refer to p. 3 and 4 of the first supplemental Staff report (see attachment) for an explanation of the outcome of the August deferral.

At the September 20, 2007 hearing, the EPC voted to defer the request to the October 11, 2007 special hearing date to allow for another re-advertisement. Staff had found that the citation for the Definitions section was inadvertently omitted and that one section proposed for amendment was incorrectly listed. A correct re-advertisement has since been accomplished (see attachment).

⇒ Please refer to p. 3 of the first supplemental Staff report (see attachment) for an explanation.

I. INTRODUCTION

Request

This request is for a recommendation to City Council regarding F/S O-06-40, known as the Wireless Telecommunications Facility (WTF) Ordinance. Proposed are text amendments to Section (§) 14-16-3-17, Wireless Telecommunications Regulations, found in the Comprehensive Zoning Code of the Albuquerque Code of Ordinances (ROA 1994). Because some zoning designations and the definitions section refer to WTFs, it will be necessary to amend several sections of the Zoning Code associated with the Wireless Telecommunications Regulations.

Context

A proliferation of non-concealed and poorly concealed wireless telecommunications facilities (WTFs) has prompted the City Council to seek to minimize the impact of WTFs on neighborhood aesthetics and views by requiring that all new WTFs in the City use concealed technology, which means using a design that hides or conceals the antennas.

O-06-40, containing text amendments to require concealment, was first introduced at City Council in August 2006 and subsequently referred to the Land Use Planning and Zoning Committee (LUPZ). A floor substitute version was introduced at City Council in April 2007. F/S O-06-40 was referred to the Environmental Planning Commission (EPC) as substituted, since the EPC is charged with hearing proposed Zoning Code amendments. The EPC will then make a recommendation to the City Council.

Background & History

⇒ Please refer to p. 1 and 2 of the original Staff report dated August 16, 2007 (see attachment).

Zoning, Land Use & Definitions

⇒ Please refer to p. 2 and 3 of the original Staff report (see attachment).

II. OVERVIEW (in brief) – Please refer to the original Staff report (see attachment) for details.

The proposed text amendments to Zoning Code §14-16-3-17, Wireless Telecommunications Regulations, are found in F/S O-06-40 known as the Wireless Telecommunications Facility (WTF) Ordinance. The intent of the proposed text amendments is twofold: 1) to minimize the visual impacts of WTFs by requiring that all WTFs in the City (except for pre-existing WTFs) be concealed, and 2) to encourage the siting of WTFs on City owned property. The idea is to require concealed WTFs as an alternative to the stereotypical “cell towers”, consisting of a steel pole with a ring of panel antennas at the top, which are often considered unsightly.

The proposed changes to the current regulations would accomplish the following: require that all new WTFs use a concealed design (though a waiver would be allowed), continue to allow collocation of antennas on existing WTFs, and encourage siting of WTFs on City owned property. Requirements applicable to view corridors, historic zones and distance between free-standing WTFs are proposed for deletion.

⇒ The August 16, 2007 Staff report classifies the proposed changes into four categories: Congruency & Clean Up Issues, Implementation Issues, Administrative Issues, and Other Minor Clean Up. A detailed discussion of each can be found on pages 10, 12, 20 and 23, respectively.

WTFs: Concealed vs. Non-Concealed, Free-Standing

⇒ Please refer to p. 3 and 4 of the original Staff report (see attachment).

Application Review Process

⇒ Please refer to p. 4 and 5 of the original Staff report (see attachment).

III. ANALYSIS

Federal Law (in brief)-

⇒ Please refer to p. 5-7 of the original Staff report for a full discussion and to the City Attorney’s September 13, 2007 letter for a clarification of the City’s position (see attachments).

The *Telecommunications Act of 1996* contains important provisions concerning the placement of towers and other facilities used to provide personal wireless services. Wireless telecommunications providers are required to comply with the Federal Communications Commission (FCC) regulations contained therein.

The proposed text amendments to Zoning Code §14-16-3-17 do not conflict with Section 253 or Section 704 of the Act. Section 253 protects wireless carriers by not allowing any state or local regulation to

prohibit these services. Requiring concealment would not have the effect of prohibiting service provision; rather, a variety of concealed designs using concealed (stealth) technology would be allowed and encouraged. 253(b) gives local governments the authority to regulate the telecommunications industry as long as all providers are treated equally on a competitively neutral basis. Nothing in the proposed text amendments would create an advantage for one provider over another.

Section 704 of the Act pertains siting of personal wireless service facilities and contains the National Wireless Telecommunications Siting Policy. Note that the Act does 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” (a)(7)(A). The intent of the Act is to preserve local zoning authority as long as there is no discrimination amongst providers (a)(7)(B)(i)(I) and the provision of wireless service is not prohibited (a)(7)(B)(i)(II).

⇒ Please refer to the City Attorney’s September 13, 2007 letter for a clarification of the City’s position (see attachment).

