



NOTICE OF REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION

Chair Dan Kovacevic

Vice Chair Peter Gray

Commissioner Charles McDermott

Commissioner Scott Schlossberg

Commissioner Mathew Corrigan

Commissioner Nick Proctor

Commissioner Phil Sveum

TIME: 6:00 PM - REGULAR MEETING
DOORS OPEN 15 MINUTES PRIOR TO THE START OF THE MEETING
WHEN: MONDAY, SEPTEMBER 14, 2026
WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, ARIZONA

PARTICIPATION IN PUBLIC MEETINGS

Request to Comment Cards - To speak or submit written comments, a **Request to Comment** card is required. **Cards must be completed and submitted to the Clerk before the meeting begins. Late or incomplete cards will not be accepted.** A separate card is required for each agenda item.

Agenda Items (Consent or Regular) - Request to Comment cards must include the **agenda item number**, whether the speaker is **FOR** or **AGAINST** the item, and whether the individual wishes to speak or submit written comments.

Online Request to Comment cards may be submitted for regular agenda items only to either provide written comments or request to speak at the meeting. **Online submissions must be received by 12:00 PM the day before the meeting** at: <https://www.fountainhillsaz.gov/publiccomment>. Online comments are shared with the commission.

Call to the Public requests are accepted in person only. Request to Comment cards must be submitted prior to the meeting commencing. **Online submissions are not accepted for Call to the Public.**

Speaking Rules - Speakers may speak only when recognized by the Presiding Officer and are limited to **three (3) minutes**. All comments must be directed through the Presiding Officer, not to individual commission members or staff.

Request to Comment cards and submitted information are public records subject to public disclosure.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. INVOCATION (MOMENT OF SILENCE)

3. ROLL CALL

4. STATEMENT OF PARTICIPATION

Anyone wishing to address the Commission regarding items listed on the agenda or during Call to the Public must completely fill out a Request to Comment card located in the back of the Council Chambers and hand it to the Clerk prior to the start of the meeting. Once the meeting has started, late requests to speak cannot be accepted. When your name is called, please approach the podium, speak into the microphone, and state your name and if you are a resident for the public record. Comments may not exceed three minutes. It is the policy of the Commission not to comment on items brought forth under "Call to the Public." However, staff can be directed to report back to the Commission at a future date or to schedule items raised for a future Commission agenda. To avoid disruption of the meeting, to maintain decorum, and provide for an equal and uninterrupted presentation, applause is not permitted, except during Proclamations, Awards, and Recognitions. All meeting participants must maintain proper decorum as specified in Section 6 of the Council Rules of Procedure.

5. SUMMARY OF CURRENT EVENTS BY DIRECTOR

6. REGULAR AGENDA

- a. **CONSIDERATION AND POSSIBLE ACTION:** Approving the meeting minutes of the Planning and Zoning Commission Work Session, July 28, 2026.
- b. **PUBLIC HEARING, with CONSIDERATION AND POSSIBLE ACTION:** Relating to Ordinance 26-12 repealing and replacing Zoning Ordinance Chapter 17, Wireless Telecommunication Towers and Antennas.

7. CALL TO THE PUBLIC

Pursuant to A.R.S. §38-431.01, or as prescribed by state law.

8. COMMISSION DISCUSSION/DIRECTION TO THE DIRECTOR

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

Dated this 5th day of September, 2026.



Paula Fisher, Executive Assistant

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call (480) 816-5100 (voice) or AZRelay 7-1-1 the Thursday prior to the meeting to request reasonable accommodation.



TOWN OF FOUNTAIN HILLS

STAFF REPORT

Meeting Date: 9/14/2026
Meeting Type: Planning and Zoning Commission Regular Meeting
Submitting Department: Development Services / Planning
Prepared by: Paula Fisher, Executive Assistant
Staff Contact Information: Phone: 480-816-5122
Email: pfisher@fountainhillsaz.gov

Request to Town Council Regular Meeting (Agenda Language)

CONSIDERATION AND POSSIBLE ACTION: Approving the meeting minutes of the Planning and Zoning Commission Work Session, July 28, 2026.

Staff Summary (background)

The intent of approving meeting minutes is to ensure an accurate account of the discussion and action that took place at the meeting for archival purposes. Approved minutes are placed on the town's website and maintained as permanent records in compliance with state law.

Related Ordinance, Policy or Guiding Principle

Risk Analysis

Recommendation(s) by Board(s) or Commission(s)

Staff Recommendation(s)

Staff recommends approval of the meeting minutes of the Planning and Zoning Commission Work Session, July 28, 2026.

Suggested Motion

MOVE TO APPROVE the meeting minutes of the Planning and Zoning Commission Work Session, July 28, 2026.

ATTACHMENTS

1. 2026 07 28MM

TOWN OF FOUNTAIN HILLS
MINUTES OF THE MEETING
OF THE FOUNTAIN HILLS PLANNING & ZONING COMMISSION WORK SESSION
JULY 28, 2026

A Regular Meeting of the Fountain Hills Planning & Zoning Commission was convened at 16705 E. Avenue of the Fountains in open and public session at 6:05 p.m.

Members Present: Chair Dan Kovacevic; Vice Chair Peter Gray; Commissioner Mathew Corrigan; Commissioner Nick Proctor; and Commissioner Phil Sveum

Members Absent: Commissioner Charlie McDermott & Commissioner Scott Schlossberg

Staff Present: Development Services Director John Wesley and Executive Assistant Paula Fisher.



Post-Production File

Town of Fountain Hills
Planning and Zoning Commission Work Session
July 28, 2026

Transcription Provided By:
eScribers, LLC

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Transcription is provided in order to facilitate communication accessibility and may not
be a totally verbatim record of the proceedings.

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KOVACEVIC: All right. Thank you. The meeting's called to order. This is the work session, July 28th. All items listed are for discussion only. No action can or will be taken. The primary purpose of work sessions is to provide the Commission with the opportunity for in-depth discussion and study of specific subjects. Public comment is not provided for on the agenda, and may be made only as approved by consensus of the Commission. In appropriate circumstances, a brief presentation may be permitted by a member of the public or another interested party if invited by the Chair or the Director to do so. The presiding officer may limit or end the time for such presentations.

Okay. Can we have roll call, Paula?

FISHER: Commissioner Proctor?

PROCTOR: Present.

FISHER: Commissioner Sveum?

SVEUM: Present.

FISHER: Commissioner Corrigan?

CORRIGAN: Here.

FISHER: Vice Chair Gray?

GRAY: Present.

FISHER: Chair Kovacevic?

KOVACEVIC: Present. Okay. Discussion and possible direction regarding draft ordinances amending and replacing Town Code Articles 16-2, Small Wireless Facilities, and Zoning Ordinance Chapter 17, Wireless Telecommunication Towers and Antennas.

Okay. Vanessa?

SHINMOTO: All right. Well, thank you, Commissioners. I'm very excited to be here, and so is our team. And we are excited to present the two draft wireless ordinances. I am joined by Attorney Scott McCollough. And I am leveraging his 40 years-plus of telecommunications, wireless internet regulations, and utilities law, including his experience as consumer advocate for the City of Austin Electric Utility. And he was also served as regulatory counsel for the Texas Internet Service Providers and Chief of Public Agency Representation at the Texas Attorney General Office. So he has drafted over 12

ordinances. And I have drafted three, including the Small Wireless Facilities Ordinance. And I will also be starting a fourth ordinance for another jurisdiction. So we are presenting these proposed amendments to the Town of Fountain Hills, these two ordinances. And I'm going to start first. Now, can you see my screen? Because I believe I need to share it first.

KOVACEVIC: Right. We can --

SHINMOTO: Let me go ahead and --

KOVACEVIC: -- need you to share that.

SHINMOTO: You need me to share that. So let me go ahead and do that. I realized as I was looking at it. Let's see. How do I share? Oh, here we go. Okay. Can you see this, Commissioners?

KOVACEVIC: Yes.

SHINMOTO: Okay. So I'll start with the first slide. Here. Okay. So these are the two amendments. And these have both been prepared by McCollough Law Firm, P.C. And the purposes of the amendments are to preserve local authority to the fullest extent allowed by federal and Arizona law. And second is to protect Fountain Hills' desert character, the scenic views, the historic resources and cultural resources, residential properties, and neighborhoods. One of the cultural resources of note is the Town's International Dark Sky status and its Discovery Center, which I believe is slated to open in 2027. And so that's a major purpose, especially for the macro ordinance. Then next, the amendments implement comprehensive permit application requirements and review procedures. And that's true for both ordinances. And lastly, they improve transparency. And it's not just transparency to the residents. It's also transparency for applicants who will understand their obligations because the amendments make it clear what information they are obligated to provide and how they are supposed to conduct their operations when they do erect facilities in the Town. And it also provides them with accountability, and it helps the Town defend permitting decisions.

Now, one of the things about the amendments is under federal law, any permit denials the Town must provide in writing substantial evidence that is needed to defend

potential litigation. And the Town can head that off because these amendments are baked in. All the substantial evidence is baked in in terms of what application material the ordinance requires and the criteria that the Town can use to either approve or deny permit applications from wireless applicants. So the legal framework that we used when we drafted these ordinances is first, we looked to federal law. And that's explicitly Section 332(c)(7)A. And this is Section 704 of the Telecommunications Act. And subparagraph A preserves local authority because it recognizes that local jurisdictions -- the Town has authority over its land development, over its permitting activity, and that this is an inherently local activity. However, the Telecommunications Act prohibits denials that A, effectively prohibit a carrier from providing personal wireless services. And what that term "personal wireless services" means is voice -- you know, mobile voice communications. It doesn't apply to streaming cat videos or other services. Those are under a different regulatory framework. But unfortunately, sometimes wireless applicants conflate the two because there is a big push for them to occupy the internet services. And that's an information service. That's not personal wireless services. So that is one of the things that both ordinances do is clarify that it must be for these voice personal wireless services.

Then, the next thing that federal law prohibits the Town from doing is discriminating among providers of what they call equally functional services. So for instance, if AT&T has a tower, and then Verizon wants to come in with a new tower, and the Town says, well, but we already have good coverage from AT&T, we don't need Verizon, that would be discriminatory because Verizon is also providing personal wireless services. And they could bring a lawsuit for that. So the Town isn't allowed to do that. And then lastly -- and this is a big issue -- is the Town cannot base any denials of permits on the environmental and health impacts of radiofrequency radiation. So that is the last thing. Then, there's a few other limitations in terms of -- and I alluded to this before; the substantive evidence requirement that when the Town denies permits, they have to be in writing, and they have to provide substantive evidence of why they denied it. And so that's the federal framework. And then, there's also the state -- Arizona overlay, and

that is that Arizona law mandates approval of certain types. And this is mostly for the Article 16-2 small wireless facilities in the public rights of way, facilities that are colocated. And there's definitions that we will discuss when I discuss that overview. Those are mandated approvals. However, even within those mandated approvals, there is some leverage. And that's the last bullet point on this slide, is that both ordinances leverage the remaining local authority and expressly reference the federal and Arizona wireless regulations. And both federal and state law, they do preserve local authority. I mean, there's Arizona law. So we look at the wireless providers, which is the statutes. It's 9-951 through 99. But it does talk about the Town's authority to regulate rights of way. And then, there's another regular zoning ordinance in Arizona law that also gives the Town that authority.

So I will move on to Article 16-2. And this is the overview, which I know will not be considered today. But I would like to give an introduction to this because I drafted this one, and I'm very proud of it. I think that it really does the best that it can to take the room that Arizona allows, and make sure that the Town at least has as much power as it can over these facilities. Now, most of the permitting of these facilities happens in the rights of way. And so this is where things can get difficult because they do impact nearby properties. But that's technically -- given where it's at in the Town Zoning Code, it's not really the purview of the Planning and Zoning Commission. However, because it does impact properties, it's good to have an introduction to it. So one thing we did was to expand the definitions with new protective terms. So I would say I've put, like, about maybe double the amount of definitions because the old articles to the definitions, they incorporated by reference Arizona Revised Statutes. It's you know, Section 9-591. And that one has about 27 definitions. And it was incorporated by reference. But there is nothing that doesn't keep us -- we can still add new protective terms that really clarify applicant obligations, clarify the terms so that both applicants and the Town and residents understand, you know, what these terms mean.

Now, one thing to note is that the Arizona definition of "small wireless facilities" is a little bit less protective. And normally in most circumstances, that is what is going to

apply to the permitting. So that one is -- Arizona allows the antennas to be -- these are called small wireless facilities. But they're not that small. Even with the federal regime, they can be at least no more than 50 feet in height, which is still a pretty big structure. So they can be no more than 50 feet or (sic) height, or 10 percent taller than the height of the surrounding structures. And then for the federal, the ground equipment must be no more than 28 cubic feet in volume. And the antennas must be no more than three cubic feet. But Arizona allows the antennas to be twice the size in terms of volume. That's capped at six cubic feet. And they keep the same volume for the related equipment, but that does not include certain accessories like the electric meter, any kind of concealment elements or a shroud, any grounding equipment or cutoff switches. Those aren't included. So Arizona small wireless facilities can be bigger. But we have to work with that. Now, there are new application requirements and review procedures. So even though Arizona law mandates approval of the colocated small wireless facilities, there still are documentation requirements that the Town can implement, which it does allow the Town to require a permit. So even though the Town may have to approve these, at least the Town can ask for documentation requirements ensuring that these proposed facilities meet federal and Arizona criteria for mandated approval. So for instance, by having construction drawings, site plans, site surveys, surveys of the surrounding utilities, the Town can take a look at that information and say, okay, this does meet the criteria. We have to approve it. There's nothing we can do. But at least the Town has a fair shot at making sure that it is what they say it is because in many instances, wireless applicants have been known to fudge the edges a bit. So this is one way to at least make sure that this doesn't clutter up the rights of way and make the Town unsightly.

Then, another part of the new application requirements is that the Town can request waivers from both the federal and Arizona shot clock time limits. Now, Arizona shot clock time limits are a little bit shorter and more restrictive than the federal, so it makes it a little bit harder for the Town. There is a shot clock requirement for completeness review of these applications. And it's 20 days for facilities that will be colocated and 30

days for new facilities. And then, the review period once the completeness application -- once the application is reviewed for completeness, then the Town must review it for whether it will either approve or deny. And the review period for colocations is 75 days. And it's 150 days for new monopoles or new small wireless facilities. And now then, one other thing we did was we did strengthen the design and location standards of these facilities. So all of these facilities have to be engineered and certified by a professional Arizona licensed structural engineer. And that's really to make sure that they -- I mean, especially for the ones in the rights of way -- I mean, people use the rights of way, traffic use the rights of way. If there's a structural failure and they fail, it presents a danger to public safety. So that makes sure that at least at the application stage, that they have been certified, that they're not going to fail. The next design standard is what -- this falls in line with Arizona requirements that all Town ordinances for design standards be quote/unquote "objective," which means that they have to be -- that they have to be criteria that everybody can factually agree upon. But this ordinance does that because one thing that is mandated is that the visible exterior of the surface of the small wireless facility has to be visually compatible with the surrounding area. And then, their location -- the proposed location, it has to be put in a place that minimizes any kind of adverse visual impacts on the nearby properties. One thing about small wireless facilities is that their location tends to be somewhat flexible in terms of where they can be placed. They don't have to be, say for instance, on a sidewalk in front of someone's front yard. They can be moved off 100 feet off to the side, or even a couple hundred feet off to another corner where they're not going to obstruct someone's view or they're not going to be right on top of someone's house. The next thing that we did with this small wireless ordinance is to implement permit conditions and accountability. So that would be making sure that once they are -- once they are constructed, that there is a post-certification installation. And it's within 60 days of construction showing that at least the facility has -- is actually what they say it would be; so that it matches the construction drawings, it matches the photo simulations that it -- it matches what the Town approved, that it wasn't something that

suddenly shows up and the Town has said, well, we didn't approve that. But because of the criteria in the documentation -- the application requirements -- the Town has that information that they can compare it to. And then, they can certify that this is constructed the way the Town approved. And last but not least, there are operational requirements that also address RF or radiofrequency exposures, which there's a lot going on in that realm. But basically, the FCC has full control and full preemption over the emissions limits. And neither the Town nor the State of Arizona can regulate these. And it's in the interest of achieving uniformity in wireless technology. And that's a whole thing that, you know, that we can -- we'll discuss more about the Town's role in terms of ensuring compliance with at least the FCC safety exposure guidelines and limits. So that is a short overview of the Small Wireless Facilities Ordinance.

And now, I will move on to the main star of the show. And that is Chapter 17. It's the macro towers and antennas. And here is a brief summary of the amendments that we propose. First is the expanded purpose and applicability. So we added some new express purposes that discuss the Town's desert character, scenic character, the fountain, that kind of thing. And then, the applicability. We also made sure that it applies to existing towers and antennas in the Town, and that the operation and maintenance requirements apply, and that any upgrades to the existing towers have to go through the new ordinance process. Second, we substantially expanded the definitions, clarifying essential terms. And we added about 83 new definitions. Another thing we did was enhance documentation requirements for application. And this is a really important piece of it because it really gives the Town -- we added about -- I'm going to say about 17 new provisions. But all of these provide the Town with the quote/unquote "substantive evidence" that it would need. And I say quote/unquote because that's the term of art in Section 332 that explains any written denials have to show -- it said they have to be in writing, and they have to have substantive evidence. But these documentation requirements provide that. So once the Town has that, it has all the information it needs. And it's not just to defend permit denials. It's also just to make sure that all applications are properly reviewed, and that the facility will actually

fit, and that it's not going to endanger or hurt nearby properties.

