

## ARTICLE XXVI

### PERSONAL WIRELESS SERVICE FACILITIES

#### 26.1 Purpose.

The purpose of this Article is to establish general guidelines for the siting of Towers, Antennas, and Personal Wireless Service Facilities. The goal of this Article is to encourage the location of Towers in non-residential areas and minimize the total number of Towers and Antennas throughout the community; strongly encourage the joint use of new and existing Tower sites; encourage users of the Towers and Antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; encourage users of Towers and Antennas to configure them in a manner that minimizes the adverse visual impact of the Towers and Antennas; and enhance the ability of the providers of telecommunications services to provide such services to the community quickly, efficiently and effectively.

#### 26.2 Applicability.

No Personal Wireless Service Facilities shall be erected or installed except in compliance with the provisions of this Article. The provisions of this Article apply to all Personal Wireless Service Facilities, whether such Facilities are used as a principal use or as an accessory use. Personal Wireless Service Facilities located on property owned, leased or otherwise controlled by the City shall be exempt from the requirements of this Article provided a lease or license authorizing such Personal Wireless Service Facilities has been approved by City Council. This Article shall not govern any Tower or installation of any Antenna which is owned and operated by a Federally licensed amateur radio station operator as part of the Amateur Radio Service, citizens band radio, or is used exclusively for receive only antennas. Where conflicts exist between this Article and the remainder of the Zoning Ordinance, the provisions of this Article shall govern.

#### 26.3 General guidelines and performance standards.

1. Additional use permitted on lot. Antennas and Transmission Towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an Antenna or Transmission Tower on such lot. For purposes of determining whether the installation of a Transmission Tower or Antenna complies with district bulk regulations, including but not limited to set-back and lot requirements, the dimensions of the entire zoning lot shall control, even though the Antennas or Transmission Towers may be located on leased property within such zoning lot(s).
2. Federal requirements. All Personal Wireless Service Facilities shall meet or exceed the current standards and regulations of the Federal Aviation Administration, Federal Communications Commission, and any other agency of the

federal government with the authority to regulate Personal Wireless Service Facilities. If such standards and regulations are changed, then the owner(s) of the Personal Wireless Service Facilities shall bring such Facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency, or unless Personal Wireless Service Facilities are grandfathered by such revised standard. Failure to bring such Facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the Personal Wireless Service Facilities at the owner's expense.

3. Measuring Height of Personal Wireless Service Facilities. The measurement of the height of Personal Wireless Service Facilities shall include Antenna, base pad, and related appurtenances which shall be measured from the crown of the nearest improved right-of-way.
4. Lighting. No signals or lights or illumination shall be permitted on a Personal Wireless Service Facility unless required by the Federal Communications Commission, the Federal Aviation Administration or the City.
5. Signage. No commercial advertising shall be allowed on any Personal Wireless Service Facility.
6. Compatibility with Structure. Omnidirectional, whip, directional, dish or panel Antennas when mounted on a building or structure shall be of a material or color which matches the exterior of the building or structure. Dish, directional, or panel antennas when mounted on a building, structure or rooftop shall be located or screened in an aesthetically acceptable manner so as not to be visible from the adjacent properties and/or right of way. The Director of Planning & Economic Development shall determine whether dish, directional, or panel antennas mounted on a building, structure, or rooftop matches the building, structure, or rooftop and is screened from adjacent right-of-way(s) and/or properties. Dish Antennas attached to a Transmission Tower shall not exceed forty (40) inches in diameter.
7. Abandonment. Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of sixty (60) consecutive days, or more, and where there have been no efforts to repair or renew the use during the 60-day period. The Entity owning, controlling or maintaining the Facility shall have the burden of establishing to the Director of Planning & Economic Development that the Facility is still being used within 30 days of the City's notice of abandonment. All notices described herein shall be regular U.S. Mail. Failure to respond to the Director of Planning & Economic Development's request for information regarding the abandonment of the Facility shall constitute irrefutable evidence of abandonment. Upon the Director of Planning & Economic Development's determination and final written notification to the Entity of such abandonment the Entity shall have sixty (60) days within which to:

- a.) Reactivate the use of the Facility or transfer the Facility to another Entity which makes actual use of the Facility promptly; or
- b.) Dismantle and remove the Facility and notify the Director of Planning & Economic Development in writing of the completion of such removal.