The *Wireless Communications and Public Safety Act of 1999*, known as the 911 Act, was enacted on October 26, 1999 to ensure a comprehensive approach to emergency service. The 911 Act directed the FCC to make 911 the universal emergency number. The FCC ordered wireless carriers to help 911 centers by requiring carriers to transmit a number for each call (Phase I implementation) and transfer location data with each call (Phase II implementation). The FCC worked extensively with the carriers to establish implementation plans for E-911, or Enhanced 911, with respect to Phase II. The FCC set the end of 2005 as the date by which compliance with Phase II of E-911 was to be completed, so it is likely that by Fall 2007 substantial progress has been made.

Staff points out that the carrier’s compliance efforts with E-911, which are carried out directly with the FCC, begun several years ago with the City’s current wireless regulations in place. The towers needed to help fulfill the E-911 mandate have, in all likelihood, already been constructed. The proposed text amendments would not preclude the construction of new towers; they would simply require that any new towers use a concealed design. Existing non-concealed towers would not be affected.

Applicable City Ordinances, Plans and Policies

As demonstrated in the original August 16, 2007 Staff report, the proposed Ordinance furthers the intent of the City Charter and the Zoning Code. Applicable Comprehensive Plan Goals and policies are furthered, partially furthered and not furthered.

⇒ Staff analysis begins on p. 7 of the original report (see attachment).

IV. DISCUSSION AT THE EPC HEARING

Several relevant issues were discussed at the August 16, 2007 EPC hearing. One that particularly warrants clarification is the process, especially since industry representatives’ letters continue to

demonstrate a misunderstanding about how proposed legislation (i.e.-draft changes to the Ordinance) is amended.

F/S O-06-40, introduced at City Council in April 2007, was provided to Planning Staff. Planning Staff is responsible for analyzing the proposed legislation, as it was handed down from City Council, and compiling a list of proposed changes. The EPC considers the proposed changes and makes a recommendation to City Council. The City Council, because it is the City's zoning authority, will make a final decision. Though it was mis-stated at the EPC hearing that changes have already occurred to F/S O-06-40, no changes have been made at this stage. Rather, Planning and Zoning Staff have extensively reviewed the proposed legislation in order to develop the recommended changes, and City Legal has provided guidance. The recommended changes are found in the proposed Conditions of Approval for the EPC's consideration.

Another issue discussed at the August EPC hearing was the possibility of retrofitting existing non-concealed, free-standing towers. Though included in the original O-06-40, the provision that would have required non-concealed, free-standing towers to become concealed within 5 years was removed from the F/S version by the largely industry-based task force.

Planning Staff, in the spirit of compromise with industry, is not suggesting that the retrofit provision be reinstated even though some neighborhoods seem to favor it. The industry is reluctant to even conceal future towers, and would be much less willing to retrofit existing ones.

V. CASE DEVELOPMENT UPDATE

Re-advertising

At the September 20, 2007 hearing, the EPC deferred this case to its October 11, 2007 special hearing so that the request could be correctly re-advertised to include citations for all of the associated Zoning Code sections that would be modified with the proposed text amendments.

The legal ad was updated, and verified by Zone Code Services, to ensure that all such sections are specified: Zoning Code Sections 14-16-1-5 (Definitions), 14-16-2-16 (C-1 zone), 14-16-2-17 (C-2 zone), 14-16-2-19 (IP zone) and 14-16-2-22 (SU-1 zone), ROA 1994 are proposed to be amended with the request to amend the Wireless Telecommunications Regulations in Section 14-16-3-17.

Part of the difficulty with F/S O-06-40, as drafted largely by industry representatives, was that the Zoning Code sections that would be affected by the proposed legislation were not mentioned on page 1 of the bill. The C-1, C-2, IP and SU-1 zones all allow freestanding, non-concealed WTFs, so the idea to no longer allow them by Ordinance would have created internal inconsistency in the Zoning Code. Therefore, these associated sections need modification and should be correctly advertised to the public as being affected. The proposed amendment to the Definitions section is Staff's idea to add two industry definitions (cellular on wheels (COW) and switching station) to update the wireless regulations.

Additional Input

Recap: At the August EPC hearing, Staff was tasked with seeking additional input from the neighborhoods, industry and other interested parties. Two events have occurred to that end: 1) a re-notification of neighborhood representatives, which included a written description and an attachment of the August Staff report (see attachments in the first supplemental Staff report), and 2) Staff conducted a workshop on August 28th, 2007 to discuss the proposed conditions of approval in the August Staff report one-by-one.

⇒ Please refer to p. 3 and 4 of the first supplemental Staff report for details (see attachment).

Update: Neighborhood representatives have not submitted any additional information; neighborhood letters are included in both previous Staff reports (see attachments). Staff has received an additional letter from an industry representative (see attachment in this report). Later in this report, Staff will briefly address some of the concerns and will, once again, clarify the process since apparently it continues to be misunderstood. The concerns are mostly a reiteration of concerns stated in previously received industry letters of input.

⇒ Please refer to the attachments in both previous Staff reports for neighborhood letters of input and industry letters of input that were previously received.