The next thing we did is, we added new application review procedures. And these are really important because of both the federal -- especially the federal shot clock requirement. There is a time frame. And one of the things the new application procedures does is split it into a completeness review, where the Town reviews all the initial application. And all of those requirements -- there's about 20 of them -- they function as a checklist. So for instance, you know, is there a certificate of a proof of occupancy; like, for instance, a lease if it's for a tower on private property. Does the tower -- is there certification of structural safety? Is there a Section 106 review if the tower happens to be close to historical area, or is there an environmental assessment, those types of things. So there's a checklist that the Town can go through. And that's the completeness review. And then, if anything is not there, that will stop the shot clock. Then, once the Town has all of the information and all of the check boxes are marked off, then the next procedures are, the Town can move on to actually review the merits of the application; like, is this really something that will fit here, will it be visually compatible, how is it going to look, that kind of thing. Does the applicant really need it, for instance; like, we're going to talk about coverage gaps and effective prohibitions. Next are detailed siting design and safety standards. And one thing we added was a 500-foot residential setback. And that's critical because there are instances we've seen in our practice where some towers are as close as, say, even 70 feet away from a home, and it's 150-foot tower, which makes the fall zone very dangerous because it threatens the property. It could potentially threaten the physical safety of the residents in the home. And also, there is the debris zone. If there is an adverse weather event, for instance, the antennas can blow off. So 500 feet is a good balance. I know that there are -- people want more. But this is a good balance because it allows for some permitting of towers, but ensures that it protects residential properties as much as possible.

Then, we also ensure verification of compliance with the FCC'S radiofrequency exposure guidelines. And this is a really important aspect of the ordinance because although the

FCC sets these guidelines, they're not terribly good at enforcing it. And this is where the Town comes in because the Town has authority to protect public safety. Of course, the Town can't mandate the exposure guidelines be less. But the Town can ensure that the facilities are operating within the FCC limits. And then lastly, we have maintenance and operation requirements that include -- and that include applicants providing a bond. And then operation, making sure that this is part of the radiofrequency exposure guidelines, that the facilities are operating safely, and they're operating within those guidelines, and that they're also -- there's also some insurance requirements that put the liability where it belongs, on the wireless carrier and the tower companies and not the Town; that it doesn't -- for instance, if a facility fails, and then it damages property, that it's not going to come out of the Town's and the taxpayers' kitty. It's going to come out of where it belongs, with the wireless providers, because they are the ones that are profiting from this infrastructure.

So the first thing we did is, we focused on expanding the purpose and applicability. And that's Section 17.01. And A is the expanded purpose. And what we did was that we added express language incorporating the federal grant of authority, as well as the Arizona grant of authority, which is the general zoning statute. And those expressly reference the Town's authority over its land development, over granting permits, because again, this is a very local matter. So we added that to the purpose. Then one other thing we did was we modified -- we strengthened the language around what the towers are. I mean, it's not just, you know, limiting -- it's limiting the number of towers because they clutter up the sky. And once again, I'll point to the International Dark Sky status. That's part of the Town's cultural resources. And towers can block views of major constellations in the Milky Way. We don't -- you know, the Town doesn't want that. So that's one way to explicitly reference that. The next natural resource that the Town has that provides the Town's visual character is the saguaro cacti. And so we added that in in terms of the Town protecting those and making sure that at least if any proposed towers are near those cacti, that they will do an environmental review and ensure that those cacti are protected. One other thing we did is we added express

provisions about complying with the FCC's radio exposure guidelines, and with really Section 332(c)(7) in general -- the limitations -- because we don't want a judge to come in and say, oh, the Town really doesn't -- you know, they want to prohibit the towers. They're putting in effective prohibition. That's their intent. And so we expressly say it's not our intent. And we added that into the purpose of the ordinance.

And then, we also added applicability. And I talked about this a bit before. But it applies to existing towers so that towers that are already existing in the Town, they don't get a free pass. Once this ordinance becomes law, they don't get a free pass to not maintain them or not keep up the landscaping or not repair them when something looks like it's off or when there's a report. Or, they don't get a free pass to upgrade them without at least going through the application requirements. So that really helps with the protectiveness of the ordinances is having these express purposes in there. Now next, we also expanded the definitions. And we added over -- first, we added a section with introductory language. And that governs the construction of the terms added. So for instance, the big term is the term "shall." And "shall" is not discretionary. It's mandatory. And we explicitly add a paragraph at the very beginning of the definition section stating that so that it makes it clear; applicants shall do this. This is a must. It's not optional. Then, we added over 80 new definitions that clarify important legal and technical terms. And one technical term I would like to highlight is the decibel milliwatts. And this measures the signal of the radiofrequency wave at the transmitter power source, which really is a crucial starting point for calculating exposure limits. So this goes to the operation, the safety -- the safe operation of the towers that the ordinance requires to protect the public from these exposures. And this provides clarity on, you know, what this measurement is.

Another technical term is really the reference, the RF exposures themselves. And that's to -- one, there's a definition for general population and uncontrolled exposures. And these are the exposures that the FCC has deemed safe for the general public, for people like you and I that are not, you know -- we're not cable -- we're not telephone pole repair people. So they have occupational standards. But we also include that in our

definitions so that applicants are clear. Like, these are the uncontrolled -- these are the exposure guidelines that the facilities must abide by once they're operational. And we referenced the specific FCC regulation in that provision. We also have definitions for the permitting process. So one of note is an 11th -- what we call an 11th-hour submission, which is when -- and we have seen this happen in our practice when the shot clock is coming very close to the end. And depending on what kind of facility it is; for instance, some facilities, the federal government mandates approval. And then, if the Town fails to act, they're automatically approved. And then, the wireless applicant can bring a lawsuit to force approval of that because it's already been approved. But if there is -- for instance, they'll submit documentation that the Town asked for, maybe, say, two or three days before the shot clock, and it's 300 pages of technical information. That's just completely unreasonable. So we have a provision saying that the Town can take the time that it needs to review those submissions.

The next permit process definition is complete application. And we define that term in terms of what that means. And it's everything that is in the application documentation requirements. And if one of those things are missing, then that application is incomplete. We also have definitions for both the federal and the Arizona shot clocks. And then, we have the notice of incomplete application and how that would stop the shot clock because that's -- the federal law is that if anything is missing -- if it's incomplete and it's reasonable that applicant hasn't provided it, then, you know, we have to suspend the shot clock or toll it so that it doesn't keep ticking while the applicant takes their time to provide the information. Lastly, we also have esthetic terms. And we actually do define the term "esthetic." And it's a subjective -- both subjective and objective determination of how well the facility or the tower -- is it going to fit with the character of the area? And one of the other esthetic definitions we have is a balloon test for the visual impact of the tower if the tower is going to be over 100 feet. And there is a very specific definition. It's a test that is required as part of our application requirements so that the Town and residents can gauge the visual impact of what the height is going to look like if the tower is built. They'll have a visual of that

with the balloon test.

So one of the things that we did -- we're moving on to Section 17.03 and 17.04. Now, we didn't make a lot of changes to this section because it was pretty good on its own. We just did a few tweaks to make it a bit stronger. So the one tweak that we made was to ensure that all of the accessory equipment that's related to the tower, it's required to be undergrounded. And that's per the Town code. The Town code actually has an undergrounding requirement. So we put that into the ordinance. And then, there is an exception to the undergrounding that it can be put above ground -- the equipment can be put above ground if, you know, the Town Council approves it. But even then, there are certain concealment requirement elements that the Town Council still has to comply with if it does approve that. Then, another thing we added was making sure that the lighting of the towers -- that if they have to be lit, that they're consistent with the Town's outdoor light control zoning ordinance. And again, that goes to helping to preserve the Town's dark skies. Then, we also added a section to -- or actually, we eliminated. That's what we did. We eliminated a section in 17.04. And this is the types of permits. And it's administrative permitting. So administrative permitting generally doesn't undergo public review. And one thing that was in the ordinance that we eliminated were applications -- certain types of applications for new towers. Previously, if they were on Town-owned property or in a commercial, industrial or, like, a, you know, lodging zone, or if it was, like, an alternative tower structure like a flagpole or a chimney or a clock face, that those were only subject to administrative permitting. But what we did was, we eliminated that provision so that all applications for new towers must undergo public review. And it's a good thing. It increases transparency. It gives the public an opportunity to review all new tower applications. And it also really gives applicants -- I think it makes them pause in terms of really evaluating, like, how much do they really need the tower? Because should it really come at the expense of the Town's character or the residential properties that it's going to impact? And we don't think it should, and it doesn't have to. So we eliminated that provision.

As I discussed before, we also strengthened the application documentation

requirements. And so I have here -- it's 14. We added 14 new requirements of documentation. And some of them are very basic. But you would be surprised how -- I have seen applications that don't really have applicant contact info. They only have an email or a phone number, and not even a business address. So this requires -- in Section 17.05(A), we require applicant contact info, all of it. And then, we also added provisions, for instance, for a soil erosion and sedimentation control report, which is critical in a town like Fountain Hills because it is a desert climate with desert loose sediment and soil. And so the Town is vulnerable to erosion. And these towers, they put a lot of weight on the soil and they can -- so there's got to be a report making sure, like, how do they plan to control that? Because that would make it structurally unsafe if they don't. There's also an engineer's report that certifies the safety and structural integrity of the towers. And then, an environmental assessment form. So these are some of the application requirements. I will also talk about the FCC. There's two other provisions, but I will talk about them more in length in the upcoming slides. And those are the compliance with the RF -- the radiofrequency exposure limits -- and then also the notice of effective prohibition. But those are part of the application requirements. Another thing that we required was comprehensive fire safety plan. And unfortunately, these towers are fire-prone. And they do present fire risks. And the Town of Fountain Hills has the wild urban interface wildfire risk because of the interface of the urban infrastructure with the desert and the dry heat, that it does create a fire risk. And so it's important to have a comprehensive fire safety plan. And this would include the list of emergency contacts to contact -- who do you call when a tower sets on fire? A description of the battery types, where the batteries are located, and how many batteries there are, and that's really useful to help with the procedures of shutting it down, which are also the depowering procedures; like, how are these -- how do we depower these? Because electrical fires, the power must be shut off before firefighters can begin fighting the fires. So this is a very critical plan that applicants need to think very thoroughly through in order to protect public safety because fire is a huge risk. It damages property and injures people. And so we don't -- at least have the applicant

have some sort of fire safety plan in place for its facility.

Now, we also require a visual impact analysis. And I talked about this in terms of the definition. But the visual impact analysis includes photographs. What is the completed tower going to look like? How is it going to fit in the background? And then, balloon tests for facilities taller than 100 feet. And that's when they take a crane, they take a brightly colored balloon, and they take it up to the sky. And you get an idea of how it's going to look, at least how's the height is going to look in relation to other structures of the natural, the built environment; how is it going to look in the buildings? How is it going to look, you know, set by the mountains and any other structures or vegetation? Now, we also added a new provision in the application documentation requirements. And this has to do with a completeness review. And we added a time limit of 30 days. So if, for instance, an application is missing -- say, for instance, it's missing the photograph simulation, and the Town says, this application is incomplete, we're sending you a written notice of incomplete application. And if the applicant does not respond within 30 days with the requested information, the application is deemed withdrawn, which means that finishes the shot clock, application is done. And then, if the applicant wants to, they're going to have to open up a completely, entirely new application. And that's really helpful for the Town because it doesn't -- it keeps the Town from waiting. It also eliminates potential issues with the shot clock running out. Because that that could arise if, say, for instance, the application is hanging around for a new tower, and then about maybe in 120 days in when the federal shot clock for a new tower is 150 days, the applicant could come and say, oh, well, our application is still pending. And it eliminates any kind of arguments. It's very clear. They have to provide it within 30 days, or it's over. So as a whole -- I may have mentioned this before -- the application requirements, they act like a checklist. It's to determine completeness. So any of these are missing, the Town has it right away, and they can send a notice of incompleteness to the applicant. And then, the shot clock is paused. So the time frame is paused. And that gives the applicant time to submit the information. So these documentation requirements are very important. And they help protect the Town and help the Town

have as much control and authority over the permitting of these structures.

Now, we also implemented heightened application review standards. And those are -- we added considerations that really, really affect residents. One thing that is important to note is the impact on property values. And this is one of the legitimate grounds to basically oppose the tower, is the impact on property values. Now, we have seen national studies that the impact can be as much -- up to as much as 20 percent of the property value. But even a two- to three-percent drop in property values can be pretty substantial, especially for the type of properties that are in Fountain Hills. And that's not -- that's very difficult for homeowners, especially because for most ordinary Americans, a home is the primary source of wealth. And so when you have a property value drop, it's something that you've worked very hard on, and it's going to be taken away because the applicant says it needs a tower. So this is a really critical part of protecting the Town and protecting the residents, protecting the people who live in Fountain Hills. So we added that in. And then, we also added another in, which is the adverse impact on the Town's character; like, if the tower is going to hurt the desert's scenic views. One scenic view that I understand is treasured in the Town that we did put in the provisions is the McDowell Mountain Preserve. And that's one of the natural resources of the Town. And if a tower is going to impact that view, then it's going to have an adverse impact. It's going to hurt the view of that. And that is a legitimate basis to deny the tower. So we put that in the ordinance so that the Town can consider it. And it can be part of the substantive evidence. If a photo simulation shows that the tower is going to be right in the middle of the mountain, and it's really going to make it look bad, then the Town can deny it.

We also added a requirement of a sufficient fall zone; that the tower has to have, you know, enough space to fall should it structurally fail. And then, we also added -- you know, one other thing that the Town can consider is, how much did the wireless applicants -- how much did they try to mitigate the potential -- you know, any of these adverse impacts? Like, did they consider alternative sites? Did they consider maybe a lower height of the tower? Maybe they could put smaller facilities. Are there other

alternatives? And one thing that we added to the ordinance is that the mere fact that a less intrusive location, a less intrusive design, or, like, a site that it would be more expensive, that's not a reasonable justification for their failure to not propose -- for their failure to propose reasonable mitigation measures. So they can't just say, well, it's going to be too expensive. And that's not reasonable because that's an expense that they should bear given, you know, the impacts of these facilities on the Town. These are not very sightly facilities. They're industrial, they're urban, they do pose visual blight. And it's important for the Town to protect its character. So we added those, and those are very helpful. That also adds to the substantive evidence review.

Now, next thing we talked about -- and this is a really important -- this is a really important addition that we added, that this is about the federal prohibition on an effective prohibition. So if a permit denial is an effective prohibition, or if an ordinance, they would effectively prohibit any wireless carrier. So it could be Verizon or T-Mobile. If any one of them -- oh, you know, we don't have good coverage in the Town -- one thing we do require is that if the applicant intends to claim that a permit denial would effectively prohibit personal wireless service -- and again, this is for the mobile voice communications -- that then this ordinance requires them to provide objective evidence that will allow the Town to determine, well, if we deny it, will it effectively prohibit? Because it might. But at least the Town will have objective evidence and not just an assertion. Because applicants have a knack for making assertions that oh, you don't give -- you don't allow me to have this tower, then we can't provide coverage. And now, we're going to sue because it's an effective prohibition.

Well, now the Town can say, here is what -- here's the evidence. Give us the evidence, which is basically because -- an effective prohibition, it's a factual determination. It's really based on the location. It's based on the topography. It's based on the geography. It's based on what the built environment is, what the natural environment is, you know, whether there is a line of sight that needs to be clear for the radiofrequency waves to propagate for the signal to propagate. So one of the things that if the applicants are going to claim this, they have to provide a written statement with a notice that there is

going to be -- that they're going to claim effective prohibition. And then, they have to provide sufficient evidence that, you know, where is the gap? Does the gap really exist? Like, how big is this coverage gap? Is there, like, a dead zone within a mile on the road? Say, for instance, I think Saguaro Boulevard where there's no coverage, so how big is this gap? Where is the gap? And then, the ordinance also requires, you know, the precise geographical boundaries, like, a map of where the gap is. In addition to that, the ordinance requires applicants to provide a real-world drive test. And it's not just -- many applicants, what they do is they provide a propagation map. And I've seen many of these, and they have purple-gray -- they have purple shaded areas and white shaded areas. And saying that there's no coverage -- but those are based on predictive computer models, not actual real-world conditions. So this ordinance makes them provide the raw data. And they have to conduct the drive test. And when they conduct the drive test, they've got to collect the raw data. They have to note the date and time that they conducted the drive test. They have to provide GPS coordinates for every measurement point, and then maps with the actual signal strength that's measured. So now, this provides -- these requirements provide the Town with objective. Here are the real-world conditions. And it gives the Town evidence or criteria the Town can look at and say, well, maybe if we deny this tower, it is going to -- maybe there is a gap here. Maybe we have to approve it. But at least it's because the tower was actually needed, that the applicant actually needed the tower. And it's really important to make applicants prove that because a lot of times, they just want to rush their tower through. And this is one thing the ordinance does, is it really puts them on notice in terms of if they are going to claim an effective prohibition, then they have to prove that they are going to -- that they actually have one.

So let's see. I'm going to move through these slides. I'm seeing -- let's see. Okay. So the next thing is the verification of compliance with radiofrequency exposure limits. And one thing that the ordinance has, it's an express prohibition against -- and there is a definition for this -- legally excessive emissions. And you know, this is by the FCC's own standards. So basically, because there isn't much FCC enforcement of its own standards,

this is where the -- this is the Town's role, where it can come in and at least make sure that the facilities are not excessively emitting radiofrequencies. And then, they also allow local authorities -- because the FCC actually has suggested -- or actually allows local authorities to enforce the exposure limits. And so the ordinance also has penalties for failure. For instance, if there's a reason to believe that a facility is operating or is excessive, there's penalties for failure to submit requested, you know, radiofrequency reports. And then, there is a potential, too, to revoke the permit if the operator is not correcting the situation. And then, there's also an addition of a testing if the Town has good cause to believe emissions exceed FCC limits. So I am looking at the time. I'm not sure if I'm going over. I've got a couple more slides to go over, so I hope I haven't gone over too much.