If the Entity believes that the final determination of abandonment by the Director of Planning & Economic Development is incorrect it may file a written appeal with the City Manager within five (5) days of the Director of Planning & Economic Development's final determination. The Director of Planning & Economic Development shall review the matter, take evidence if deemed necessary, and make a determination as to whether the Facility has or has not been abandoned. The City Manager's determination shall be final. If the Entity fails to prevail on appeal, reactivate, transfer to another active user or remove the Facility, the City shall have the right to have the Facility removed at the Entity's expense. The City shall be entitled to reimbursement for all costs and expenses associated with the removal and the storage of any Facility thereafter. If a stored Facility is not picked up from the City within twenty-eight (28) days of removal, the City may dispose of the Facility in its discretion. The City at that point will also be entitled to the cost of the disposal less any value the City secures for the Facility for scrap or resale. In addition, an administrative fee shall be assessed against the Entity for disposal of the Facility in an amount equal to the staff time related to all proceedings associated with the removal and disposal of the Facility. Failure to remove an abandoned Facility in conformance with this ordinance shall be considered a violation of the Code and subject to its general penalty provisions. No permit for any work in the City shall be granted to an Entity including its successors, which owes any some of money to the City for the removal and disposal of an abandoned Facility.

8. **Equipment.** Mobile or immobile equipment not used in direct support of a Personal Wireless Service Facility shall not be stored or parked on the site of a Personal Wireless Service Facility unless repairs to such Facility are being made. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Noise attenuation measures shall be included to reduce noise levels. Testing and maintenance of generators shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
9. **Substantial written evidence of denial.** In the course of reviewing any request for any approval required under this Article, the Planning and Zoning Board or the City Council, as the case may be, shall act within a reasonable period of time after the request is duly filed, taking into account the nature and scope of the request, and any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.
10. **Petition for amendment.** Should the application of this Article have the effect of prohibiting an Entity from providing personal wireless service to all or a portion of the

City, such provider may petition the City Council for an amendment to this Article. The City Council, upon receipt of such a petition, shall promptly undertake review of the petition and shall make a determination on the petition within a reasonable period of time, taking into account the nature and scope of the petition and any decision to deny such a petition shall be in writing and supported by substantial evidence contained in a written record.

11. Nonconformities. Any Personal Wireless Service Facility installed and operating prior to the enactment of this Article, which would be prohibited by this Article, shall be considered a lawful existing non-conforming use and/or structure, as the case may be, and shall be subject to the rules on Existing Non-Conforming Uses and Existing Non-conforming Buildings provided in Article 4 of the Zoning Ordinance.
12. Independent technical expert. The Director of Planning & Economic Development is hereby authorized to employ on behalf of the City an independent technical expert to review any technical materials submitted including, but not limited to, those required under this Article. The applicant shall pay all reasonable costs of said review, including any administrative costs incurred by the City. Hourly rates charged by the independent technical expert shall not exceed those hourly rates customarily charged by technical experts within the radio engineering industry. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall not be disclosed to any third party.

#### 26.4 Administrative Approvals.

1. General.
  - a. The Director of Planning & Economic Development may administratively approve the uses listed in this Section 26.4. Nevertheless, all such uses shall comply with Section 26.3 of this Article and all other applicable ordinances.
  - b. Each applicant for administrative approval shall apply to the Director of Planning & Economic Development, providing the information set forth in Sections 26.5.2 and 26.5.4 of this Article.
  - c. The Planning and Economic Development Department shall respond to each administrative approval application within thirty (30) days after receiving it by either approving or denying the application. If the Planning and Economic Development Department fails to respond to the applicant within said thirty (30) days, then the applicant shall be deemed to be denied. Within fourteen days (14) of the thirty (30) days, the Planning and Economic Development Department shall provide written reason for the denial.
  - d. If an administrative approval is denied, the applicant may appeal said denial in accordance with the provisions of the Zoning Ordinance concerning appeals of administrative decisions.

- e. The Director of Planning & Economic Development may refer an application for administrative approval that meets all of the standards contained herein to be approved as required by Section 26.5 if the Director of Planning & Economic Development determines that the location of the proposed wireless Facility is in close proximity to a principal residential structure in a residentially zoned district and that the public interest would be furthered by requiring a Special Use Permit to construct the wireless Facility in question.