Staff also received a letter of clarification from the City Attorney (see attachment). Basically, the letter states that the City does not believe that the proposed legislation will have the effect of prohibiting the provision of wireless service, contrary to industry's claims. The City disagrees with the industry's underlying premise that the proposed text amendments would result in an Ordinance that violates Federal law.

VI. OUTSTANDING ISSUES

Though some progress has been made, the issues discussed below remain outstanding. This list, however, is not exhaustive.

Concealment: The big debate concerning modification to the existing wireless regulations centers on concealment. The intent of the original O-06-40 is to require that all WTFs be concealed, including existing free-standing, non-concealed WTFs. In F/S O-06-40, the retrofit provision has been dropped and the requirement for concealment has been removed from the first page, embedded in later text and generally "watered down". Though the intent for concealment needs to be made more explicit up front, concealment would be required for new free-standing towers but not for new collocations on existing structures and not for already existing free-standing non-concealed towers.

Industry representatives, who were mostly responsible for the overhaul of the original O-06-40 into the floor-substitute version, are reluctant to have to conceal new towers. Neighborhood representatives tend to favor concealment of all new towers *and* collocations. Planning Staff is recommending a

compromise: concealment of new free-standing towers, but to continue to allow non-concealed collocations on existing structures.

Height: This point of contention was raised at the workshop, when industry representatives stated that the height allowance in the current regulations is too limiting. Currently, 65 ft. is allowed for a free-standing facility and 75 ft. for a collocated facility. Staff points out that the current height limitations already seem to be a compromise and have not posed implementation problems since their inception.

Setbacks: Industry representatives would like the required setback for a free-standing facility to be reduced. Currently, an 85 ft. setback is required from a residentially zoned property. They want the setbacks to be a 1:1 ratio- 1 ft. setback for every 1 ft. height. The neighborhoods favor setbacks greater than the current 85 ft., such as 100 ft. or even 150 ft. Staff suggests leaving the current requirement, which has not proven problematic in terms of implementation.

Preferred Location: F/S O-06-40 contains a proposed preferential hierarchy for locating future WTFs; it is not a requirement (see p. 3). Industry representatives are concerned that this provision would result in financial gain for the municipality at the expense of industry. Staff agrees that municipal properties need to be available, and points out that there is an ongoing effort toward developing a master lease agreement for such properties. The idea is to encourage siting on municipal properties if feasible; note that a preference and a requirement are not the same thing.

VII. A PROPOSED COMPROMISE

Staff's Position

At the workshop in August, Staff re-iterated that proposed conditions of approval already represent a compromise position. On one hand, neighborhoods tend to favor concealment of *all* WTFs, including collocations (of antenna) on existing non-concealed facilities and do not want any more non-concealed, free-standing towers or non-concealed collocations (see attached neighborhood letters in the first supplemental report). Some even want existing non-concealed towers to be concealed (the retrofit provision).

On the other hand, the industry wants to continue to build non-concealed, free-standing towers without restrictions and wants the current regulations to be more permissive (see attached industry letters in the supplemental reports). This intent is reflected in F/S O-06-40, which was written primarily by industry representatives and was agreed upon when it was created. More recently, however, industry representatives have decided that they are no longer satisfied with F/S O-06-40. Also, they do not support Staff's proposed compromise position because apparently they do not want to "give" anything and meet the neighborhoods halfway.

The compromise, which Staff had suggested previously, consists of the following: require concealment of all new WTFs *except* for collocations on existing non-concealed facilities such as existing towers and public utility structures, and do not conceal already existing non-concealed towers (no retrofit provision). Though neither side may be completely satisfied, Staff's "middle of the road" position offers

a logical compromise that will result in concealment of most new WTFs while allowing the industry flexibility to continue non-concealed collocations and a variety of concealed monopole designs. The free-standing pine trees, light poles and flag poles would all continue to be allowed. The only free-standing designs that would no longer be permitted are non-concealed, free-standing towers (with rings of exposed antennas) and the much taller, old style lattice towers.

Industry Arguments (brief update)

It is noteworthy that recent letters from industry representatives (see attachments in both supplemental reports) have greatly broadened the scope of their concerns since the August timeframe. Previously, concerns were more specific to aspects of the proposed legislation, such as abandonment, location and fees (see attachment in the original report and the last attachment in the first supplemental report). The more recent letters, however, point to an overarching concern that the draft under consideration (meaning F/S O-06-40) is unbalanced.

Staff finds this curious, especially since F/S O-06-40, as handed down from City Council, was written mostly by industry representatives- who made radical changes to the originally proposed O-06-40 that was under consideration in Fall 2006. Staff agrees that F/S O-06-40 is indeed unbalanced, much like a “one legged stool.” It is Staff’s intention to create balance by adding the two other critical components, the neighborhoods and planning/zoning, to the proposed legislation and to develop a compromise position (as elaborated above) that takes all parties into account.