But the last additions that we did were maintenance and consultant review. And one thing we did was, we require a decommissioning and reclamation plan for any kind of facilities or towers that the permit carriers, they're not going to use anymore. They don't need them anymore. Well, they have to have a plan. How are they going to remove them? Because otherwise, the Town risks having facilities that are abandoned. And then, they're just littering the landscape. And the Town doesn't want that. One thing that we require is a maintenance bond. And that is to ensure that tower operators maintain the facilities, the equipment, and the landscaping. And then, you know, the failure to maintain that, the Town can call upon the bond. And the Town will need to implement procedures in terms of how to implement the bond requirement. But we added that in. That's an extra layer of protection for the Town. And then, we also require insurance. There's indemnity and liability for damages, and there's insurance that's required. And there's also required a verification of coverage. And these are the types of insurance that are required. One is general commercial liability with a two-million-dollar coverage per occurrence or four million in the aggregate. Then, there's environmental pollution insurance because radiofrequency radiation is a recognized pollutant. And the telecom industry actually does have exclusions for loss in their device protection. So there is a tacit recognition that it is a pollutant. And there's

also other insurance policies that exclude that. So that's part of that. And then, there's also umbrella coverage, is the third insurance requirement. And what these insurance requirements do is ensure that the liability belongs where it really should. It belongs to the wireless carriers. These are their facilities. And the tower operators, they're the ones that are maintaining it. Of course they are providing wireless service and providing the technology, the mobile communications technology. It's not all bad. But you know, they are profiting. And so they should have the liability for damages. It should not come out of the Town's pocket and the taxpayers' pocket.

So those we added. And we also added a new section where the Town can retain an independent consultant at the applicant's expense, and also at the landowner's expense, too, that the landowner is also liable. And that's part of it because the landowner is profiting, perhaps not as much as the applicant. But a lot of landowners like the passive income. I mean, who doesn't? I like it, too. But it should not come at the expense of neighboring properties and esthetic impacts and that kind of thing.

So the key takeaways for the ordinance are that it protects local authority, it improves permit review, and also defensibility of any decisions that -- any denials, it provides that evidence that the Town needs. It enhances public safety because there are public safety engineering certification requirements for these towers to be built safely and operate safely. And it helps with esthetics and the Town's character in terms of really keeping the unsightly towers to a minimum. Or at least if they have to be there, having proper stealth designs, concealment, paint colors, those types of things that will help it blend in a little bit. Like, personally, I'm not a big fan of the monopines or the fake nature ones. But some of the other ones might not be so bad. For instance, the flagpoles or the clock towers that conceal them so that they're at least not too unsightly. They might not be too bad. And then, it also enhances transparency. And that's for both the Town and the wire

less applicants and the residents, and accountability as well. It's important that the wireless companies are accountable for, you know, their decisions in terms of their siting and the impacts that these facilities have. And it also balances, you know -- which

is important. I mean, we do want this technology. We're not against it. You know, we want the innovation. We also want it to be efficient. We want it to be reliable, and you know -- and to be as, I would say, economically feasible or as cheap as possible, consumer-friendly. But it balances that with the community character. So those are the key takeaways. And now, I will turn it over to the Planning Commission if they have -- if you have any questions, please feel free to ask. And I will be on site to answer. And if so, those are my closing thoughts.

KOVACEVIC: Okay.

SHINMOTO: Do I keep this up, or should I stop the screenshare?

KOVACEVIC: I think you can keep it up for now.

SHINMOTO: Okay. I'll keep it up.

KOVACEVIC: Commissioners?

Go ahead. Commissioner Gray?

GRAY: Vanessa, thank you for the overview of both chapters. Very, very informative, and offered some clarity that's maybe not been there for some of us, especially me, over the past couple of years that this has been in deliberation. I had just one structural question, just so I can have it answered.

SHINMOTO: Um-hum. Sure.

GRAY: I can't tell you exactly the impetus for it, but we had charetted over the course of time here the idea of comingling Chapters 16 and 17 together.

SHINMOTO: Um-hum.

GRAY: You've chosen the bifurcation of them still. And I was just curious. I think it's fine based on how you walked through that. But I was curious what your thoughts or rationale are on keeping those as separate chapters?

SHINMOTO: You know, that's a really great question. I mean, frankly, I'm going to say that my preference would have been to collapse them into one. I do wonder -- I would have to take a closer look at the Arizona right of way. I still think that it could be a permitting. It's just that it would still be mandated. So that may be an option. I think that when the Town -- to put it in streets and sidewalks, it was really the recognition

that most of the small wireless facilities are in the rights of way. And because of that, that's where the Arizona law tends to be very stringent. And that could have been the recognition, and that maybe that that was the Town's way of addressing that. I am very open to revising Article 16-2 or putting it in the zoning ordinance because I think that it does have a physical impact on nearby properties. And even if it is in the rights of ways, I don't see any reason for keeping it in streets and sidewalks. And if the Planning and Zoning Commission wanted to have more authority over these, then my answer would be to have them combined or put Article 16-2 in the zoning ordinance.

GRAY: Okay.

Can I keep asking, Chair?

KOVACEVIC: Yes, please.

GRAY: A couple other questions. I guess one more kind of macro, and then some specifics.

SHINMOTO: Um-hum.

GRAY: Another question that you answered for me in particular was, there is a difference in mobile voice versus data.

SHINMOTO: Absolutely. Um-hum.

GRAY: And I'm going to show some naivete here. But through your presentation, everything to me is geared towards that mobile voice application.

SHINMOTO: Um-hum.

GRAY: I'm curious. Most of our -- again, our deliberation over time here has probably been more with reservations about data --

SHINMOTO: Um-hum.

GRAY: -- and the breadth and the speed and the power of data.

SHINMOTO: Um-hum.

GRAY: How do these chapters then apply in that data realm?

SHINMOTO: So basically, the federal preemption doesn't apply to data because under the regulatory scheme, data and the internet -- for instance, internet broadband, it's classified as an information service. Now, I'm going to take a closer look at -- there is

Section 47 253. But I still think that's telecommunications and not data. And so really, one thing where this fits is to ensure that the tower is for voice. Of course, I think that there is an overlap with data, and that it can provide both. And so one thing I will say, that if a provider is going to provide both voice and data, that then it can be subject to the federal preemption. But we did have a case in the Ninth Circuit where the tower applicant was providing fixed broadband wireless services, not personal voice services. And we were able to get the tower denied because the federal preemption didn't apply to that particular tower.

GRAY: So then, is there a third lane to this in your mind where you're writing language around the data component, and then allowing for some cross-reference comingling of the two?

SHINMOTO: Yes. I would say that that is the approach that we're taking. I mean, what we're trying to address, at least with the ordinances head-on, is to really -- is to address the federal preemption for the personal wireless service because that's really where local authority becomes limited.

GRAY: Okay.

SHINMOTO: But I imagine that there are -- and one thing that we are keeping in mind is that, you know, the FCC is very much on a track to eliminate what it deems regulatory barriers. And so there isn't -- I mean, I'm fairly certain that at some point, there is going to be proposals to mingle these two or to apply a federal preemption to the data.

GRAY: Okay. Two more if you don't mind?

SHINMOTO: No, of course. Of course.

GRAY: You referenced -- in different words, but you referenced diminutive valuation in regard to 17. Is that also applicable with 16 and small cell even given the further extended, you know, by right --

SHINMOTO: Um-hum.

GRAY: -- that comes with small cell placement? Is there still a diminutive valuation component to a jurisdiction evaluating placement even with the constraints that are imposed?

SHINMOTO: So basically, the thing about it is that Arizona mandates it. So there isn't really -- the Town won't have the, you know, the right to review it on the property value impacts. But the Town can still suggest alternatives, so. But that is a big problem that the Arizona preemption made it difficult to draft, you know, Section 16-2 for the small wireless facilities because of the mandated. But having said that -- and this is -- you know, I spoke with both Director Wesley and Councilman Watts about this, that this really is something that needs to be taken up at the Arizona legislative level in terms of addressing this problem because unfortunately, as it stands, the property value impact, it's not germane. The Town still has to approve it even if it's going to impact property values. And so that is a big problem with the small wireless facilities ordinance.

GRAY: But we are asserting with the language that the Town, I'll say, has a heavy hand in being able to push a tower -- like, to push a tower to a boundary property line versus placing it directly in front of a residence or something like that. There is some -- we're at least asserting some control of the Town to govern placement where the provider can't --

SHINMOTO: Absolutely.

GRAY: -- just have unilateral.

SHINMOTO: Yeah. Exactly. Well, and they don't have unilateral rights to put it wherever they want them. You know, they may act like they do, but they don't.

GRAY: Okay. And then, last one if you don't mind. You referenced in relation to 17 again fire protection planning and so on and so forth. Do we have an ability to take that a little bit further in definition, maybe both in 16 and 17 --

SHINMOTO: Um-hum.

GRAY: -- and place requirements like iron phosphate batteries instead of lithium ion, for example, or to force compliance with NFPA 70. Can we get a little more prescriptive to where you take some of that ambiguity and some of that, you know, lowest first capital dollar option off the table for a provider?

SHINMOTO: Um-hum. I believe so. I mean, I would have to delve into it a little bit deeper. But I don't see why not. I mean, especially if there is a legitimate basis. There

is a wild urban fire -- you know, that interface that -- so I don't see why not. Because just because it's the cheapest version doesn't necessarily mean that it's safest. And if a certain type of battery would be more compliant with, you know, the international fire code or, like, you know, building codes or those types of things, I don't see why not. I would have to delve a little bit more into it. But I do think that it's critical that with respect to the fire, that it should be as safe as possible because fire just has a way of taking over everything. And really -- you know, it really is a public safety threat. And I don't think right now as it stands, there is enough appreciation on the part of the wireless providers to really appreciate that threat.

GRAY: Yeah. And in application there, we're just saying, you know, if a provider is going to, you know, have their way, they're going to go, you know, a lowest capital dollar installation.

SHINMOTO: Um-hum.

GRAY: In terms of battery selections, I would go lead acid, lithium ion, and then iron phosphate.

SHINMOTO: Okay.

GRAY: But in terms of fire prevention and protection, they go in an inverse order. So I think to the extent, you know, those sorts of things could be layered in, it would be great. And I apologize. I'm going to ask you one more.

SHINMOTO: Oh, no. Of course.

GRAY: So again, given all the preemption with the small cell, have you ever seen a municipality or jurisdiction require additional improvements that come along with that almost in a development agreement-type manner; where for simplicity's sake, I'm going to place a tower in the right of way on any given street, the City comes in and says, sure, you can place the tower because, you know, you have rights to place that tower, but we're going to require these other two or three improvements to come along with it?

SHINMOTO: Um-hum. Well, we have seen that. And some of the improvements are mandated by, like, say for instance, the county code. You know, one case that we were dealing with in the Washington State area that the tower would require -- it was a gravel

road. And installing the tower will require the road to be widened from -- right now, I believe it's about ten feet across, and it's not even paved. Parts of it are paved, but it's going to have to be widened to 20 feet. And then, it's going to have to be paved with asphalt because as it stands, that road will not bear the heavy equipment. So I guess the short answer to your question is yes. The Town can impose certain conditions. And as long as those conditions are justifiable -- and it's not just safety conditions. It can also be esthetic conditions. So for instance, maybe there's some unsightly retaining wall next to a proposed small wireless facility that the Town -- I think if it's related enough, the Town could say, well, I mean, if the wireless applicant is going to use it in some way -- like, put the equipment against it or something -- that the Town could require that as a condition. Okay. We'll fix this retaining wall, like, paint it, make it look better. So I would say that -- I would say yes, that those improvements can be required.

GRAY: Okay. Thank you very much.

Chair, I yield back.

KOVACEVIC: Thank you, Commissioner Gray.

Commissioners?

Commissioner Corrigan?

CORRIGAN: Vanessa, thank you for comprehensive and specific outline of what you've prepared here and the following legal documents which I didn't delve into. But one of the questions I have is, we have an ongoing discussion here in town. And it applies to underground utilities.

SHINMOTO: Um-hum.

CORRIGAN: And so our preference -- because we're a Dark Sky community and we'll have that prominence especially in January when the Dark Sky Discovery Center opens up. As you mentioned, that's one of our -- not only significant to business, but also to our identity in Arizona. So that's a specific, I would think, requirement for us that all utilities be underground, including -- and I may be going beyond my scope here, but 16, small cell, could we kind of wrap that around a requirement for everything to be underground to the greatest extent possible?

SHINMOTO: That's a difficult question because that might have to do with a fact-based determination on whether it's going to be technically feasible. Now, my understanding of the technology, at least for the radiofrequencies, is that they do require a certain level of height and a clear line of sight. So I'm not exactly -- wondering, I'm not sure how far underground they could be. I mean, I wonder if there may be some new technologies that could do that. But I do believe at least the antenna portion would need to be a certain level above-grade. And that would be difficult. But the rest of the accessory equipment, you know, the meters, those types of things, I believe those things can be underground. And that is -- at least in Chapter 17, that's the requirement. And I think we did -- we may have added that requirement in Article 16-2.

CORRIGAN: And I probably wasn't specific enough. What I had in mind was, you know, instead of having a number of towers that would be used for broadband and data and so on and so forth -- fiber optics specifically, which would be underground --

SHINMOTO: Oh.

CORRIGAN: -- with the other utilities --

SHINMOTO: Yeah.

CORRIGAN: -- for you know, television; in other words, cable, and you know, gas. There's a limited amount of gas supply around here, but electric and so on.

SHINMOTO: So what you're saying is that you would want most of it to be, like, fiber-connected because fiber is a superior technology to wireless. It's a lot secure. It's faster. It's more reliable. And it's also -- yeah. And it also takes away the unsightliness of the, you know, the wireless facilities that are required, or at least minimizes it to an extent possible. So is that what you're referring to, the fiber optic networks?

CORRIGAN: Right. And I'm thinking, could we craft that into the ordinance? Would that be something that we could do legally?

SHINMOTO: So I'm hesitant to answer that. My sense is that it might be a little bit too far because that could potentially be a barrier to deployment. I would have to look into it more in terms of what the fiber is. Really, I will say -- I would say the preference seems to be that they're just very gung ho about wireless. I think it's more because it's

cheaper and fiber lasts a lot longer. I mean, the initial outlay is more expensive. But then it's --

CORRIGAN: Um-hum.

SHINMOTO: -- 50-year shelf life as opposed to, say, I think I believe it's 5 years. So you know, I would have to take a look. My sense is that it might function as an effective prohibition or it might -- it may, you know, present a substantive barrier. But I would have to actually consult with, you know, Attorney McCollough and, like -- and get a better answer to that. But I do think that that is something that the Town should consider.

CORRIGAN: Okay. Great. Thank you.

KOVACEVIC: Thank you. All right. I'll take a turn. My strategy in going through this over the last four years, whatever it's been, is to look at ordinances all over the country and come up with provisions that they had.

SHINMOTO: Um-hum.

KOVACEVIC: And what you've given us is wonderful. It incorporated most of what I had asked for in the course of going through these. I do want to go through a couple more things, though. It's small potatoes compared the things you've put together. But one ordinance that I had reviewed and had mentioned before said no RF emissions below eight and a half feet above grade. And for the small cell, that sounds like it would be important that you wouldn't want the RF emissions being emitted at head height.

SHINMOTO: Um-hum.

KOVACEVIC: So I'm mentioning that to see if there's room for that, and if that's something that wouldn't be too objectionable.

SHINMOTO: I don't think it would be objectionable. I mean, I think the more protections against RF, the better, and as long as it's not running into federal law and if this ordinance is currently existing now. Having said that, I will say that perhaps the reason that ordinance exists -- there is the possibility that it hasn't been challenged, maybe because the wireless carriers don't see a profit in that particular jurisdiction. And so they haven't challenged it. So that's something to keep in mind. But I mean, we

would be more than happy to add as much protections as we can, you know, for the radiofrequency emissions.

KOVACEVIC: Thank you. Another one, when we reviewed these ordinances earlier, towers were allowed within 100 feet of vacant and unplatted residential land. And I think the ordinance has been silent to that.

SHINMOTO: Um-hum.

KOVACEVIC: And my preference would be that if it's residential land, it should still have the 500-foot setback requirement.

SHINMOTO: Um-hum.

KOVACEVIC: But I think the ordinance -- do you recall, is the ordinance silent?

SHINMOTO: You know, I believe it is silent on that. I can probably take a quick look about -- and this is Chapter 17, correct?

KOVACEVIC: Yeah. That would be Chapter 17. I'm going to go back and forth just because I have these in --

SHINMOTO: Okay. No. No problem. I think it is silent. It may be that -- I think mostly, it's really -- the setback applies to the residential districts and not the unplatted.

KOVACEVIC: All right.

SHINMOTO: But I do understand that there is an area in town that is slated for residential development. I wonder if that's the one that you're referring to.

KOVACEVIC: Well, Director Wesley came up to the mic. So he has something to say to us.

SHINMOTO: Okay.

WESLEY: Okay. So Chair, it is in -- go back here to find the start of which -- I think it's 17.04. Yeah, 17.03 is where it's at, B(2)(a) romanette ii. So I'm on page 25. So it is 500 feet from any residentially zoned or used land.

KOVACEVIC: Okay.

WESLEY: So as long as it's zoned residential, whether it's platted or not, it's 500-foot separation.

KOVACEVIC: Perfect.

WESLEY: Okay.

KOVACEVIC: Okay. Thank you.

SHINMOTO: Thank you.

KOVACEVIC: That solves that. One of the other things I asked for; new developments over some number of acres. And I suggested 50, but 100 would -- but new development over some number of acres should provide for a tower location. Is that something in the -- I didn't see that in the ordinance either. Is that something we could consider?