2. Specific administratively approved uses. The following uses shall be approved by the Planning and Economic Development Department after conducting an administrative review unless the Director of Planning & Economic Development concludes that the public interest would be furthered by requiring a special use permit in conformance with Section 26.4.1(5) of this Article.

- a. Personal Wireless Service Facilities installed on a Transmission Tower, including the placement of buildings or other supporting equipment in connection with said Facilities, in any M-1 Manufacturing or C-5 Planned Commercial zoning district provided that a Transmission Tower shall not exceed a height of one hundred five (105) feet and shall be set back from the closest adjacent residential structure a distance equal to the height of the tower and further provided that:

- (1) A Transmission Tower exceeding fifty (50) feet in height shall not be located within one-quarter mile ( $\frac{1}{4}$ ) from any existing Transmission Tower that is over fifty (50) feet in height.
- (2) The separation requirement of Section 26.4.2(1)(a) may be waived by the Director of Planning & Economic Development for the M-1 Manufacturing or C-5 Commercial zoning district provided that the applicant establishes:
  - (a) No other site or current technology could be used to provide intended services to the residents of the City; and
  - (b) A denial of a permit for the proposed site would create a gap in providing intended services to the residents of the City; and
  - (c) The issuance of the permit for the proposed site would minimize the appearance that towers are clustered within a quarter-mile area by allowing for co-location.

If one or more of the foregoing factors do not exist the Director of Planning & Economic Development shall inform the applicant that it may request a Special Use Permit in conformance with Section 26.5 of this Article.

- b. Personal Wireless Service Facilities on an existing Utility Pole. Personal Wireless Service Facilities mounted on Utility Poles shall comply with Above Ground Service Facilities requirements as set forth herein and subject to the following conditions:
  - (i) The addition of said Personal Wireless Service Facilities does not exceed more than seven (7) feet above the height of the existing Utility Pole to which it is attached.
  - (ii) No guy or other support wires shall be used in connection with such Personal Wireless Service Facilities.
  - (iii) Personal Wireless Service Facilities antenna and related equipment shall not exceed an above ground volume greater than 24 cubic feet.
  - (iv) Replacement Utility Poles may be placed at the same height as the existing Utility Pole to accommodate Personal Wireless Service Facilities.
  - (v) Personal Wireless Service Facilities, including antenna and related equipment shall be a color that blends with the surroundings of the existing Utility Pole on which it is mounted. Any wiring on the Utility Pole shall be covered with an appropriate cover or cable shield.
  - (vi) Not more than one Personal Wireless Service Facility may be located on a single Utility Pole.
  - (vii) Such Personal Wireless Service Facilities shall not be located within 300 feet of another such Personal Wireless Service Facility.
- c. Personal Wireless Service Facilities on an existing structure, or replacement structure which is substantially similar, in any nonresidential district, the R-7 and R-6 districts, and any nonresidential structure (such as a building, sign, water tower, parking lot light pole or other free-standing structure) in a residentially zoned district (school, park, or church existing structure) other than a Transmission Tower so long as said Facilities add no more than seven (7) feet to the height of the existing structure, or replacement structure.
- d. Personal Wireless Service Facilities on any existing Transmission Tower of any height including the placement of additional buildings or other supporting equipment used in connection with said Facility, so long as the addition of said Facilities adds no more than twenty (20) feet to the height of said existing Transmission Tower.

## 26.5 Special Use Permits.

### 1. General.

The following provisions shall govern the issuance of special use permits.

- a. If Personal Wireless Service Facilities are not permitted to be approved administratively pursuant to Section 26.4 of this Article, then a special use permit shall be required for the construction of Personal Wireless Service Facilities in all zoning districts except R-1, R-2, R-3, R-4, R-5, C-2 and C-4, where such Facilities are prohibited.
  - b. In granting a special use permit, conditions may be imposed to the extent that the Planning and Zoning Board and/or City Council concludes are necessary to minimize any adverse effect of the proposed Personal Wireless Service Facilities on adjoining properties.
  - c. In recommending or granting a special use permit, the Planning and Zoning Board and/or City Council may express a condition requiring that the applicant allow, on a commercially reasonable and technologically feasible basis, a minimum of one other provider of Personal Wireless Services to co-locate additional Personal Wireless Service Facilities on a Transmission Tower which is part of the applicant's proposed Personal Wireless Service Facility.
  - d. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.
2. Information required. Each applicant requesting a special use permit under this Article shall submit an alternative site analysis which identifies all reasonable technically feasible alternative sites which would provide the proposed services; a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including topography, radio frequency coverage, Transmission Tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses; and other information reasonably deemed by the Director of Planning & Economic Development to be necessary to assess compliance with this Article.
3. Factors considered in granting special use permits. In addition to the standards identified in Section 5.9.4 of the Zoning Ordinance, the following factors may be considered in determining whether to issue a special use permit:
  - a. Height of the proposed Transmission Tower;
  - b. Proximity of the Transmission Tower to residential structures and residential district boundaries;
  - c. Nature of uses on adjacent and nearby properties;
  - d. Surrounding topography;