Industry representatives have also broadened their arguments to include general allegations of non-compliance with Federal law, for both the proposed text amendments and the City’s current Wireless Telecommunications Regulations which have been in effect since 1999. Previous arguments were based on excerpts from case law, provided without the cases’ full context. The City Attorney has provided a response stating that the City disagrees with the industry’s underlying premise that the proposed text amendments would create an illegal Ordinance (see attachment and p. 2-3 of this report).

VIII. CONCLUSION

This request is for a recommendation to City Council regarding F/S O-06-40, proposed text amendments to Zoning Code §14-16-3-17, the Wireless Telecommunications Regulations. The purpose of the text amendments is to minimize the visual impacts of WTFs by requiring concealment of new WTFs (excluding collocations), and to encourage the siting of WTFs on City owned property.

The City’s current and proposed wireless regulations comply with Federal law. They do not prohibit or have the effect of prohibiting any entity from providing telecommunications service [Section 253(a) Section 704(a)(7)(B)(i)(II)]. The City’s current and proposed regulations do not ban wireless facilities. Many opportunities for concealed designs and collocations (both concealed and non-concealed) would continue to be available. Nor do the regulations discriminate between different wireless providers. Municipalities are allowed under Federal law to retain authority “over decisions regarding the placement, construction and modification of personal wireless service facilities” [Section 704(a)(7)(A)]. Local regulation of WTFs is permitted under Federal law.

Staff's proposed conditions of approval will balance the proposed legislation and create a "middle of the road" position. Without them, F/S O-06-40 will remain a "one legged stool" that was re-written largely by industry representatives without adequately taking into account planning and zoning practice and neighborhood concerns.

Staff recommends that a recommendation of approval, with conditions, be forwarded to City Council.

FINDINGS- 06EPC 01144, October 11, 2007-Text Amendments Zoning Code §14-16-3-17, Wireless Telecommunication Regulations

1. This request is for a recommendation to the City Council regarding F/S O-06-40, which the City Council introduced in April 2007. F/S O-06-40 contains proposed text amendments to Zoning Code §14-16-3-17, Wireless Telecommunications Regulations, which have been in effect since 1999.
2. The purpose of the proposed text amendments is to: a) minimize the visual impacts of wireless telecommunication facilities (WTFs) by requiring that all new WTFs (except collocations) use a concealed design to hide their antennas, and b) encourage the siting of WTFs on City owned property.
3. The proposed text amendments do not conflict with Section 253 or Section 704 of the Federal Telecommunications Act of 1996. Requiring concealment would not have the effect of prohibiting service provision; a variety of concealed designs and non-concealed collocations would continue to be allowed [253(a)]. The text amendments would not create an advantage for one wireless provider over another; local regulation would remain competitively neutral [253(b)]. The text amendments, which do not discriminate between wireless providers, also address “reasonable time” for application review and substantiation of decisions in writing [704].
4. Achievement of the City Charter:
Adding provisions to the ROA 1994 to require that wireless telecommunication facilities (WTFs) use concealed (stealth) technology is an exercise in local government (City Charter, Article 1) which is allowable under Federal law. Requiring all future WTFs to be concealed expresses the Council’s desire to protect and preserve natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic urban environment (City Charter, Article IX).
5. The proposed text amendments *further* the following Comprehensive Plan Goal and policies with respect to the Developed Landscape:
 - A. Goal— Requiring concealment of new free-standing arrays will improve the quality of the natural and developed landscape. Concealed antennas blend in and are not readily visible the way non-concealed antennas are.
 - B. Policy II.C.8a — Features unique to Albuquerque, such as the volcanic escarpment and other amenities, will be protected from the adverse visual effects of non-concealed free-standing wireless telecommunication facilities (WTFs).

- C. Policy II.C.8b— Wireless telecommunications facilities (WTFs) provide a public function. The proposed text amendments will require that WTFs do not detract from the visual attractiveness of the City, and may even contribute to beautification.\
- D. Policy II.C.8e— New wireless telecommunications facilities (WTFs), except for collocations, will be concealed, and their materials and designs will be required to be in harmony with the landscape and their surroundings.
6. The proposed text amendments *partially further* the following Comprehensive Plan Goals:
- A. Community Identity and Urban Design— Though requiring concealment of Wireless telecommunications facilities (WTFs) will preserve the natural and built environments, the proposed text amendments remove protections for Historic Zones and View Corridors.
- B. Economic Development— The proposed text amendments will not impede wireless service provision; they will simply require use of designs that conceal the antennas (except collocations). The cost of balancing economic concerns with social and environmental goals will be quite low since the costs will be distributed among many users.
7. The proposed text amendments *do not further* the Comprehensive Plan’s Historic Resources Goal. The current regulations require that all WTFs in historic districts are concealed within existing buildings or structures. The proposed text amendments remove language that creates protections for Historic Zones.
8. The general intent of the Zoning Code is *furthered*. Adding provisions to the Revised Code of Ordinances of Albuquerque 1994 (ROA 1994) to ensure concealment of wireless telecommunications facilities (WTFs) (except collocations) will help achieve the intent of the City Charter, and generally furthers applicable Goals and policies of the Comprehensive Plan. However, as zoning authority for the City of Albuquerque, the City Council will make the final determination as required.
9. The proposed text amendments will necessitate corresponding revisions to other Sections of the Zoning Code and possibly the City’s Development Process Manual (DPM).
10. There is neighborhood concern regarding F/S O-06-40. Generally, neighborhoods favor concealment of *all* WTFs, including collocations (of antenna) on existing non-concealed facilities and do not want any more non-concealed, free-standing towers or non-concealed collocations. Some want already existing non-concealed towers to be concealed.