SHINMOTO: No. I suppose you could consider it. So what you're saying is that you would want a tower with a new development just to ensure coverage, or is --

KOVACEVIC: Yeah.

SHINMOTO: -- that what you're saying?

KOVACEVIC: Yes.

SHINMOTO: That is fine. I mean, if that's something -- I mean, what I would say is that again, like, there can be exceptions. The Town can grant exceptions to that. So if, say, you wanted a tower in a particular spot, that could be something that could be added to the ordinance.

KOVACEVIC: Okay. And. 17.04 talks about utility service antennas, and that those can be approved administrative approval. But that's not wireless facilities, correct? That's something completely different than wireless facilities?

SHINMOTO: Yeah. That's something different. Um-hum. Yeah. Those are for -- those are basically for utilities because those also use radiofrequency radiation to communicate. But that's for the utility company.

KOVACEVIC: So wireless antennas are not utility service antennas, and utility service antennas are not wireless antennas?

SHINMOTO: Right.

KOVACEVIC: Okay. Phoenix has a 25-foot door setback rule for small cell facilities --

SHINMOTO: Um-hum.

KOVACEVIC: -- and 10 foot at the right of way across from a door. Is that something we want to put into the code, or --

SHINMOTO: Now, you say door, like an entryway to a building? Is that what Phoenix has?

KOVACEVIC: Yes, exactly. So you know, in the downtown area, if there's wireless facility on a light pole or something, it can't -- or they want to put a light pole or something, it can't be directly across from the door to a facility. It can't be within 25 feet of the doorway.

SHINMOTO: Um-hum.

KOVACEVIC: And it has to be at least ten feet to one side or the other of the doorway in the right of way.

SHINMOTO: Okay. I mean, there's no reason, if that's something that the Town wanted to do is to, you know, model it after Phoenix and put it, like, in front of the door, that that's something that could be done for the small wireless facilities if that was something that suited the Town's needs.

KOVACEVIC: I mean, I would think, again -- I mean, we want them out of the way.

SHINMOTO: Well, that's what I would think, too, in terms of impeding the flow of traffic or just the flow of pedestrians moving in and out of the building.

KOVACEVIC: Right. And then, when we last -- with the last meeting that we had on this, the agreement between wireless carriers and the Town had a 20-page list of terms and conditions.

SHINMOTO: Um-hum.

KOVACEVIC: And I'm wondering if that's part of your scope, and if you're going through that list of terms and conditions in the contract between the Town and the wireless carriers.

SHINMOTO: I had gone through it when I drafted Article 16-2. And really, there weren't a lot of inconsistencies. It was pretty consistent with my draft. One thing that was interesting is that the Town's, you know, terms and conditions -- standard terms and conditions, the insurance requirements were more stringent. So I ended up adding the more stringent insurance requirements to the Small Wireless Facilities Ordinance.

KOVACEVIC: Okay. And those are my questions and comments. Anybody else? Oh,

Commissioner Sveum.

SVEUM: Vanessa, thank you for the presentation. And John, great work on all of this. And Rick Watts. Someone like myself can even understand some of these things. But my question centers around the esthetics.

SHINMOTO: Um-hum.

SVEUM: And it's fairly generic or very general on what the submission should provide; monopolms or flagpoles. I mean, John, how are you -- I guess maybe, John, how are you going to address someone that brings in -- John, how are you going to address someone that brings in an application with -- what are you going to be asking for from an esthetic standpoint, or should there be more specificity on what the applicant should be expecting to present?

SHINMOTO: Well, what I would say -- and this is what I would speak to -- is that esthetic requirements -- I mean, there is a subjective element to them in terms of, you know, how everybody perceives them differently. Like, one person might find, you know, it not to look so bad, say for instance. And then, other people might say it is. You know, one thing to keep in mind is that the Ninth Circuit rejected because the FCC had a proposal in 2018 to force all municipalities to require quote/unquote, "objective design standards" and to take away any kind of subjective consideration of the facilities. And in the City of Portland -- and this decision was handed down in 2020 -- the Ninth Circuit Court of Appeals struck that down. So basically, because there is a subjective element to it, and there is a harm that even if it's not tangible necessarily, just really there's sort of what I would call a demoralizing character. Sometimes when you walk, you know, with an area that's ugly, and the facilities, you know, they add to that. And the Town has an interest in protecting, you know, its scenic character. So you know, those are the things that I would say are open to debate, where I think what applicants should expect -- and I think the ordinance provides that is that, you know, that's part of the visual impact analysis that they have to provide. So they need to provide, you know, drawings of the -- site drawings, site surveys, photo simulations, you know, design plans, those types of things that you can take them and you look at them as a whole -- as a

gestalt -- and make that determination. And yes, there may be some back and forth between that. And that's, you know, entirely up to the Town. But I don't think that it's -- it would be too difficult for applicants -- at least they understand that they do have to provide some sort of visual impact analysis. They have to show, like, here's how it's going to potentially look. So I don't really see that as a problem per se. Like, I think it's okay that it's somewhat subjective. And I know that it's one of those slippery definitions because there is that element of subjectivity to it.

WESLEY: So Chair Commissioner, I'm in full agreement with what Vanessa said. She said it much better than I think I would have. There are a lot of different circumstances and conditions that a tower may be in, whether it's something downtown in a more urban area, off next to an open space. And if we try to get too prescriptive in the ordinance about what, you know, that design should be, might build ourselves a box that we really don't want to be in. So by having the goals or after, and then getting the visual preferences shown and simulation shown, that'll help us look at each individual case and determine what the best fit is for a given location.

SVEUM: Well, I guess my point is then, maybe neither of these ideas should be put out there.

WESLEY: That's a possibility.

SVEUM: We turned one down up by the church on Fountain Hills Boulevard -- it was the palm tree --

WESLEY: Right.

SVEUM: -- replica -- for good reason. And why even suggest something like that that could possibly be approved? So I think you're better off not mentioning anything that would possibly be approved as far as from a design purpose.

WESLEY: Okay. We can look at modification.

SHINMOTO: Yeah. We could reevaluate that provision. It sounds like what you're saying is that you want to eliminate that whole stealth definition. Is that what I'm -- that's what I'm hearing. I don't know. But that is something that we could take into consideration. Our perspective is that those definitions enhance the protectiveness of

the ordinance in terms of at least requiring applicants to consider some esthetic mitigation. Now, granted, I will say personally, they're usually not great.

WESLEY: So I guess, what I think maybe part of what I heard, Commissioner, was if we know we really don't like the faux palms, then why put that in there as an example?

SVEUM: Correct.

WESLEY: Okay.

SVEUM: Yeah.

WESLEY: So if we -- yeah.

SVEUM: Let's Just lead them to -- maybe introduce that.

SHINMOTO: Oh. I see.

SVEUM: And they look worse than --

SHINMOTO: Oh. Yeah. We can --

SVEUM: -- just a single pole.

WESLEY: Right. Right. So if we had some --

SHINMOTO: Yeah. No. We could take that out. We could --

WESLEY: Yeah. So if as you commissioners continue discussion -- okay. We're not taking any votes. We're not taking any official action. But if we can kind of hear a consensus -- and I've got a couple of things I may ask about in a minute -- hear a consensus about something like that, then that gives us some idea that, yes, we ought to change it. But if it's -- you know, if we're not hearing anybody else have that type of idea, then, you know, maybe leave it as it is for now.

GRAY: But I think you want language that says it's going to communicate with the adjacent environment. Right? You want something that's complimentary, not something that's a exact application of a 400-foot palm tree. I mean, that's kind of what that flagpole was, right, on Fountain Hills Boulevard. It was a 150-foot palm tree.

SVEUM: We don't want the industrial --

GRAY: Yeah. But I think as long as you say, you know, something that communicates and interfaces with the adjacent environment, and it's proportionately in line, then --

SVEUM: It's -- specifically that last sentence in that particular paragraph, 17.03(3)(d)

just removing that last sentence, just not even talk about specifics.

SHINMOTO: Yeah. We could do that.

GRAY: Can you read the sentence, Phil?

KOVACEVIC: Concealment elements such as monopoles or flagpoles should be utilized to camouflage the pole and antennas.

GRAY: Yeah. I see why Phil doesn't like that.

KOVACEVIC: Um-hum.

SHINMOTO: Right. Yeah, we could absolutely remove that. I mean, I would say, you know, that's just a strikeout for sure.

GRAY: Yeah. Just change it to "disguised" to --

SVEUM: Yeah. Stop at the sentence.

GRAY: Yeah.

KOVACEVIC: Yeah.

SVEUM: Stop at the sentence beforehand.

KOVACEVIC: Commissioner Gray?

GRAY: I know it's dangerous to challenge the Chair and the Councilman-elect. But I want to revisit the offsetting separations from the Phoenix ordinance. And my challenge to that is -- it's kind of in the same way that Phil just highlighted with the aesthetics -- I think if we say a ten-foot offset, we're now saying, you can place that small-cell pole ten-foot offset from Phil's front door. Whereas I think the language -- not having that in there allows staff the ability to push it all the way to a lateral property line, you know, much further away. So if we're going to do it, let's put a bigger separation distance in there or let's say, you know, should be placed at the intersection of property lines -- adjacent property lines versus saying ten-feet offset from a front door. I don't know if I said -- I did not say that well. But I think once it's in there, then you're saying, hey, this is an appropriate placement. I don't know that we want to do that.

KOVACEVIC: And I'm okay with that. My point was that Phoenix addresses not blocking doorways and not -- you know, keeping them out of the way. And I think that is

something that we would want to address.

SHINMOTO: What I would say, though, is that that could be part of the -- you know, the flow of pedestrian traffic. I mean, that is a basis under Arizona law to deny a permit, is that if it impedes the flow of traffic, then that's something that could be considered. So I mean, I wonder if it might be better to -- I would agree with Commissioner Gray, maybe just not have that language in there, just that that could be a case-by-case determination.

KOVACEVIC: Okay.

SHINMOTO: But again, this is all -- this is completely up to the Town.

GRAY: And then, one more, Chair and Vanessa, if you don't mind. Commissioner Corrigan started down a path. And I wanted to maybe take it one step further.

SHINMOTO: Um-hum.

GRAY: He was talking about underground utilities, and you know, strengthening the language to say, you know, utilities coming to and from one of these sites would need to be underground. As we, you know, extrapolate that, what if you take that same application and apply it to the bifurcation of telecom versus data? And the way that the -- the way that the -- I'm going to paraphrase here, but the way that the ordinance is basically written today is it says, all utilities that can be provided underground should be provided underground. And so if we're afforded this bifurcation of voice versus data --

SHINMOTO: Um-hum.

GRAY: -- can that application be -- can that discriminator be to say that if you're applying for a small-cell data tower, that that data can also be -- that same service at that same level or better can be provided via subterranean fiber? Is that a viable discriminator to allowing that application by right for a data small cell?

SHINMOTO: I believe so. Again, I would have to take a very close look at that, the data. But it is -- given that it is under a different regulatory scheme, that that could be something that the Town could leverage to keep as many things underground as possible.

GRAY: Thank you, Vanessa.

KOVACEVIC: Okay. Anybody else? Director Wesley?

WESLEY: Yes. Commissioners, first of all, I want to myself thank Vanessa and Scott for their help in getting us this far. We've done a lot of good work here that I think we'll be able to take forward on to the public hearings. And so we heard some things this evening that we will work on, and making some modifications to the ordinances as they have been drafted. Our plan at this point is to come back to the Planning and Zoning Commission in September with a public hearing on Chapter 17 because that's the chapter the ordinance is that is within your purview, then, to review and make a recommendation on to Town Council. Based on the work we've done thus far and what the staff feels is still the best way, and also to keep this thing moving on in a timely manner, is to go ahead and still keep 16 and 17 as two separate documents. If at some point, we really find that it's not working well, we can come back and revisit the idea of bringing them together. So that's our plan is to notice Chapter 17 for public hearing in September. Again, we'll look on the modifications for both chapters. As you have commented, it has been helpful for both as we then go on to Town Council. Any questions for me about where we are or what to expect next?

SVEUM: No.

KOVACEVIC: Thank you. Vanessa.

SHINMOTO: And thank you, Commissioners. And thank you, John and the Town for the opportunity to draft and present these ordinances. I'm very excited the Town is moving forward on at least Chapter 17. So it's really exciting. So thank you.

KOVACEVIC: And Commissioner Gray, did you have something else to say?

GRAY: No. I was just going to say the same thing. Really, really appreciate the effort and the overview at a level that we could all comprehend this today. We've really struggled with that over time. So really appreciative.

SHINMOTO: Thank you.

KOVACEVIC: We're adjourned.

Thanks, Vanessa.

Having no further business, Chair Kovacevic adjourned the Work Session Meeting of the Planning and Zoning Commission held on July 28, 2026, at 7:40 p.m.

TOWN OF FOUNTAIN HILLS

Dan Kovacevic, Chairperson

ATTEST AND PREPARED BY:

Paula Fisher, Executive Assistant

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Session Meeting held by the Planning & Zoning Commission of Fountain Hills in the Town Hall Council Chambers on the 28th of July 2026. I further certify that the meeting was duly called and that a quorum was present.

DATED this 14th Day of September 2026.

Paula Fisher, Executive Assistant





TOWN OF FOUNTAIN HILLS

STAFF REPORT

Meeting Date: 9/14/2026
Meeting Type: Planning and Zoning Commission Regular Meeting
Submitting Department: Development Services
Prepared by: John Wesley, Development Services Director
Staff Contact Information: Phone: 480-816-5138
Email: jwesley@fountainhillsaz.gov

Request to Town Council Regular Meeting (Agenda Language)

PUBLIC HEARING, with CONSIDERATION AND POSSIBLE ACTION: Relating to Ordinance 26-12 repealing and replacing Zoning Ordinance Chapter 17, Wireless Telecommunication Towers and Antennas.

Staff Summary (background)

Staff and the Commission began work to revise Zoning Ordinance Chapter 17 at the regular meeting in March 2025. Over the next couple of months, the Commission reviewed the existing zoning ordinance and the draft ordinance provided by Mr. Campanelli for modification of Chapter 17 of the Zoning Ordinance. Given the legal and technical requirements involved in this ordinance, work was delayed until a decision was made to hire a consultant to help address all the ordinances and issues related to wireless telecommunications.

To help complete this project, with direction from the Town Council, staff entered into a contract with McCollough Law Firm PC to assist staff in the drafting of the updates to the ordinances and associated documents. This firm was selected based on their expertise in this field of law and their responsiveness to working with staff to complete this project in a timely manner.

Over the last several months, the consultant and staff have worked to revise Chapter 17 to provide the maximum protection for the town while also complying with legal requirements and providing reasonable means to have adequate wireless communication coverage throughout the Town. A work session was held on July 28, 2026, during which the consultant reviewed the draft revised ordinance with the Commission. Commissioners asked questions and requested a few changes be made to the draft ordinance. Those comments have been considered by the consultant and staff and resulted in several changes to the draft ordinance.

On Monday, August 31, 2026, staff received an email from a citizen, Lori Troller, listing 19 comments and suggestions she had for items to be included in either the update to Chapter 17 or to the small wireless facilities ordinance, or both. A copy of her email is attached. The consultant has been able to review those comments and suggestions and incorporate revisions into the ordinance to address most of them.

Attached are two copies of the final draft ordinance. One is a version of Chapter 17 as presented to the Commission at the July work session with all the changes presented at that time accepted and red lines showing the changes made based on the comments received. The second version is a clean copy of the ordinance with all the new changes accepted. Also

attached is a copy of the strikethrough version of the draft ordinance presented at the July work session. Finally, a copy of the email from Ms. Troller is attached.

This report provides an overview of the new ordinance, including changes made based on the discussion at the Commission work session and comments received from the public.

Section 17.01 Purpose, Intent, and Applicability

The list of purposes for the ordinance has been expanded to a more comprehensive description of the goals for the ordinance. The intent provisions have been expanded to more fully capture the intent to comply with Federal Communication Commission rules. A statement regarding the intent to protect Sonoran Desert tortoises was added. The applicability section now has a statement that clearly requires existing towers and antennas to comply with the new regulations when they are modified in any manner.

Section 17.02 Definitions

The definitions section has been greatly expanded to ensure a clear understanding of the terms used in the ordinance.

In response to the request to call out OET Bulletin 65, the consultant noted this bulletin is no longer binding. Instead, the definition of "General population/uncontrolled exposure limits" was expanded to add the current standard from the FCC Office of Engineering and Technology Laboratory Division's advisory Knowledge Database.

One change has been included as a result of the discussion by the Commission at the work session. There was a request to mandate iron phosphate batteries for fire safety. The change has been made in Sec. 7.03 C 4 and will be discussed below. Adding this language, however, prompted a need to add a definition for "thermal runaway."

The added definition is: "Thermal runaway" means self-heating of an electrochemical system in an uncontrollable fashion.

Section 17.03 Requirements

Section 17.03 A, General Requirements, has remained largely unchanged. There are a few changes from the draft presented at the work session addressing comments which were made. Those include:

- Section 17.03 A 3 e i. Removed the language regarding certain types of designs that could be used to camouflage a tower and antennas. The concern was that by stating specific types of camouflage, applicants would design to those choices rather than provide a more site-specific solution.
- Section 17.03 A 3 h i. Removed the last sentence regarding using additional palm trees to help screen a tower. This was removed as a companion to the change in A 3 e i regarding specific design solutions. Additional trees may still be required, but it is not limited to palm trees.
- To address the topic of facilities that are data only, added Section 17.03 A 3. j.