- e. Surrounding tree coverage and foliage;
- f. Design of the Transmission Tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- g. Demonstrated ability for co-location of Antennas by more than one Personal Wireless Service carrier on the Facility proposed to be constructed. Demonstrated ability shall include, but not be limited to, landlord approval if proposed Transmission Tower site is to be leased, commercially reasonable sublease agreement, Facility constructed to structurally accept co-locations, and Transmission Tower site of sufficient size to accept co-locations.
- h. Availability of suitable existing Transmission Towers and other structures as set forth in Section 26.5.4 of this Article.

4. Availability of suitable existing Transmission Towers or other structures. No new Transmission Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning and Zoning Board and/or City Council that no existing Transmission Tower or structure can accommodate the applicant's proposed Antenna. Evidence submitted to demonstrate that no existing Transmission Tower or structure can accommodate the applicant's proposed antennas may consist of the following:

- a. No existing Transmission Towers or structures are located within the geographic area required to meet applicant's engineering requirements.
- b. Existing Transmission Towers or structures are not of sufficient height to meet applicant's engineering requirements.
- c. Existing Transmission Towers or structures do not have sufficient structural strength to support applicant's proposed Antenna and related equipment.
- d. The applicant's proposed Antenna would cause electromagnetic interference with the Antenna on the existing Transmission Towers or structures, or the Antenna on the existing Transmission Towers or structures would cause interference with the applicant's proposed Antenna.
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing Transmission Tower or structure or to adapt an existing Transmission Tower or structure for sharing are unreasonable. Costs exceeding new Transmission Tower development are presumed to be unreasonable.

- f. The applicant's demonstration that there are other limiting factors that render existing Transmission Towers and structures unsuitable.
- 5. Setbacks and separation. The following setbacks and separation requirements shall apply to all Transmission Towers and Antennas for which a special use permit is required. The standard setbacks and separation requirements may be reduced if in the opinion of the Planning and Zoning Board and/or City Council the goals of this Article would be better served thereby.
  - a. Transmission Towers shall be set back from the closest adjacent residential principal structure a distance equal to the height of the Transmission Tower or twenty percent (20%) of the height of the Transmission Tower from the adjacent property line, whichever is greater.
  - b. Transmission Towers and accessory Facilities shall satisfy the minimum zoning district setback requirements.
  - c. Transmission Towers over fifty (50) feet in height shall not be located within one-quarter ( $\frac{1}{4}$ ) of a mile from any existing Transmission Tower that is over fifty (50) feet in height. To minimize adverse visual impacts associated with the proliferation and clustering of Personal Wireless Service Facilities, installing Personal Wireless Service Facilities with the demonstrated ability for co-location of Antennas by more than one Personal Wireless Service carrier on an existing or new Transmission Tower; and/or technical evidence acceptable to the Director of Planning & Economic Development concluding no other site or latest technology could be used to provide the intended services, and denial of the proposed site would create a gap in providing services to the residents of the City shall eliminate the separation requirement.
- 6. Landscaping. The following requirements shall govern the landscaping surrounding Personal Wireless Service Facilities requiring a special use permit.
  - a. Personal Wireless Service Facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the compound from adjacent property. The standard buffer shall consist of a landscaped strip at least fifteen (15) feet wide from the edge of the compound. In some cases, such as Facilities sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer.
  - b. In locations where the visual impact of the Facility would be minimal, the landscaping requirement may be reduced or waived.
  - c. Provisions of Section 6.11, Tree Preservation of the Wheaton Zoning Ordinance.