11. The industry wants to continue to build non-concealed, free-standing towers and wants the current regulations to be more permissive as reflected in F/S O-06-40, written primarily by industry representatives. However, industry representatives are no longer satisfied with F/S O-06-40. Also they do not support Staff's proposed compromise position, which is designed to meet the neighborhoods' position halfway.

12. Planning Staff's compromise position consists of the following: require concealment of all new WTFs *except* for collocations on existing non-concealed facilities such as existing towers and public utility structures, and do not conceal already existing, non-concealed towers. Though neither side may be completely satisfied, Staff's "middle of the road" position offers a logical compromise that will result in concealment of most new WTFs while allowing the industry flexibility to continue non-concealed collocations and a variety of concealed monopole designs.

RECOMMENDATION- 06EPC 01144, October 11, 2007

That a recommendation of APPROVAL of 06EPC 01144, Text Amendments to Zoning Code §14-16-3-17, Wireless Telecommunication Regulations, to require that all proposed wireless telecommunication facilities (WTFs) in the City of Albuquerque (except collocations on existing, non-concealed facilities) use concealed technology, be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of approval.

CONDITIONS OF APPROVAL-06EPC 01144, October 11, 2007-Text Amendments to Zoning Code §14-16-3-17, Wireless Telecommunication Regulations

1. Zoning Code Designations:

The following language, ~~located in several places in the Zoning Code~~, found in Zoning Code 14-16-2-15, 14-16-2-16, 14-16-2-17, 14-16-2-19 and 14-16-2-22 shall be modified as follows to create internal consistency:

"Wireless Telecommunications Facility, provided that the requirements of §14-16-3-17 of this Zoning Code are met, and as specifically allowed below:

- (a) A free-standing wireless telecommunications facility, up to 65 feet in height [+, only if it meets the definition of a concealed wireless telecommunications facility.+]
- (b) A collocated free-standing wireless telecommunications facility, up to 75 feet in height.
- (c) A face-mounted wireless telecommunications facility.
- (d) A roof-mounted free-standing wireless telecommunications facility, up to 20 feet above the parapet of the building on which it is placed.

(e) A Community Identity Feature [~~if it is approved by the Planning Commission pursuant to §14-16-3-17 of this Zoning Code.~~]

(f) A wireless telecommunications facility, the antennas of which are all mounted on an existing vertical structure.

2. The following additional Zoning Code sections to be amended shall be listed:

[+, AND AMENDING THE FOLLOWING ASSOCIATED SECTIONS 14-16-1-5, 14-16-2-15, 14-16-2-16, 14-16-2-17, 14-16-2-19 and 14-16-2-22, ROA 1994+]

3. The following definition in Zoning Code §14-16-1-5, Definitions, shall be modified as follows:

Community Identity Feature. A wireless telecommunications facility [~~which is readily visible, but~~] which positively contributes aesthetically to the neighborhood or community in which it is placed [~~as determined by the Planning Commission~~].

4. The following new definitions shall be added to Zoning Code §14-16-1-5, Definitions:

A. [+Wireless Telecommunications Facility on Wheels. Commonly referred to as a Cellular on Wheels or a COW, this portable, vehicle-mounted wireless telecommunications site is self-contained and can be moved and set up on a temporary or emergency basis.+]

B. [+Wireless Telecommunication Equipment Leasable Area: The area, which is typically enclosed with a block wall or fence, that a wireless provider leases and contains space for the telecommunications equipment building or cabinet.+]

C. [+Switching Station: A type of facility with equipment that switches, changes, or regulates how energy and/or data is routed. A data switching station does not transmit data directly for wireless communication.+]

5. The following new proposed Section 1 shall be added (Page 1, Line 11):

(A) Basic Requirements. The following regulations shall apply to all wireless telecommunications facilities in all zones, unless otherwise stated.

[+(1) Concealment:

All wireless telecommunications facilities shall be concealed and be consistent with the definition of a Concealed Wireless Telecommunications Facility pursuant to Zoning Code §14-16-1-5.