Data-Only and Information Service Facilities. To the maximum extent permitted by federal and state law, any wireless facility used exclusively for the provision of an information service, data collection, telemetry, machine-to-machine communication, sensing, monitoring, or another service that does not constitute a personal wireless service under 47 U.S.C. ss 332(c)(7)(C) or a telecommunications service protected by 47 U.S.C. ss

253 shall be installed underground or flush with grad, including its antenna, antenna equipment and accessory equipment, where technically feasible. An applicant seeking above-ground installation shall demonstrate through clear and convincing technical evidence that underground or flush-to-grade installation would prevent the facility from performing its intended function and that the proposed above-ground installation is the least visually intrusive technically feasible alternative.

Nothing in this subsection shall require underground placement to the extent the applicant demonstrates that such requirement is expressly prohibited or preempted by applicable federal or Arizona law.

- To address the topic of ensuring the antenna are not too close to people on the ground in the vicinity of the tower, added Section 17.03 A 15. *Minimum Height of Antennas*. All antennas shall be located such that:
 - a. Any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half (8.5) feet below the transmitting surface; and,
 - b. No person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.
- Added Section 17.03 A 16. Fall Zone. Each new tower shall maintain a fall zone having a radius of not less than one hundred twenty-five percent (125%) of the total height of the tower, measured from the base of the tower. The fall zone of any tower, pole shall not overlap, in whole or in part, any portion of a public sidewalk, street, alley, right-of-way, or occupied building.

A couple of significant changes were made to Section 17.03 B Minimum Setbacks and Separations.

- Section 17.03 B 1 a was modified to remove a statement that referred to separation distances that were in a former table included in the ordinance. Given the change to require all towers to be at least 500' from any residential zone or use rather than the variety of separation options that were included in Table 1, the remainder of the statement in Sec. 17.03 B 1 a was no longer relevant or needed.

A sentence was added to this provision clarifying that for towers using guy wires, the separation distance is measured from the anchor point of the guy wires.

- Section 17.03 B 2 a regarding setbacks and separations was modified significantly to increase the separation requirement from towers to residential properties. The existing ordinance could allow towers within 100 feet of multifamily developments. The new ordinance requires all towers to be at least 500 feet from any residential use or zoning district. There is a provision, however, that the Town Council a reduction down to 300 feet if the applicant provides information and data showing the goals of the ordinance are better served at the reduced distance.
- Section 17.03 B 2 b also includes a table for separation distances between towers.

Table 17.03 B was amended to increase the separation distance by 500' for most tower heights. The separation distance between towers less than 40' in height was just increased 250'.

At the work session several Commissioners expressed support to require a specific type of battery to decrease potential fires hazards. This language was added in Section 17.03 C:

4. *Battery Safety.* Any battery energy storage or backup power system installed in connection with a PSWF shall utilize lithium ion phosphate (LiFePO₄ or LPE) batteries, which are less prone to thermal runaway and fire hazard. All battery systems shall comply with applicable fire, electrical, building, and product-safety codes and standards.

Section 17.03 D, Co-location, has remained largely unchanged.

Section 17.04 Application Types

This section was modified to require all new towers to go through a public review process.

Another change was to add minimal submittal requirements for temporary wireless facilities in Section 17.04 A 6.

Section 17.05 Application Submittal, Review, and Processing

In the ordinance reviewed by the Commission at the work session, Section 17.05 A regarding general application requirements had been significantly modified to increase the General submission requirements. Items 5 - 18, which include things such as fire safety information, visual impact analysis, FCC compliance report, and effective prohibition claims, were all added to the items required. Those have remained largely the same with a few additions being made.

17.05 A 11 was amended to provide more specificity to the requirement for balloon tests regarding the date and time these can occur.

17.05 A 16 b i (a) was amended to require the exact time of day when a drive test was completed. 17.05 A 16 b ii and iii was amended to add additional equipment used and activities occurring during a drive test.

17.05 A 20 was amended to add a new k requiring in more detail a biological resource survey addressing impacts on locally present protected species, to include Sonoran Desert Tortoises.

Section 17.05 B regarding shot clocks and tolling has remained largely unchanged.

Section 17.05 C has not changed. In the previous review at the work session it was noted this section regarding review and processing of applications has been modified to increase the items considered for review. Subsections C 1 h - l are all new. Subsection C 3 regarding review and processing of public review applications was also significantly expanded regarding factual determinations which need to be made.

Section 17.06 Maintenance and Operation

At the work session it was pointed out that Section 17.06 A regarding removal of abandoned antennas has been expanded to require a bond for the cost of removal and Section 17.06 B regarding state and federal requirements has been greatly expanded to address excessive RF

emissions.

Changes made since the work session include

- Section 17.06 F has been added in response to comments about ensuring ongoing maintenance. This will ensure we have a contact for any required maintenance issues.
- A paragraph was added to the end of Section 17.05 H regarding certificates of insurance specifying the quality of the insurance being provided.

Section 17.07 Nonconforming Uses

This section remains largely unchanged.

Section 17.08 Retention of Consultants

This is a new section which provides the process for the Town hiring consultants to help administer the requirements of the ordinance.

One of the requested additions made by the Commission was to include a requirement that subdivisions over a specified size be required to provide a location for a cell tower. After consideration of where such a provision would go, it was determined that the best place is in the Subdivision Ordinance. The Commission does not provide the Council with recommendations on changes to the Subdivision Ordinance. The language proposed that will be submitted to the Council for approval is in Section 3.03, Subdivision Design Standards. A subsection 10 is added which states:

10. Wireless Communications Facility Planning for Large Developments. For any subdivision containing fifty (50) gross acres or more, the preliminary plat shall identify and propose to preserve at least one location within the subdivision that will be suitable for the potential future installation of a wireless communications tower and associated facilities in accordance with Chapter 17 of the Zoning Ordinance. In selecting such location(s), the subdivider shall prioritize locations that maximize separation from residential lots and other sensitive land uses, minimize visual and aesthetic impacts, utilize existing topography and vegetation for screening, provide suitable access and utility service, and minimize the need for the future siting of wireless communications towers within or immediately adjacent to residential areas. Identification of a location pursuant to this subsection does not constitute approval of a wireless communications facility at that location, and any future facility shall obtain all approvals otherwise required by the Town Code, Zoning Ordinance, and all approvals otherwise required by federal and Arizona law.

One of the comments from Ms. Troller is the need to update our application process to reflect the new ordinance requirements. That will be done following Commission action when we are sure any additional changes will be minimal. The new application requirement will be in place before the ordinance goes into effect.

Related Ordinance, Policy or Guiding Principle

Zoning Ordinance Chapter 17, Wireless Telecommunication Towers and Antennas

Risk Analysis

N/A

Recommendation(s) by Board(s) or Commission(s)

N/A

Staff Recommendation(s)

Staff supports a recommendation of approval to the Town Council.

Suggested Motion

MOVE TO recommend adoption of Ordinance 26-12.

ATTACHMENTS

- | |
|--|
| <ol style="list-style-type: none">1. Final draft for P&Z Hearing - showing changes from work session2. Ordinance 26-12 Chapter 173. Chapter 17 Strikethrough version from July Work Session4. Lori Troller Ordinance Points of Concern - For distribution to Planning & Zoning Commission members - John Wesley - Outlook |
|--|

Chapter 17

Wireless Telecommunications Towers and Antennas

Section 17.01 Purpose, Intent, and Applicability

A. The purpose of this chapter is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this chapter are to:

1. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
2. Employ the “General Authority” preserved to the Town under 47 U.S.C. § 332(c)(7)(A) to the greatest extent the United States Congress intended while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B).
3. Employ the authority reserved under A.R.S. §§ 9-462.01, and 9-596.A to exercise the Town’s zoning powers, land use, planning and permitting authority, exercise its police powers, and manage access to the Town’s public rights of way.
4. Promote the location of towers in nonresidential areas;
5. Limit the total number of towers throughout the community;
6. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
7. Require users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
8. Require users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and camouflaging techniques;
9. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
10. Recognize that technology and laws regarding these facilities have changed, so the Town’s regulations need to change accordingly;
11. Consider the public health and safety of communication towers; and

12. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

13. Maintain the Town's status as a designated International Dark Sky Community and an optimum environment for stargazing.

14. Conserve and enhance the unique natural beauty, irreplaceable natural resources, historical, natural, and man-made character and appearance of Fountain Park, McDowell Mountain Preserve, Pleasantville Park, and views of Red Mountain and Four Peaks.

15. Protect Saguaro cacti as a unique natural resource promoting tourism, contributing to the aesthetic well-being of the community, high property values, high quality of life, unique lifestyles, and providing habitat protection for desert wildlife. Saguaro cacti grow slowly and cannot be replaced by a plant of like character.

16. Protect the Sonoran Desert tortoise and its habitats as a unique natural resource and an important component of Town of Fountain Hills natural environment that contributes to the aesthetic, environmental, and personal well-being of the community. The Sonoran Desert tortoise is a state-protected species in Arizona and a petitioned candidate for inclusion as a federally endangered species pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544. Populations of the Sonoran Desert tortoise has been documented in the Town of Fountain Hills.

17. Protect the quiet small-town suburban, scenic and visual character of the Town.

In furtherance of these goals, Town of Fountain Hills shall give due consideration to the Town of Fountain Hills General Plan, the Town of Fountain Hills Zoning Ordinance, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

B. It is the intent of this chapter:

1. That no wireless communication towers or antenna be sited, constructed, reconstructed, installed, materially changed, expanded, or used unless in conformity with this chapter.

2. To achieve a balance between the need to provide wireless services with the health, safety, and general welfare of the residents of Fountain Hills by balancing five (5) simultaneous objectives:

a. Enabling personal wireless service providers to provide adequate personal wireless services throughout the Town so that Town residents can enjoy the benefits of same from any FCC-licensed wireless carrier from which they choose to obtain such services;

b. Minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage;

-
- c. Preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the Town's communities, residential areas, and individual homes; and
 - d. Complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B) for permit applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.
 - e. Complying with the Federal Communications Commission's (FCC) legislative rules for communications facilities including those for Radio Frequency human exposure limits in 47 C.F.R. Part 1, Subpart I and those addressing State and Local government regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities, in 47 C.F.R. Part 1, Subpart U.

This Section is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide reasonable and necessary wireless communications services; (2) prohibit or effectively prohibit any entity's ability to provide reasonable and necessary interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities solely on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply in every instance and regard with all FCC's regulations concerning such emissions; (5) prohibit any eligible facility that the Town may not deny under federal or state law; or (6) otherwise authorize the Town to violate any applicable federal or state law.

C. *Applicability.*

1. *New Towers and Antennas.* All new towers or antennas in the Town of Fountain Hills shall be subject to these regulations. The following exceptions apply:

- a. *Amateur Radio Station Operators/Receive Only Antennas.* This chapter shall not govern any tower, or the installation of any antenna, that is under the maximum building height of the zoning district in which such structure is located and which is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only operations.
- b. *Pre-existing Towers or Antennas.* Legally established pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this chapter, other than the requirements of Sections 17.06(B)(1) and 17.06(C).
- c. *AM Array.* For purposes of implementing this chapter, an AM array, consisting of one (1) or more tower units and supporting ground system which functions as one (1) AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

d. *Small Wireless Facilities.* Wireless communication towers and antenna meeting the definition of small wireless facilities as contained in A.R.S. 9-591 are subject to the requirements of Article 16-2, Small Wireless Facilities, of the Town Code.

e. *Mobile or Temporary Towers.* Mobile wireless facilities, when placed on site for seven (7) consecutive days or less, provided any necessary building permit or encroachment permit is obtained.

f. *Utility Service Antennas in the Right-of-Way.* Utility service antennas as defined in this chapter placed in the public right-of-way are subject to the requirements of Article 16-3, Utility Service Antenna, of the Town Code. (24-08, Amended, 09/04/2024, Deleted and replaced)

g. Over-the-Air-Reception Devices ("OTARD") antennas as defined by 47 C.F.R. § 1.4000(a).

2. *Existing Towers and Antennas.* Any existing towers which are modified, upgraded, or changed in any manner shall be subject to the provisions of this ordinance as applicable. All existing towers and antennas shall be subject to the maintenance and operations requirements in Sec. 17.06.

Section 17.02 Definitions

For the purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings provided in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Town Code and Zoning Ordinance, and the definitions set forth herein below shall control and apply to Chapter 17 of the Zoning Ordinance and all subparagraphs herein.

"Accessory facility or accessory structure" means a facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex or an immediately adjacent lot, including, but not limited to utility or transmission equipment storage sheds or cabinets.

"ACHP" means the Federal Advisory Council on Historic Preservation.

ADA means American Disabilities Act.

"ADEQ" means the Arizona Department of Environmental Quality.

"Adequate coverage" means, as determined by the Town Council, that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers' equipment can successfully use connect to the carrier's radio access network and achieve a received signal strength of -110 dBm or better and deliver a -90 dBm or better signal to the base station receiver (uplink) with a signal to noise ratio (SINR) of 3

dB or higher the vast majority of the time, in the vast majority of the geographic locations within the Town, that the Voice Drop Call Rate, e.g. the percentage ratio of dropped voice calls to total call attempts or successful call setups remains at or below 3%. A “gap” can exist when there is a lack of coverage or when coverage exists but quality is below the above metrics. The Town will assess whether a gap in a carrier’s personal wireless services are significant, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier’s customers are affected for only limited periods of time. A wireless carrier’s coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

For claimed capacity or quality shortfalls in an area that has coverage, the applicant must demonstrate through independently-verifiable data and analysis, including network generated recordings based on user equipment reports that users are consistently experiencing dropped voice calls (in contrast to dropped sessions involving non-voice communications) at an unacceptable level during peak periods, or user devices are consistently denied access to the network due to lack of overall capacity at peak periods.

If the applicant relies on signal strength data (whether network recorded or through drive tests) to demonstrate a lack of coverage or inadequate quality/capacity the applicant must disclose all underlying data, its thresholds for acceptable quality in such fashion that all claims and conclusions are independently verifiable.

The Town strongly encourages all applicants to use methods consistent with the FCC rules governing provider reports and mapping data in 47 C.F.R. Part 1, Subpart V (§§ 1.7000 – 1.7010).

“Alternative tower structure” means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

“Adjacent properties or properties adjacent” shall mean (i) those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a wireless facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

“Aesthetic or aesthetics” refers to subjective or objective determinations related to whether and if so, how well a facility will fit within the character of the area where the facility is proposed. This requires a broad range of factors including but not limited to visual effects and impact on property values. The Town will consider aesthetics for all applications and, where not prohibited by federal or state law, reserves the ability to impose careful placement conditions or restrictions.

“Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. This definition does not apply to antennas designed for amateur radio use or satellite dishes for residential or household purposes.

“Antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when Co-located on a PWSF Structure, is mounted or installed at the same time as such Antenna.

“Antenna facility” means Antenna and associated Antenna Equipment.

"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a wireless communication facility permit, site plan approval, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more wireless communication facilities.

"Application" shall mean all necessary and required documentation, information, and evidence that an applicant must submit to receive a wireless communications facility permit, building permit, or other Town approval for personal wireless service facilities from the Town.

“Backhaul network” means the lines that connect a provider’s towers/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

“Balloon test” means the raising of a balloon (or placement of a “crank up” tower, crane or temporary structure) equal to the height of a proposed personal wireless services facility tower for a period of 4 hours on a pre-determined date and time prior to approval of a wireless facility permit application to assess the visual impact of a proposed tower.

“Base station” means for purposes of eligible facilities requests the definition in the FCC’s regulations at 47 CFR § 1.6100 shall apply. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

“Board of Adjustment” means the Board of Adjustment of the Town of Fountain Hills, established pursuant to Sec. 1.07 of the Zoning Ordinance with membership, powers, duties, and responsibilities as set forth in Article 2A-2 of the Town Code.

Carriers. See Wireless Carriers.

“Cell tower” means a free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

“CEQ” means the Council on Environmental Quality, as established under NEPA.

"Collocate, colocate" or "collocation, colocation" can have different meanings depending on context.

1. When and where A.R.S. §§ 9-951 — 9-600 apply, the definition in A.R.S. §§ 9-951.8 shall also apply. That definition currently states:

"Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a wireless support structure or utility pole.

2. Where and when the FCC's general rules for placement, construction and modification of personal wireless facilities apply, the definition in 47 C.F.R. § 1.6002(g) shall also apply. That definition currently states:

Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of "collocation" in § 1.6100(b)(2) applies to the term as used in that section.

3. Where and when the FCC's rules for wireless facility modifications apply, the definition in 47 C.F.R. § 1.6100(b)(2) shall also apply. That definition currently states:

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Complete application, completed application" means an application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Development Services Director, Town Engineer or the Town's expert or consultant, or the Council determines, based upon information provided, that any additional, further, or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Development Services Director, Town Engineer, Town Council or the Town's expert or consultant of the Council.

"Complex" means the entire site or facility, including all structures and equipment, located at the site.

"Council or Town Council" means the Town Council of the Town of Fountain Hills.

"DBM" (dBm) stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. It expresses power relative to 1 milliwatt (mW) on a logarithmic scale. Emissions are measured using positive whole or fractional numbers. Received signal strengths are typically recorded in negative numbers because they are usually weaker than 1 milliwatt, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal. FCC, HHS and OSHA regulate

safe exposure thresholds but transmitter power (in dBm) is crucial to determining exposure, as it is the starting point for calculating current exposure limits.

“Deployment” means the placement, construction, or substantial modification of a personal wireless service facility.

“Development Services Director” (or “Director): T” means the person appointed by the Town Manager to be the Development Services Director. If there is no such person designated by the Town Manager, the Town Manager is the Development Services Director.