6. The language on Page 7, Lines 24-33 and Page 8, Lines 1-7 shall be modified as follows:

(12) Concealed ~~[+Stealth Technology+]~~ Wireless Telecommunications Facility:

~~[+(a) All proposed wireless telecommunications facilities [+,+] excluding collocations of antennas on [preexisting] [+existing+] towers [+,+] [that are permissive uses] shall use concealed [stealth] technology. [An applicant for a wireless telecommunications facility may seek a variance to make the facility the least visually intrusive when the applicant is able to demonstrate that the stealth] [+Consistent with Federal statute, the+] requirement [+for concealment+] [has] [+shall not have+] the effect of prohibiting the provision of wireless services.+]~~

7. The language on Page 7, Lines 30-33 and Page 8, Lines 1-18 shall be modified as follows:

~~[-(a)-] [+ (b) [In order for] [+A+] wireless telecommunications [facility] [+facility+ to create] [+shall be+] the least visually and physically intrusive [facility reasonably] [+as+] possible [+given the facts and circumstances involved+] and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.+]~~

8. The following shall be made a new subsection (c), with the following language modifications:

~~[+(c)+] A concealed [+stealth technology+] wireless telecommunications facility shall [+be+]:~~

1. ~~[Be]~~ architecturally integrated with existing buildings, structures, ~~[+and+] [+or+]~~ landscaping, ~~[-including-] [+to blend in with the nature and character of the +built and natural+ environment and take into consideration+]~~ height, color, style, massing, placement, design, and shape.

2. ~~[Be]~~ located to avoid a dominant silhouette of a wireless telecommunications facility on escarpments and mesas, and to preserve view corridors.

3. ~~[Be]~~ located on existing vertical infrastructure, such as utility poles and public utility structures, including transmission and sub-transmission line structures, if possible.

4. ~~[Be]~~ located in areas where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

~~[5. Be located to minimize adverse effects they have on residential property values.]~~

~~[6.]~~~~[+5.+]~~ not be a readily visible wireless telecommunications facility.

~~[7.]~~ ~~[+6.+]~~ ~~[Be]~~ subject to the landscaping and screening requirements of ~~[\$14-1-6-17 (A)(14)]~~ ~~[+\$14-1-6-17+] [+if required+]~~.

9. The language on Page 2, Lines 24-29 shall be modified as follows:

(5) Collocation [~~+New Site Construction+~~]: No new free-standing wireless telecommunications facility shall be permitted unless the Planning Director or his/her designee determines, upon the applicant's demonstration, that no existing tower, structure or public utility structure can be used in lieu of new construction to accommodate the applicant's proposed telecommunications facility.

10. The language on Page 2, Lines 29-33 shall be modified as follows:

Evidence submitted to the city which demonstrates that no existing tower, structure, or public utility structure [~~+can be used in lieu of new construction to+~~] [~~within a 1/4 mile radius of the proposed facility can~~] reasonably accommodate the applicant's proposed telecommunications facility shall consist of the following:

- (a) That no existing tower, structure, or public utility structure is located within [~~the~~][~~+~~]1/4][~~+~~]1/2][~~+~~] mile radius which meets the applicant's engineering requirements. [~~An affidavit a notarized statement explaining what the engineering requirements are and why shall be included~~].
- (b) That no existing tower, structure, or public utility structure is located within the [~~1/4~~][~~+~~]1/2][~~+~~] mile radius which has sufficient structural strength or space available to support the applicant's proposed telecommunications facility and related equipment.
- (c) That the applicant's proposed telecommunications facility would cause unavoidable electromagnetic interference with the antenna(s) on the existing towers, structures or public utility structures, or the antenna(s) on the existing towers, structures or public utility structures would cause interference with the applicant's proposed telecommunications facility;
- (d) That there are other limiting factors that render existing towers, structures, or public utility structures within the [~~1/4~~][~~+~~]1/2][~~+~~] mile radius unsuitable: [~~and~~][~~+~~]or][~~+~~]
- (e) That the owners of existing towers, structures, or public utility structures within the [~~1/4~~][~~+~~]1/2][~~+~~] mile radius will not allow the applicant to place its telecommunications facility thereon, or such owners are requiring payments thereof that substantially exceed commercially reasonable rates.

11. The language on Page 5, Lines 10-13 shall be modified as follows:

[~~+(9) Collocation. Placing additional~~ [~~+wireless telecommunication+~~] antennas on [~~preexisting~~][~~+~~]existing][~~+~~][~~non-concealed~~][~~+~~]non-concealed][~~+~~][~~wireless telecommunication~~][~~+~~]wireless telecommunication][~~+~~] towers and [~~existing~~][~~+~~]existing][~~+~~][~~stealth vertical structures~~][~~+~~]concealed wireless telecommunication facilities][~~+~~] shall be [~~permissive uses~~]

[+allowed and encouraged+]. Such collocation shall be done in the least visibly intrusive manner, ~~blending~~ [+to blend+] in with the existing structure [+and its surroundings+].

12. The following language regarding Horizontal Separation Distance (Page 9, Lines 20-23) shall be reinstated:

(15) Horizontal Separation of Free-Standing Wireless Telecommunications Facilities: Free-standing wireless telecommunications facilities shall be separated by at least 1,000 feet, as measured from the wall or fence of each free-standing wireless telecommunications facility.

13. The language regarding WTF Siting Preferences on Page 3, Lines 21-32 and Page 4, Lines 1-10 shall be modified as follows:

[+(6) Preferred location. ~~New or collocated~~ +Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, but consistent with coverage, capacity, and system engineering requirements. If the proposed site is not the highest priority, a detailed [+written+] explanation ~~must~~ [+shall+] be provided as to why a ~~site of a~~ higher priority [+site+] was not selected [+ ,+] including why it is ~~commercially or otherwise~~ impracticable. The inability to meet ~~required~~ coverage, capacity, and system engineering requirements may allow a lower priority location to be used. Priorities are listed in order of most preferred first:

- (a) Collocation on existing [+wireless telecommunication+] facilities on City-owned property;
- (b) Collocation on existing [+wireless telecommunication+] facilities not owned by the City;
- (c) ~~New~~ [+concealed+] facilities on existing structures on City-owned property;
- (d) ~~New~~ [+concealed+] facilities on existing structures not owned by the City;
- (e) ~~New~~ [+concealed+] facilities on new structures on City-owned properties; or
- (f) ~~New~~ [+concealed+] facilities on new structures on property not owned by the City.

In all circumstances, the application for location or collocation shall comply with the requirements of Section 14-16-3-17(A)~~(+2)~~[+(13) regarding concealment+].

14. The language regarding View Corridors & Historic Zones on Page 4, Lines 18-30 shall be reinstated:

(8) View corridors: Only a concealed wireless telecommunications facility or a wireless telecommunications facility, the antennas of which all are located on existing vertical structures, is allowed within 1/8 mile from the outer edge of the right-of-way of any flood control arroyo designated by the City or the Albuquerque Metropolitan Arroyo Flood Control Authority and identified as part of an existing or future trail system by the city, or the following streets: Alameda Boulevard, Griegos Road, Coors Boulevard, Central Avenue, Unser Boulevard, Sunport Boulevard,

Paseo del Norte, Rio Grande Boulevard, Tramway Boulevard, Interstate 25 and Interstate 40. All other wireless telecommunications facilities are prohibited within 1/8 mile of the outer edges of the right-of-way. Only a concealed wireless telecommunications facility is allowed within 1/4 mile from the property line of any City-owned Major Public Open Space.

15. The language regarding Historic Overlay Zones on Page 4, Lines 31-33 and Page 5, Lines 1-9 shall be reinstated:

(a) Only a concealed wireless telecommunications facility [+that is not free-standing+] is allowed within neighborhoods which are included in an Historic Overlay Zone, including, but not limited to: 8th & Forester, Huning Highlands, 4th Ward, and Old Town (except within H-1 zone, in which all wireless telecommunications facilities are prohibited).

(b) Only a concealed wireless telecommunications facility [+that is not free-standing+] is allowed within neighborhoods listed on the State Register of Cultural Properties or the Federal Register of Historic Places, as defined by their Neighborhood Association Boundaries, pursuant to the requirements of Ordinance 14-1987, including, but not limited to: College View, Silver Hill, and Spruce Park.

16. The language regarding walls/screening and landscaping on Page 2, Lines 11-13 shall be modified as follows:

(3) ~~[Telecommunications Equipment Building or Cabinet]~~ [+Wireless Telecommunication Equipment Leasable Area+] shall:

(a) Not contain more than four-hundred square feet of gross floor area per user and shall not be more than ~~[twelve]~~ [+eight+] [+nine+] feet in height.

17. The language on Page 8, Lines 21-22 shall be modified as follows:

A concealed wireless telecommunications facility shall be:

~~[-7.-]~~[+6.+] ~~[-Not-]~~ ~~[Be]~~ subject to the landscaping and screening requirements of ~~[§14-1-6-17(A) (-4)]~~ [+§14-16-3-17(A) (15)+][+if required+].

18. The language on Page 9, Lines 15-19 shall be modified as follows:

(b) A free-standing wireless telecommunications facility shall be surrounded by a ~~[six-foot-high]~~ [+landscaping,+] [+solid+] fence or wall [+, at least six feet high and not more than eight nine feet high, and landscaping+] [+to properly screen ground equipment facilities from public view.+] ~~[which shall be solid if facing or abutting a residentially zoned lot.]~~ Chain link with slats shall not constitute a solid fence [+or wall+].

19. The language regarding abandonment on Page 2, Lines 22-23 shall be modified as follows:

Abandonment: All wireless telecommunications facilities which are not in use for ~~[-six-]~~ [+three+] consecutive months shall be removed by the wireless telecommunications facility owner. This removal shall take place within three months of the end of such ~~[-six-]~~ [+three+] month period.

<Make separate section>

Upon removal, the site shall be revegetated to blend with the existing surrounding vegetation. [+If there is no vegetation on a WTF site, the site shall be returned to its preconstruction condition.+]
[+The facility owner shall notify the City when removal of the facility occurs+].