“Distributed antenna system, DAS” means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

“Effective prohibition” means a finding by the Town Council that if an application seeking approval for a specific new Personal Wireless Service Facility at a specific location, and a specific height, were to be denied, such denial would either: (a) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area, or areas, within the Town, or (b) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

An effective prohibition shall not be found to exist if a Wireless Carrier has Adequate Coverage in a specified geographic area , such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier’s Personal Wireless Services; however, the frequencies are not the “most preferred” frequencies of the Carrier.

An effective prohibition shall also not be found to exist if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier’s coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

A finding of Effective Prohibition, or lack thereof, shall be based upon an applicant’s submission of sufficient probative, relevant, and sufficiently reliable evidence and the appropriate weight the Town Council deems appropriate to afford.

“Eleventh hour submissions” means an applicant’s submission of new and/or additional materials in support of an application less than five (5) business days before the expiration of an applicable shot clock or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town Council to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

“Eligible facilities request” means a request that meets the requirements in 47 CFR § 1.6100 for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station and involving:

- (a) Co-location of new transmission equipment,
- (b) Removal of transmission equipment, or
- (c) Replacement of transmission equipment.

“Enure” means to operate or take effect. To serve to a person or party's use, benefit, or advantage.

“EPA” means the United States Environmental Protection Agency.

“Existing structure” means light poles, power poles, chimneys, billboards, and other similar structures, which are placed, within the Town at the time of adoption of this chapter, except existing buildings.

“FAA” means the Federal Aviation Administration or its duly designated and authorized successor agency.

“Facility” means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

“FCC” means the Federal Communications Commission.

“General population/uncontrolled exposure limits” means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3), **as further described and supplemented by the FCC Office of Engineering and Technology Laboratory Division’s advisory Knowledge Database (KBD), available at <https://apps.fcc.gov/oetcf/kdb/index.cfm>.**

“HHS” means U.S. Department of Health and Human Services or its constituent agencies, including FDA Food and Drug Administration, charged with review and compliance, meeting or exceeding requirements of the RF-emitting consumer devices (e.g., electronic products such as cell phones) for health impacts.

“Height” means, when referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

“Historic Structure” means any structure that is either on the National Register of Historic Places or is eligible for inclusion in the national register, irrespective of whether or not an application for inclusion onto the national register has been filed or not filed.

“Illegally excessive RF radiation or illegally excessive radiation” means RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

“In-kind call testing” means testing designed to measure the gap in Personal Wireless Service coverage asserted by an applicant. In-Kind Call Testing for a claimed gap in Personal Wireless Services in buildings means call testing performed in buildings to establish the existence or absence of such a gap, unless the applicant provides an affidavit sworn under penalties of perjury demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing. In-Kind Call Testing for a claimed gap in Personal Wireless Services in vehicles or in the open air means call testing performed in vehicles or in the open to establish the existence or absence of such a gap.

“In-kind replacement” means the replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

“Least intrusive” means the location and design of a personal wireless service facility that would remedy a significant gap in Personal Wireless Service coverage and (1) does the least disservice to the objectives stated in § 270-219A(2), and (2) deviates as little as possible from (a) the preferential order of location in subsection K (Priority of siting locations) and (b) applicable design standards in subsection L.

“Macrocell” means a cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, typically ranging from 50 to 199 feet in height.

“Maintenance or routine maintenance” means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

“Monopole” means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole. Monopoles are typically unguyed.

“Necessary, or necessity, or need” means what is technologically required for the equipment to function as designed by the manufacturer and anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards or unspecified “coverage objectives.” Any situation involving a choice between or among alternatives or options is not a need or a necessity.

“NEPA” means the National Environmental Policy Act, 42 U.S.C. §4321, et seq.

“NHPA” means the National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800, et seq.

“Node, DAS node” means a fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

“Node” means a fixed antenna and antenna equipment installation that operates as part of a system of spatially separated Antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services using hand-off capabilities. A 4G (LTE) node is referred to as an ENode B, and a 5G node is referred to as a GNode B. Some sites incorporate both 4G and 5G. Some 5G capable sites still rely on a 4G network core.

“Notice address” means an address, which is required to be provided by an applicant at the time it submits an application, at which the Town, Town Council, and/or Development Services Director or Town Engineer designee can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

“Notice of incompleteness, notice of incomplete application” means a written notice, sent by electronic mail , to an applicant seeking approval for the installation of a PWSF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

“Notice of effective prohibition conditions” means a written notice, which is required to be provided to the Town at the time of the filing of any application by all applicants seeking any approval, of any type, for the siting, installation, and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the Town, would constitute an “effective prohibition ” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

“Occupational/controlled exposure limits” means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

"Permit" means written permission required by an authority to install, mount, maintain, modify, operate or replace a utility pole or monopole, to collocate a wireless facility on a utility pole or wireless support structure or to collocate wireless facilities on a monopole.

“Permittee” means a holder of a Personal Wireless Service Facility Permit.

“Personal wireless service/personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

“Personal wireless service facility, personal wireless services facility or PWSF” means a facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

“Pre-existing towers and pre-existing antennas” means any tower or antenna for which a building permit has been properly issued prior to the effective date of the ordinance codified in this chapter, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

"Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

“Probative evidence” means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Town Council or other decision making authority, as the finder-of-fact in determining whether to grant or deny applications under this provision of the Town Code.

“Repairs” means the replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

“RF” means radiofrequency.

“RF radiation” means radiofrequency radiation. That being electromagnetic radiation, which is a combination of electric and magnetic fields that move through space as waves, and can include both Non-Ionizing radiation and Ionizing radiation.

“School” means a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes the real property and facilities used for such educational purpose.

“School property” means any parcel containing a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes associated playgrounds, athletic fields, administrative buildings, parking areas, and other school-related facilities.

“Section 106 Review” means a review under Section 106 of the National Historic Preservation Act.

“Setback” means the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property that is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

“Shot clock, Arizona” means the statutory timeframes within which the Town must review a wireless application for completeness of an application for wireless facilities in right-of-way pursuant to A.R.S. § 9-594.C.2 and act on a wireless application before it is otherwise deemed approved pursuant to A.R.S. § 9-594.C.2. For deemed approved purposes, the Arizona shot clock begins on the date when the Town determines the application is properly completed. For applications involving wireless facilities not in right-of-way the FCC shot clock will apply.

Shot clock, FCC: the presumptively reasonable time frame within which the Town must act on a wireless application, as defined by the FCC, shown below subject to amendment from the FCC. The shot clock begins when the applicant takes the first procedural step that the Town requires.

a. Aggregate of 60 days:

- 1) Standby emergency generators at previously permitted macro cell tower sites.
- 2) Collocation of small wireless facilities at existing small wireless facility sites.
- 3) Eligible Facilities Requests.

b. Aggregate of 90 days:

- 1) New small wireless facilities.
- 2) Collocation applications for additions to existing communications facilities not defined as an eligible facilities request.

c. Aggregate of 150 days:

- 1) All other applications, such as development of a new communication tower or facility.

“SHPO” means the Arizona State Historic Preservation Office.

“Site developer or site developers” means individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their

facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.

“Small cell” means a fixed cellular base station that sends and receives radio signals and is typically mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

"Small wireless facility" can have different meanings depending on context.

1. When and where A.R.S §§ 9-591 – 9-599 applies, the definition in A.R.S §§ 9-591.19 shall also apply. That definition means a wireless facility that meets both of the following qualifications:

- (a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.
- (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
 - i. An electric meter.
 - ii. Concealment elements.
 - iii. A telecommunications demarcation box.
 - iv. Grounding equipment.
 - v. A power transfer switch.
 - vi. A cutoff switch.
 - vii. Vertical cable runs for the connection of power and other services

2. Where and when the FCC’s general rules for placement, construction and modification of personal wireless service facilities apply, the definition in 47 CFR §1.6002(l) shall apply. That definition states as follows:

(a) Small wireless facilities are facilities that meet each of the following conditions:

(i) The facilities—

- .i Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- .ii Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- .iii Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

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- (ii) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of “antenna” in § 1.1320(d)), is no more than three cubic feet in volume;
 - (iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 - (iv) The facilities do not require antenna structure registration under part 17 of this chapter;
 - (v) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
 - (vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

"Special taxing district" means a special district formed pursuant to title ARS 48, chapter 11, 12, 17, 18, 19, 20 or 22.

“Special Use Permit” means the official document or permit granted by the Town Council pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

“State” means the State of Arizona.

“Structure” means a pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

“Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

“TCA” means the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at various provisions of Title 47 U.S.C.

“Thermal runaway” means self-heating of an electrochemical system in an uncontrollable fashion.

“Tolling or tolled” means the pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to resume running, as opposed to causing the shot clock to begin running anew.

“Tower” means a mast, pole, monopole, slim stick, guyed tower, lattice tower, freestanding tower, or other structure designed to support or employed to support antennas and other equipment, including but not limited to dishes, transceivers and arrays used to provide personal wireless services and wireless communications

services. A ground- or building-mounted mast greater than ten feet tall and six inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a communications tower.

“Town” means the Town of Fountain Hills.

“Town code” means the Town Code of the Town of Fountain Hills.

“Undertaking” means any application seeking Town approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

“Utility” means Arizona (under ARS § 40-360.51 (5)): A public utility includes corporations or persons engaged in furnishing water, gas, electricity, telephone service, or sewage disposal to the public for compensation.

“Utility service antennas” means antenna placed on or near utility boxes, poles, switches, storage tanks, etc., and used by a utility provider to facilitate the operation of the utility system.

“Wireless carriers or carrier” means companies that provide Personal Wireless Services to end-use consumers.

“Wireless communication” means the transmission of voice or data without cable or wires.

“Wireless communication facility” means wireless communication facilities including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities also include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio and television broadcast towers and government-operated public safety networks.

“Zoning ordinance” means the Zoning Ordinance of the Town of Fountain Hills, as codified in Chapter 1, Sec. 1.01 of the Zoning Ordinance.

Section 17.03 Requirements

A. General Requirements.

1. *Principal or Accessory Use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

2. *Lot Size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

3. *Aesthetics.* Towers and antennas shall meet the following requirements:

a. Towers shall, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

d. The choice of design for installing a new wireless communication facility or the substantial modification of an existing wireless communication facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties. Concealment elements ~~such as mono-palms or flagpoles~~ should be utilized to camouflage the pole and antennas.

e. *Accessory Structures.* Unless approved by the Town Council, all equipment associated with a wireless communication tower is to be located below grade in a vault. If above grade accessory structures are approved by the Town Council, they shall comply with the following requirements.

i. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of specified concealment elements for communications towers may be required by the Council to blend the communications tower and/or its accessory structures further into the natural surroundings using specified concealment elements.

ii. Accessory structures shall be designed to be architecturally similar, compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one (1) building.

iii. No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than 2 square feet indicating the

name of the facility owner(s) and a twenty-four (24) hour emergency telephone shall be posted adjacent to any entry gate. In addition, “no trespassing” or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.

f. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

g. *Existing Vegetation.* Existing vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this chapter prior to the approval of the application.

h. *Screening.*

i. Tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the compound. ~~Additional palm trees may be required to accompany towers which use a palm tree stealth design.~~

ii. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town Council.

iii. The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate noise emanating from on-site equipment, including but not limited to heating and ventilating units, air conditioners, and emergency power generators.

Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

i. *Utility Services Antennas.*

i. If placed on another utility structure such as a water tower, the antenna shall be painted to blend with the building or equipment it is placed on.

ii. If a separate tower structure is used, the design shall comply with the provisions in this section.

j. ~~Data-Only and Information Service Facilities. To the maximum extent permitted by federal and state law, any wireless facility used exclusively for the provision of an information service, data collection, telemetry, machine-to-machine communication, sensing, monitoring, or another service that does not constitute a personal wireless service under 47 U.S.C. § 332(c)(7)(C) or a telecommunications service protected by 47 U.S.C. § 253 shall be installed underground or flush with grad, including its antenna, antenna equipment and accessory~~

equipment, where technically feasible. An applicant seeking above-ground installation shall demonstrate through clear and convincing technical evidence that underground or flush-to-grade installation would prevent the facility from performing its intended function and that the proposed above-ground installation is the least visually intrusive technically feasible alternative.

Nothing in this subsection shall require underground placement to the extent the applicant demonstrates that such requirement is expressly prohibited or preempted by applicable federal or Arizona law.

4. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views and, to the degree possible while complying with FAA requirements, meet the standards set in Zoning Ordinance Chapter 8, Outdoor Lighting Control.

5. *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Town of Fountain Hills irrespective of municipal and county jurisdictional boundaries.

6. *Not Essential Services.* Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

7. *Franchises.* Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Town of Fountain Hills have been obtained and shall file a copy of all required franchises with the Community Development Director.

8. *Signs.* No signs other than those required by law shall be allowed on an antenna or tower.

9. *Co-location and Multiple Antenna/Tower Plan.* The Town of Fountain Hills encourages tower and antenna users to submit a single application for approval of multiple towers and/or antenna sites and to submit applications, which utilize co-location with an existing wireless telecommunications provider. Applications for approval of multiple sites or for co-location with an existing provider shall be given priority in the review process.

10. *Security fencing.* PWSF shall be enclosed by security fencing not less than 6 feet in height and no more than 8 feet in height, shall be constructed of a block or masonry, and shall be equipped with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements, as it deems appropriate.

11. *Noise.* Submission of applications for towers and associated equipment placed above grade, including backup generators or power supplies, shall include noise and acoustical information, prepared by a

qualified firm or individual, for the base transceiver station(s), equipment buildings, and associated equipment such as air conditioning units and backup generators. The Town may require the applicant to incorporate appropriate noise baffling materials and/or strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations contained in Section 11-1-7 of the Town Code.

12. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer.

13. Application approval issued under this chapter shall be conditioned upon verification by the Town Engineer or designee that such tower structure is structurally sound. Such verification shall be received by the applicant prior to submission.

14. Access and Parking. Areas sufficient for access to the tower and equipment location and for temporary off-street parking of at least two vehicles shall be provided. The type and configuration of the access and parking shall be subject to the standards set forth in Zoning Ordinance Chapter 7, Parking and Loading Requirements.

15. Minimum Height of Antennas. All antennas shall be located such that:

a. Any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half (8.5) feet below the transmitting surface; and,

b. No person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

16. Fall Zone. Each new tower shall maintain a fall zone having a radius of not less than one hundred twenty-five percent (125%) of the total height of the tower, measured from the base of the tower. The fall zone of any tower, pole shall not overlap, in whole or in part, any portion of a public sidewalk, street, alley, right-of-way, or occupied building.

B. *Minimum Setbacks and Separations.*

1. *Setbacks From Property Lines.* Except for utility service antennas, the following setback requirements shall apply to all towers; provided, however, that the Town Council may reasonably reduce the standard setback requirements if the goals of this chapter would be better served thereby:

a. Towers must be set back a distance equal to at least one hundred fifty percent (150%) of the height of the tower from any adjoining lot line; ~~provided, however, that the setback distance shall be increased as required to comply with the separation distances from residential uses in accordance with Table 1 set forth below.~~ For guyed towers, the required setback shall be measured from the outermost guy wire anchor point, and shall additionally account for the manufacturer's or structural engineer's certified guy-wire failure/whip radius. In no case shall a guy wire anchor, guy wire, or its calculated

failure radius be located within 500 feet of an occupied structure, public right-of-way, or property line, whichever is more restrictive.

b. Accessory buildings must satisfy the minimum zoning district setback requirements.

2. *Separations From Adjacent Uses.* Except for utility service antennas, the following separation requirements shall apply to all towers and antennas.

a. *Separation From Residential Uses.*

i. Tower separation shall be measured from the base of the tower to the lot line of the residential uses.

ii. Separation requirements for towers shall be 500 feet from any residentially zoned or used land including mixed-use.

The Town Council may reduce the standard separation requirements to 300' if, through information and data presented, the Council determines the goals of this chapter would be better served thereby.

b. *Separation Distances Between Towers.* Separation distances between towers shall be applicable for and measured between the proposed tower and pre-existing towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 27.03 B. Separation Distances Between Towers

	Monopole 65 ft. in height or greater	Monopole less than 65 ft. in height but greater than 40 ft. in height	Monopole less than 40 ft. in height
Monopole 65 ft. in height or greater	2,000 2,500 feet	1,500 2,000 feet	1,000 1,000 feet
Monopole less than 65 ft. in height but greater than 40 ft. in height	1,500 2,000 feet	1,500 2,000 feet	1,000 1,500 feet
Monopole less than 40 ft. in height	1,000 1,000 feet	1,000 1,500 feet	750 1,000 feet

C. *Buildings or Other Equipment Storage.*

1. *Antennas Mounted on Structures or Rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:

a. Unless approved otherwise by the Town Council for good cause shown, but located in an underground vault.

b. If located above ground:

i. The cabinet or structure shall not contain more than 120 square feet of gross floor area or be more than 8 feet in height and shall be located on the ground.

ii. Equipment storage buildings or cabinets shall comply with all applicable building codes.

2. *Antennas Mounted on Utility Poles, Light Poles, or Towers.* The equipment cabinet or structure used in association with antennas shall be located, unless otherwise approved by the Town Council in an underground vault. If approved to be above ground, then in accordance with the following:

a. In residential districts, the equipment cabinet or structure may be located:

i. In a required front yard or required street side yard, provided the cabinet structure is no greater than 3.5 feet in height and 20 square feet of gross floor area and the cabinet/structure is located a minimum of 3 feet from all lot lines. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height not to exceed forty-two (42) inches.

ii. In a required rear yard, provided the cabinet or structure is no greater than 5 feet in height or 120 square feet in gross floor area. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height of 6 feet.

iii. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure.

b. In commercial or industrial districts the equipment cabinet or structure shall be no greater than 14 feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by sight-obscuring landscaping with an ultimate height of 16 feet and a planted height of at least 6 feet. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure. Such access way shall not face residentially zoned property.