20. The language regarding neighborhood notification on Page 6, Lines 21-33 shall be modified as follows:

A. (f) ~~[+In the case of an application for a new wireless telecommunication facility, excluding collocation of antennas that are permissive uses+]~~ Evidence that recognized neighborhood ~~[organizations]~~ associations, as defined in the Neighborhood Recognition Ordinance, have been notified in writing ~~[+.+] [; except that the distance from the wireless telecommunications facility of neighborhood associations entitled to notice shall be increased to a 1/4 mile radius from the wireless telecommunications facility.]~~ [+The applicant shall provide mailed notice of a proposed WTF to adjacent property owners that would be entitled to notice of a zone map amendment and to recognized neighborhood organizations within a 1/4 mile radius.+]

B. The following language shall become a separate subsection, and be modified as follows:

[+(g)+][+When requested by interested neighborhood [organizations] associations representatives, the wireless telecommunication facility owner or agent shall meet with [those] association representatives to provide a selection of alternative concealed facility designs deemed both technically feasible and aesthetically non-intrusive, seeking to reach a mutual agreement concerning the most acceptable design.+ [prior to construction]

21. The language on Page 8, Lines 25-27 shall be modified as follows:

A. ~~{(b)-}~~ [+(c)+] [+The applicant+] ~~[Applicant]~~ shall provide mailed notice of a proposed ~~[concealed]~~ wireless telecommunications facility to ~~[the adjacent]~~ property ~~[owner]~~ [+owners that would be entitled to notice of a zone map amendment +] and to [+recognized+] neighborhood associations [organizations +within a 1/4 mile radius +] ~~[that would be entitled to notice of a zone map amendment on the property on which the concealed wireless telecommunications facility is proposed to be located]~~, and shall present written documentation verifying such mailed notice to the Planning Director or his/her designee.

B. The following language shall become a separate subsection, and be modified as follows:

[+(d)+] The Planning Director or his/her designee shall decide whether the facility is "concealed." The Planning Director's decision shall be subject to review pursuant to the appeal provisions of the Zoning Code.

22. The language regarding fees on Page 11, Lines 1-8 shall be modified as follows:

[+(D) Fees. The Mayor shall set a fee of three thousand dollars (\$3,000) per application for a [new] [proposed] [wireless telecommunication] facility to cover reasonable administrative expenses based on approximate City costs [in order to cover the cost of reviewing applications, holding public meetings and hearings and other expenses] incidental to the processing [and approval] of applications for siting [of] wireless telecommunications [regulations] [facilities]. The fee for an application for a collocation shall be two thousand dollars (\$2,000). Such fees may be increased every two years based on [the CPI] [Consumer Price Index (CPI)] increases.+]

23. The language regarding administrative review on Page 11, Lines 9-16 shall be modified as follows:

[+(E) Review Time. The administrative review time shall not exceed sixty (60) days for a complete application. If a notice of deficiency is sent to the applicant, the application is not complete until such deficiency is corrected [to the satisfaction of the Director's designee]. If a complete application is not acted upon in the sixty [(60)] day period [+, the applicant may choose to refer request referral of the application+] [it shall be referred] to the Environmental Planning Commission [EPC+] for immediate action at its next [regularly scheduled] [available] [meeting] [hearing].

<Make separate section>

If the deficiencies are not corrected within sixty (60) days of notice of the deficiencies [+,+] the application shall be deemed withdrawn and no further action will be taken+ [on it] [except for adding a note to the file.+]

24. The language regarding application requirements on Page 5-6, Lines 26-33 and Lines 1-9 shall be modified as follows:

(c) ~~[-Collocation-]~~ Evidence [+that demonstrates collocation possibilities+] as described in § 14-16-3-17(A)(5).

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

1. Includes a scaled site development plan clearly indicating the location, type, color and height of any proposed wireless telecommunications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other jurisdictions), Comprehensive Plan classification of the site, adjacent roadways, proposed means of access,

setbacks from property lines, elevation drawings of any wireless telecommunications facility, topography, parking and other information deemed necessary by the Planning Department to assess compliance with this section;

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

[+3. A notarized statement An affidavit explaining what the engineering requirements are and why shall be included+].

25. The language regarding inventory of sites on Page 5, Lines 18-22 shall be modified as follows:

(10) Application Requirements: In addition to information already required by the Comprehensive City Zoning Code, each applicant for a wireless telecommunications facility shall provide the Planning Department with:

(a) [~~The first application for a permit by a~~] [~~Each~~] wireless telecommunications provider [~~and/or owner~~] [~~+~~,~~+~~] ~~after~~ [~~not later than~~] January 1, [~~1999~~] [~~+~~2008, ~~+~~] shall include an inventory [~~set of data~~] of all of the said provider's [~~and/or owner's~~] existing wireless telecommunications facilities [~~or~~] [~~+~~and~~+~~] approved sites for facilities that are either within the City or within one thousand feet of the border thereof.

26. The following corrections shall be made to Page 1, Lines 13-14 and Page 1, Line 20, respectively:

A. (1) Setbacks: (a) A free-standing wireless telecommunications facility shall be set back a minimum of 85 feet from the property line of a [~~residentially zoned property~~] [~~+~~residential zone~~+~~].

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

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