3. *Modification of Building Size Requirements.* In the case of wireless facilities considered by the Town Council, the requirements of subsections (C)(1) and (C)(2) of this section may be modified by the Town Council to address site specific conditions and requirements.

D. *Co-location.*

1. Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers. Design considerations shall include sufficient area for additional ground equipment, structural design of the tower, and sufficient electrical power available for the load of at least two (2) additional wireless service providers.
2. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same support structures or site, if the Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to comply with this section.
3. *Third Party Technical Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third-party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.
4. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.
5. *Violation; penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit. (24-08, Amended, 09/04/2024, Deleted and replaced)

Section 17.04 Application Types

A. *Administrative.* The following types of applications are processed administratively by staff:

1. Applications to change or modify an existing administratively approved wireless communication facility that remains in compliance with all chapter requirements.
2. Applications to change or modify an existing wireless communication facility approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);
 - c. Increase the original approved square footage of accessory buildings by more than 200 square feet;

-
- d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.
3. Applications for co-location of additional antenna for an additional service provider on an existing administratively approved tower that remains in compliance with all chapter requirements.
 4. Applications for co-location of additional antenna for an additional service provider on an existing tower approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);
 - c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
 - d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.
 5. Applications for new utility service antenna that comply with the height and setback requirements of the zoning district in which they are located.
 6. Applications for mobile or temporary wireless facilities for more than seven (7) consecutive days **upon submittal of:**
 - a. **Proof of event, emergency, or documented capacity need;**
 - b. **A site plan showing setback and fall zone compliance; and**
 - c. **Proof of general liability insurance per Section 17.06.G.1.**

B. *Public Review.*

1. Any new tower or modification to existing towers or antennas that do not meet the requirements in subsection (A) of this section for administrative review shall require review and approval as provided in subsection 17.05 (C)(2).
2. Any new tower not meeting the setback or separation requirements in Section 17.03(B).

Section 17.05 Application Submittal, Review, and Processing

A. *General.* Unless waived in writing by Zoning Administrator, the following provisions shall govern the review of all wireless communication facility applications:

1. *Complete Application.* Applications for wireless communication facilities shall be filed electronically on the Town's website by an owner of real property and shall contain the area proposed for the wireless communication facility using the process established by the Director for such applications. All such applications shall include the information required in this section. Applications filed on behalf of the property owner by a third party shall include a statement from the property owner authorizing the submittal of the application.
2. Applications shall include documentation of compliance with items listed in Section 17.03(A) as applicable to the application submitted.
3. *Inventory of Existing Sites.* Each applicant for a new tower or co-location of new antenna on an existing tower shall provide to the Development Services Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the Town of Fountain Hills or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. Each applicant shall also provide a one (1) year build-out plan for all other wireless communications facilities within the Town. The Development Services Director may share such information with other applicants applying for administrative approvals or special use permits under this chapter or with other organizations seeking to locate antennas within the jurisdiction of Town of Fountain Hills; provided, however, that the Development Services Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
4. *Utility Service Antennas.*
 - a. If the antenna complies with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and approved with the overall site development plans if the site is being developed concurrently. If the antenna is being added to an existing utility site, the plans will be reviewed and processed consistent with the requirements of subsection (C)(2) of this section.
 - b. If the antenna does not comply with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and processed consistent with the requirements of subsection (C)(3) of this section.
5. A list of the full names and contact information for all applicants, co- applicants, facility owner(s), facility operator(s), site developer(s), and wireless carrier(s), property owner(s) and other related third parties and their agent(s), if any, on whose behalf the application is being submitted.

56. Proof of Authorization for Site Occupancy. Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, it shall submit proof of authorization to occupy the site at issue.

If the applicant is leasing all or a portion of real property upon which it intends to install its facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant seeks to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

7. Fire Safety: The applicant shall submit a Fire Safety Plan that includes a general description of the personal wireless services facility for purposes of ensuring the Fire Department is fully informed and prepared in case of a fire. The Fire Safety Plan shall include:

- a. Location of all Fire Safety Plan documents.
- b. Location of the facility's alarm panel.
- c. List of emergency contacts.
- d. Specific responsibilities assigned to designated personnel.
- e. Location of signal-processing equipment.
- f. Location and listing of types of power equipment, including rectifiers, inverters, distribution cabinets, bus bars, cables, and communications raceways.
- g. Listing and location of batteries, including description of quantities and types of batteries, specifying whether batteries are lithium-ion, nickel cadmium, sodium-nickel, valve-regulated lead acid, and/or vented, and description of any associated exhaust ventilation system(s).
- h. Description of actions to detect and prevent thermal runaway events.
- i. Description of whether the facility will be located in a lightning-prone area. If the facility is to be located in a lightning-prone area, description of how the facility shall comply with NFPA 780 Standard for the Installation of Lightning Protection Systems;
- j. Description of location and types of fuses used to ensure that if the wireless transmission facility experiences overcurrent resulting from current exceeding the rating of equipment or the ampacity of a conductor, the facility shall turn off temporarily.

k. Depowering procedures including identification of locations of electrical depowering devices, which include:

- (a) Coded floor prints located in the Fire Safety Plan document;
- (b) Facility signage to direct fire personnel to depowering locations;
- (c) The method of turning off power to the following:
 - i. Alternating current power board. This is the primary source of electric power for a telecommunications facility and is supplied by the local power company.
 - ii. Standby power generator. This unit, usually a turbine or diesel generator, provides standby ac power that is transferred manually or automatically whenever a loss of ac power is experienced.
 - iii. Direct current primary disconnect fuse or circuit breaker bay. This unit distributes dc power to the secondary fuse or circuit breaker panels throughout the central office. The secondary fuse or circuit breaker panels feed all the operating voltages to the central office branch circuits.
 - iv. Uninterruptible power supply (UPS)
 - v. HVAC systems serving the facility
 - vi. Alternative energy devices, such as wind turbines, fuel cells, photovoltaic systems, or other devices providing power to the facility.

l. Detailed electrical designs, signed and stamped by a licensed electrical engineer, demonstrating compliance with the Building, Electric and Fire Code. The Code compliance demonstration shall include all necessary underlying calculations and inputs, including but not limited to:

- (a) A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
- (b) A one-line diagram of the electrical system;
- (c) Voltage Drop & Load Flow Study;
- (d) Load Calculation;
- (e) Panel Directories;

8. Soil Erosion and Sedimentation Control: A soil erosion and sedimentation control plan, prepared in accordance with the standards as established by the Town Engineering Division.

9. Engineer's Report: For the construction of all new wireless facilities and to the extent not already mandated herein, the applicant shall provide a report prepared and certified by a professional engineer certifying the integrity and safety of all proposed new towers and/or structures and indicating the location, type, and height of the proposed personal wireless services facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, all applicable American National Standards Institute (ANSI) technical and structural codes. To the extent that an application proposes the co-location of new equipment onto an existing tower or personal wireless services facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify above.

10. Visual Impact Analysis. The applicant shall provide a completed visual impact analysis that shall include the following:

- a. A "Zone of Visibility Map" to determine locations from where the new facility will be seen.
- b. A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/ or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The photographic images shall show the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening and landscaping. The analysis shall include the results of the drone/balloon test, and other information as necessary to determine visual impact of the facility. The analysis shall include a map depicting where the photos were taken. Where consistent with the natural or built environment, the analysis shall include a native vegetation landscaping plan with a visual simulation of how the chosen plants, at maturity, will screen the site.

11. For proposed towers and facilities taller than 100 feet, the applicant shall perform a balloon test and shall publish reasonably advanced public notice of the same to enable the Reviewing Authority, property owners, and the community an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community. **The balloon test shall be conducted for not less than four consecutive hours between 7:00 a.m. and 6:00 p.m. The primary test shall be conducted on a weekend.** Said date and time will be established by the Development Services Director in coordination with the applicant, including an alternative date in case of inclement weather. If a balloon is used, the diameter shall be equal to the largest antenna or dish proposed for the CRS tower or the width of the tower, whichever is larger. The applicant will be responsible for publishing a public notice of the balloon test in at least one local newspaper publication and notifying abutters owning property within one thousand (1,000) feet radius, via U.S. Mail at least one week prior to the test.

12. If the application is for a facility that will not be attached to an existing utility pole and the facility's proposed height will be greater than 30 feet then structural elevations of the facility(ies) shall include any trees and other structures within twenty (20') feet, and their height.

13. Environmental Assessment Form. A completed environmental assessment form (EAF) and a completed visual EAF addendum if required by ADEQ.

14. FCC Compliance Report.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility, the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the General Population Exposure Limits or the Occupational Exposure Limits. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of

radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

15. FCC License. A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the Town.

16. Effective Prohibition Claims.

a. The Town is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is “necessary” to remedy one or more significant gaps in a carrier’s personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The Town is additionally aware that, in December 2018, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through twelve (12) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff’s 66-page report is made a part of this Chapter as Appendix 1.

The Town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town Council to render determinations upon applications for new wireless facilities consistent with this Chapter’s requirements and the TCA’s statutory requirements.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Town Council or the Town that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the Town, (b) that the applicant’s proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Town Council would

constitute an “effective prohibition” under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

“Notice of Effective Prohibition Conditions”

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Town Council to reasonably determine:

- i. Whether or not the conditions alleged by the respective applicant exist,
 - ii. Whether there exists a significant gap or gaps in an identified wireless carrier’s personal wireless services within the Town,
 - iii. The geographic locations of any such gaps, and
 - iv. The geographic boundaries of such gaps, to enable the Town Council to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not Federal law would require the Town Council to grant the respective application, even if it would otherwise violate the Town Code, including, but not limited to, this Chapter.
- b. The additional materials which the applicant shall then be required to provide shall include the following:
- i. Drive Test Data and Maps. If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the Town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the Town and the Town Council with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:
 - (a) The date and **exact time of day** for the test or tests,
 - (b) The location, in longitude and latitude, of each point at which signal strength was recorded and
 - (c) Each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
 - (d). The applicant shall also submit drive test maps depicting the actual signal strengths recorded during the actual drive test for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a “minimum” signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to - 98 DBM, -99 to -101 DBM, and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

ii. Denial of Service and/or Dropped Call Records. If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the Town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier’s customers were unable to initiate, maintain and conclude the use of the carrier’s personal wireless services without actual loss of service, or interruption of service.

iii. The equipment and methodology used.

iv. A list of any concurrent special events, festivals, road closures, or unusual network conditions occurring in the test area during the test period.

17. Estimate for Cost of Removal of Facility. At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town Council’s Engineer shall review this estimate. A bond for the cost of removal as required in Sec. 17.06 A. 2. shall be filed prior to commencement of construction.

18. Property Owner Consent & Liability Acknowledgement. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners both authorize the applicant to file and pursue its application and acknowledge the potential landowner’s responsibility, under Section 17.08 for engineering, legal and other consulting fees incurred by the Town.

19. *Applications Using Existing Towers.*

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- a. Dimensioned, to-scale drawings showing the existing and proposed antenna on the tower including the height of the tower and the antennas.
 - b. The number and type of existing and proposed antennas.
 - c. Engineering calculations documenting the structural changes and certifying the tower's ability to carry the new antennas.
 - d. Dimensioned, to-scale drawings illustrating modification of ground equipment, if any.

20. *Applications Using New Towers*

In addition to any information required for applications for special use permits pursuant to Chapter 2, Section 2.02, applicants for a new wireless facility shall submit the following information:

- a. A site plan as required in Section 2.04 plus zoning, General Plan classification of the site and all properties within the applicable separation distances set forth in Section 17.03(B)(1), adjacent roadways, proposed means of access, elevation drawings of the proposed tower and any other structures, photo simulations showing the tower in the proposed location from at least four (4) directions, and other information deemed by the Development Services Director to be necessary to assess compliance with this chapter.
- b. The setback distance between the proposed tower and the nearest residential unit and residentially zoned properties. Include an illustration of the fall zone for the tower.
- c. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 17.03(B)(2) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
- d. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- e. A description of compliance with Sections 17.03(A)(3), 17.03(A)(4), 17.03(A)(5), 17.03(A)(7), 17.03(A)(8), 17.03(A)(9), 17.03(A)(10), 17.03(A)(11), 17.03(B), subsection (A)(3) of this section, Sections 17.06(A) and 17.06(B) and all applicable federal, state or local laws.
- f. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
- g. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.

h. Alternatives Analysis. An itemized list of alternative sites considered, with a comprehensive explanation of reasons alternative sites are not technologically feasible. Explanation shall include specific comparative analysis of how different sites would impact aesthetic values, and other environmental values.

i. A description of the feasible alternative location(s) of future towers or antennas within the Town of Fountain Hills based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

j. A statement of compliance with Federal Communications Commission (FCC) radio frequency (RF) exposure standards.

k. A biological resource survey addressing potential impacts to locally present protected or sensitive species, including but not limited to the Sonoran Desert Tortoise (*Gopherus morafkai*). The survey shall include the following:

i. A proposed facility description including location, height of tower as measured from the ground, description of associated equipment, width and length of access roads and driveways, and length and right-of-way width of power and communication lines;

ii. Existing biological resources on-site including quantification of vegetation and habitat types, color photo documentation of on-site and surrounding vegetation, a description of water resources, potential habitat for federal and state-listed species, and sensitive species habitats;

iii. The results of any focused surveys for federally listed species (if required); and

iv. Impacts to biological resources including quantification of the habitat to be removed as a result of the proposed facility.

The director may waive this requirement based on a finding that existing information verifies the lack of such biological resources on the site.

21. *Filing Fee*. Payment of a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. No part of the filing fee shall be returnable.

B. *Shot Clocks and Tolling*. To comply with the requirements of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth hereinbelow shall be presumed to be reasonable periods within which the Town shall render determinations upon applications for wireless communication facilities.

The Town shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period listed below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Town's control.

1. *Application Shot Clocks*.

a. *Receipt of Initial Application.* Upon receipt of an application, the Development Services Director, or designee, shall review the application for completeness. If the Director determines the application is: (i) incomplete, (ii) missing required application materials, (iii) is the wrong type of application, or (iv) is otherwise defective, then, within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the Town's receipt of the application, the Director, or their designee, shall notify the applicant of the finding and state what is needed to have a complete application.

The notice of incompleteness shall toll the shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues identified in the notice of incomplete application. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again notify the applicant within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the applicant having filed its supplemental or corrected materials to the Town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

If Applicant does not cure the stated deficiencies within 30 days, the application shall be considered withdrawn or closed.

b. *Application Review.* The shot clock for administrative applications is ninety (90) days. The shot clock for applications with new towers, monopoles, utility poles and other wireless facilities that trigger public review applications is one hundred fifty (150) days.

2. *Shot Clock Tolls, Extensions and Reasonable Delay Periods.* Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within subsection (B) of this section shall generally be presumed to be sufficient periods within which the Town shall render decisions upon applications.

Notwithstanding the same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Town, and the Town shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

a. *Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error.* As provided for within subsection (B)(1) of this section, in the event that the Development Services Director deems an application incomplete, the Director shall send a notice of incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Director sends a notice of incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Town is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the Town receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically resume running, but shall not be deemed to start running anew.

The applicable shot clock period shall, once again, be tolled if the Director thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the Town, from the applicant, up to that point.

b. *Shot Clock Extension by Mutual Agreement.* The Town shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Town shall include the Town's authority to request, at any time, and for any period of time the Town may deem reasonable or appropriate under the circumstances, consent from a respective applicant to extend the applicable shot clock period to enable the Town, the applicant, or any relevant third party, to complete any type of undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Town, to the extent that any such undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law and/or the requirements of any provision of the Town Code, including but not limited to this chapter.

In response to any request by the Town, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative, can consent to any extension of any applicable shot clock by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Town shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Town within the review process.

c. *Reasonable Delay Extensions of Shot Clock Periods.* The Town recognizes that there may be situations wherein, due to circumstances beyond the control of the Town and/or the Town Council, the review and issuance of a final decision upon an application for a wireless communication facility cannot reasonably be completed within the application shot clock periods delineated within subsection (B) of this section.

If, despite the exercise of due diligence by the Town, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Town shall be permitted to continue and complete its review and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances

including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

i. In the event that the rendering of a final decision upon an application under this chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

ii. In the event that applicant tenders eleventh-hour submissions to the Town in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Town at such late point in the proceedings, the Town shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Town, even if such review or services extend beyond the applicable shot clock period, so long as the Town completes such review and retains and secures such expert services within a reasonable period of time thereafter and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

C. Review and Processing of Applications.

1. Conformity to the following shall be considered in review of all applications:

- a. The application is consistent with the objectives of this chapter.
- b. The height of the proposed tower.
- c. The adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.) that provide for the ability to comply with the provisions of this chapter.
- d. The extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.
- e. The extent to which the proposed telecommunications facility uses concealment elements.

f. The extent to which the proposed facility is integrated with existing structures (i.e., buildings, signs, utility poles, etc.) with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

g. An applicant's compliance with all Town requirements with respect to previous applications.

h. Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

i. Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

j. Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

k. Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

l. Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

2. *Review of Administrative Applications.*

a. Administrative applications will be reviewed by staff using the Town's standard building permit review processes.

b. Applications for mobile or temporary wireless facilities which remain in place for more than seven (7) consecutive days must submit a request for a temporary use permit as provided in Section 2.03.

3. *Review and Processing of Public Review Applications.*

a. Applications which require public review and approval on private property will be processed as special use permits and follow the requirements listed in Section 2.02 for special use permits.

Applications on Town-owned property will not require a special use permit but will follow the same requirements for notice for review by the Town Council.

b. Factual Determinations.

To decide applications under this Section, the Town Council shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Council shall render local zoning determinations according to Section i. hereinbelow.

Then, if, and only if, an applicant asserts claims that a denial of its application would effectively prohibit an identified Wireless Carrier from providing Personal Wireless Services within the Town, or its proposed wireless facility or installation is necessary to remedy a significant gap in personal wireless services for an explicitly identified Wireless Carrier, and that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps.

The Council shall then additionally render TCA determinations in accord with Section ii. herein below.

The Council shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence-based upon which it rendered each of its factual determinations.

Each factual determination made by the Council shall be based upon Substantial Evidence. For purposes of this provision, "Substantial Evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence that the Council may consider shall include any evidence submitted in support of an application and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Council may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess and any documents, records, or other evidence which is a matter of public record, irrespective of whether such public record is a record of the Town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the Town, its residents, and property owners, and not applicants.

If, and to the extent that the Town Council fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town Council.

i Local Zoning Determination

The Council shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this Chapter.

(a) Compliance with Section 2.02

Whether the proposed installation will meet each of the conditions and standards set forth within Section 2.02 in the absence of which the Town Council is not authorized to grant a special use permit.

(b) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties located adjacent to, or in close proximity to, the proposed site or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(c) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(d) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(e) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including, but not limited to, historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(f) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or

scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

(g) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

(h) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If, when applying the evidentiary standards set forth in Section 17.05 C. 3. b. i. hereinabove, the Town Council determines that the proposed facility would not meet the standards set forth within Section 2.02 or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the Town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town Council shall deny the respective application unless the Council additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections 17.05 C. 3. b. ii. and iii immediately hereinbelow.

ii. TCA Determinations

In cases within which an applicant has filed a “Notice of Effective Prohibition Conditions,” the Town Council shall determine if a denial of the respective application would “Effectively Prohibit” a specifically identified Wireless Carrier from providing Personal Wireless Services within any geographic area or areas in the Town.

More specifically, the Town Council shall determine whether a denial of the specific application would either: (i) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

In determining whether a denial of any specific application would constitute an “Effective Prohibition,” the Town Council shall determine: (1) whether an applicant has established that an identified Wireless Carrier suffers from one or more significant gaps in its Personal Wireless

Services, and (2) whether its proposed installation is the least intrusive means of remedying any such gap or gaps.

(a) Significant Gap in Personal Wireless Services of an Identified Carrier

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific Wireless Carrier suffers from a significant gap in its personal wireless services within the Town.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (1) Whether the identified Wireless Carrier, which is alleged to suffer from any significant gap in their personal wireless services, already provides Adequate Service in its Personal Wireless Services to its customers at any frequency being used by the carrier to provide personal wireless services to its end-use customers,
- (2) Whether any such alleged gap is relatively large or small in geographic size,
- (3) Whether the number of the carrier's customers affected by the gap is relatively small or large,
- (4) Whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or
- (5) Overall, whether the gap is relatively insignificant or otherwise relatively de minimis.

An Effective Prohibition shall not be found to exist under subparagraph (iii) hereinbelow if a Wireless Carrier has adequate coverage in any specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services, but the frequency at which the customers are using such services is not the frequency most desired by the Carrier.

(b) Least Intrusive Means of Remedying Gap(s) in Service

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility at the specific site proposed by the applicant and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant, is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proven to exist as determined by the Town Council based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (1) Whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location,
- (2) Whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation
- (3) Whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service,
- (4) Whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas,
- (5) Whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or
- (6) Overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations.

An Effective Prohibition shall also not be found to exist in subparagraph (iii) hereinbelow if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

iii. Finding of Effective Prohibition or Lack of Effective Prohibition

After considering the evidence presented before it, the Town Council shall determine whether or not a denial of the respective application would constitute an effective Prohibition.

If the Town Council affirmatively determines that the applicant has failed to establish either: (i) that a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application does not constitute an Effective Prohibition.

If the Town Council affirmatively determines that: (i) a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town, or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application would constitute an Effective Prohibition, and the Town Council shall grant the subject application, irrespective of whether or not the granting of same would otherwise be inconsistent with any other provision of this Section §17.05 C. 3. b. Provided, the Town reserves the right to deny an application even if doing so leads to an effective prohibition to the extent allowed by the safe harbors contained in 47 U.S.C. §§ 253(b) and (c) and incorporated into 332(c)(7)(B)(i), based on the evidence of record.

c. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- i. No existing towers or structures are located within the geographic area, which meet applicant's reasonable engineering and personal wireless service related quality requirements. This evidence cannot be merely conclusory and must be supported by propagation maps that include the underlying analysis models, engineering reports speaking to the technical infeasibility, dropped call logs, and other data showing that a new tower is the only means of accommodating the proposed antenna.
- ii. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- iii. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- iv. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna as certified by an RF engineer.
- v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

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- vi. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - vii. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- d. Following approval by the Town Council, the applicant may apply for a building permit through the standard application process. Construction shall not commence prior to approval of the building permit.

4. Environmental Impacts

If, and to the extent that, the Town Council determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of ADEQ and/or the NEPA, then the Council shall be expected to comply with the requirements of ADEQ in determining both:

- a. The extent of adverse impacts upon the environment and/or historic properties; and,
- b. What mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or impacts upon historic sites, structure and/or districts.

If a respective applicant fails to obtain a review from the ADEQ and/or NEPA and opinion letters from the ADEQ and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council may make direct requests to the ADEQ and the FCC for their review of the application. The Town Council may request the FCC's review and input in completing the statutorily-required environmental impact analysis pursuant to ADEQ and NEPA.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete an ADEQ review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement and, if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

5. Historic Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the Town's historic preservation law requirements and comprehensive plan and ADEQ.

If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on a historic site or a historic district within the meaning of ADEQ and/or the NHPA (especially if the historic site at issue is listed upon the National Register of historic places), then the Council shall comply with the requirements of both ADEQ and Town law in determining both:

- a. The extent of adverse impacts upon the historic properties, and
- b. What mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a SHPO and/or a Section 106 review under NHPA, and opinion letters from SHPO and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council shall make direct requests to SHPO and the FCC for their review of the application. They shall request SHPO and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to ADEQ and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the Town recognizes each application for a special use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete a SEQ ADEQ RA review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

6. Tribal Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any tribal lands associated with the Fort McDowell Yavapai Nation and the Salt River Prima-Maricopa Indian Community near or within the general area of Fountain Hills, Arizona. If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on such

tribal lands, then the Council shall issue notice to tribal representatives and request tribal review of the application.

7. Force Majeure

In the event that the rendering of a final decision upon an application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town or the Town Council, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

8. In granting a permit, the Town may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

Section 17.06 Maintenance and Operation

A. Removal of Abandoned Antennas and Towers; Bond Required.

1. Any antenna or tower that is not operated for a continuous period of ninety (90) days shall be deemed abandoned. Within ninety (90) days of receipt of notice from the Town of Fountain Hills notifying the owner of such abandonment, the owner of such antenna or tower shall completely remove the same and all related equipment and improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Code. Failure to remove an abandoned antenna or tower within said ninety (90) day period shall be grounds to remove the tower or antenna at the owner's expense. The Town shall have the right (but not the obligation) to perform such removal and restoration with or without notice. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower for the prescribed period.

2. Upon receiving a special use permit approval from the Town Council and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the Town a bond for a length of no less than three (3) years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time the Town has good cause to question the sufficiency of the bond at the end of any three-year (3) period, the owner and/or operator of the facility, upon request by the Town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for the removal of the facility at the owner's expense. Each facility will require a separate bond, regardless of the number of owners or location.

B. State or Federal Requirements.

1. Compliance with state and federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

2. Prohibition against illegally excessive emissions and RF testing.

As disclosed on the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the Town is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the Town, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The Town deems it to be of critical importance to the health, safety, and welfare of the Town, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR. The FCC has recognized that 47 U.S.C. § 332(c)(7)(B)(iv) permits state and local governments, when making decisions on the placement, construction, and modification of personal wireless service facilities, to consider whether such facilities comply with the Commission's regulations concerning RF emissions. In re Human Exposure to Radiofrequency Electromagnetic Fields et al., 34 FCC Rcd 11687, 11739, ¶114 (2019).

In accord with the same, the Town enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §17-2 or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3) unless the operator implements and retains responsibility for ongoing effectiveness of the mitigation actions contained in 47 C.F.R. §1.1307(b)(4).

To ensure continuing compliance with such limits by all owners and/or operators of wireless communication facilities within the Town, all owners, and operators of wireless communication facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by the owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town Council or any other body or representative of the Town is subject to modification or revocation by the Town Council following a public hearing.

a. *Certification of Compliance with Applicable RF Radiation Limits.* Within forty-five (45) days of initial operation or a substantial modification of a wireless communication facility, the owner and/or operator of each telecommunications antenna shall submit to the Development Services Director a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall also measure the emissions of the approved wireless facility, including the cumulative impact from other nearby wireless facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's maximum permissible exposure (MPE) limits shall be submitted to the Development Services Director.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original

report. The Town may require, at the applicant's expense, independent verification of the results of the analysis.

b. *Random RF Radiofrequency Testing.* At the operator's expense, the Town may retain an engineer to conduct random unannounced RF radiation testing of such wireless facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one (1) test per facility per calendar year unless such testing reveals that one (1) or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the wireless facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective wireless facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town Council at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks' written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town Council shall have the power to and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town Council, Board of Adjustment, Town Engineer and/or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town may issue a civil citation of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

c. *Annual Testing.* The owner or operator of all PWSF shall provide for and conduct an inspection of radio frequency radiation at least once annually by a licensed radio frequency engineer. Three copies of a report shall be provided to the Development Services Department, verifying that the radio frequency radiation is in compliance with FCC Guidelines.

3. *Actions for Noncompliance.* If the Town at any time finds that there is good cause to believe that a wireless communication facility and/or one (1) or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town's Zoning Administrator at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

The owner and/or operator shall be afforded not less than two (2) weeks' written notice of the hearing.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town shall have the power to revoke any permit, building permit, and/or any other form of approval(s) which the Town Council or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility. The Zoning Administrator may revoke an administrative approval. The decision of the Zoning Administrator may be appealed to the Town Manager. If the tower or antenna was approved by the Town Council, revocation will be considered by the Town Council in the same manner as the original approval.

In addition, the Town may issue a civil citation for noncompliance as provided in Section 1-8-3 of the Town Code.

In the event that an owner or operator of one (1) or more wireless communication facility is found to violate subsection (B)(1) of this section three (3) or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the

owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

C. *Building Codes; Safety Standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Fountain Hills concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

D. *Noise.* Wireless facilities and all related equipment must comply with all noise regulations and shall not exceed such regulations, either individually or collectively. Backup generators shall only be operated during power outages and/or for testing and maintenance purposes between the hours of 9:00 a.m. and 4:00 p.m.

E. *Maintenance.* Prior to scheduling a final inspection for construction of a tower and associated equipment, the applicant shall file with the Town a bond in the amount of X to cover the ongoing maintenance of the tower, equipment, and landscaping. The bond amount shall be reviewed and revised every three years thereafter. Should the owner of the tower, equipment, and/or landscaping fail to maintain said facilities consistent with the Town's approval and ordinance requirements, and after notice for correction by the Town, the Town may call and utilize the bonds to perform the needed maintenance activities.

F. *Maintenance Contact Information.* Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll-free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). The contact information for the agent responsible for the maintenance of the facility must include at least one natural person. Contact information shall be updated within seven (7) days of any change.

G. *Indemnity and liability for damages.*

1. The wireless telecommunications facility provider shall defend, indemnify, and hold harmless the Town or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the Town, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The Town shall promptly notify the provider(s) of any such claim, action or proceeding if the Town bears its own attorney's fees and costs, and the Town defends the action in good faith.

2. Wireless telecommunications facility operators shall be strictly liable for interference caused by their facilities with Town communications systems. The operator shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not

limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the Town attributable to the interference.

H. *Certificate of Insurance required.* The applicant shall maintain adequate and sufficient liability insurance during the construction period and thereafter, the carrier shall maintain liability insurance, issued by an insured authorized to do business in the State of Arizona meeting the criteria of this section throughout the life of any PWSF erected within the Town of Fountain Hills, at least as broad as follows:

1. Commercial General Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, commercial General Liability ("CGL") insurance on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; (iv) bodily injury or damage from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit.

2. Environmental Pollution Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the personal wireless services facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

3. Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

4. Endorsements. The relevant policy(ies) shall name the Town, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds.

The permittee shall use its best efforts to provide thirty (30) days' prior notice to the Town of the cancellation or material modification of any applicable insurance policy.

5. Verification of Coverage. Permittee shall furnish the Development Services Department with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the Development Services Department before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. Permittee shall furnish updated certificates and endorsements to the Town annually. The Town reserves the right to require updated certificates and endorsements or complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

6. Permittee Has Full Liability: The permittee shall assume full liability for damage or injury caused to any property or person by the personal wireless services facility.

7. Permittee shall provide an executed agreement, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the Town, its officers, employees, agents, attorneys, and volunteers, from (i) any claim, action or proceeding brought against the Town or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Town or (ii) a successful legal action brought against the Town for loss of property value or other harm caused by the placement or operation of a small cell installation. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the Town and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the Town for all of the Town's costs, fees and damages which the Town incurs in enforcing the indemnification provisions of this Section.

All insurance required under this Chapter shall be issued by an insurer holding a current A.M. Best rating of A- or better, that is not an affiliate, subsidiary, or captive insurance entity of the applicant, permittee, or any parent or related company thereof. Self-insurance and insurance issued by a special-purpose or single-project entity created by the applicant shall not satisfy this requirement. The Town reserves the right to request and independently verify the insurer's rating and independence prior to permit issuance and at each renewal.

I. ADA Accommodations. The Town seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent they are entitled to same under the Act.

J. Decommissioning and Reclamation Plan shall include the following information:

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1. A plan for disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations detailing the types and quantities of waste materials and methods of disposal;
 2. A description of how and on what schedule stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. Permittee should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover;
 3. An estimate of costs for the decommissioning of the personal wireless services facility with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate;
 4. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum requirements meet the standards of this Ordinance. Such plan must be filed in the Town Office prior to the first operation of the personal wireless services facility;
 5. An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during the implementation of the decommissioning plan.

Section 17.07 Nonconforming Uses

A. *Not Expansion of Nonconforming Use.* Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. *Pre-existing Towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this chapter.

C. *Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas.* Notwithstanding other provisions of this chapter, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain a special use permit and without having to meet the separation requirements specified in Section 17.03. The type, height, and location of the tower on site shall be of the same type and intensity as the original facility approval; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within ninety (90) days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 17.06(A).

Section 17.08 Retention of Consultants

A. Use of Consultants

Where deemed reasonably necessary by the Town Council and/or the Town, the Town Council and/or the Town may retain the services of professional consultants to assist the Town in carrying out its duties in review and approval of personal wireless service facilities. Where the Town Council uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the Town for such services. That responsibility shall not exceed the actual cost to the Town of such engineering, legal, or other consulting services.

B. Advance Deposits for Consultant Costs

The Town and/or Town Council may require advance periodic monetary deposits held by the Town on account of the applicant or landowner to secure the reimbursement of the Town's consultant expenses. The Town Council shall establish policies and procedures for the fixing of deposits and the management of payment from them. After the review and approval of itemized invoices by the Development Services Director, or designee, as to the reasonableness and necessity of the consultant charges, the Town may make payments from the deposited monies for engineering, legal, or consultant services. Upon receiving a request by the applicant or landowner, the Town shall supply copies of such invoices to the applicant and/or landowner reasonably in advance of review and approval, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's consultant. When it appears that the remaining deposit held for the applicant or landowner by the Town may be insufficient to pay current or anticipated invoices, the Town shall cause the applicant or landowner to deposit additional monies to meet such expenses or anticipated expenses in accordance with policies and procedures established by the Town Council. Consultants shall undertake no review on any matter scheduled before the Town until the initial deposit has been made or requested replenishment of the deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with deposit requirements.

C. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The Town may also take into account any special conditions for consideration as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants for a service that was rendered to assist the Town in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the Town or its residents; (b) assessing potential adverse environmental impacts such as those identified within an ADEQ process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, enabling the Council to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

D. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the Town Council shall review all invoices and determine whether such engineering, legal, and consulting expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of an application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the Town Council on reasonable advance notice.

E. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the Town for funds expended to compensate services rendered to the Town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the Town for its consulting expenses, notwithstanding that the deposit account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the Town to be due. In the event of failure to reimburse the Town for such fees, the following shall apply:

The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.

Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal, and consulting fees expended by the Town shall be remedied by charging such sums against the real property that is the subject of the application by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected simultaneously and in the same manner as Town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal, and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record by certified mail, return receipt

requested, of an opportunity to be heard and object before the Town Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

ORDINANCE NO. 26-12

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA, AMENDING THE FOUNTAIN HILLS ZONING ORDINANCE BY REPEALING AND REPLACING CHAPTER 17, WIRELESS TELECOMMUNICATION TOWERS AND ANTENNAS WITH A NEW CHAPTER 17, WIRELESS TELECOMMUNICATION TOWERS AND ANTENNA.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) adopted Ordinance No. 93-22 on November 18, 1993, which adopted the Zoning Ordinance for the Town of Fountain Hills (the “Zoning Ordinance”); and

WHEREAS, the Town desires to enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently while protecting residential areas and land uses from potential adverse impacts of towers and antennas; and

WHEREAS, the Town Council desires to repeal the existing Chapter 17, Wireless Communication Towers and Antennas and replace it with a new and updated Chapter 17, Wireless Communication Towers and Antennas; and

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding this ordinance were advertised in the August 26, 2026, and September 1, 2026, editions of the Fountain Hills Times; and

WHEREAS, a public hearing was held by the Planning and Zoning Commission on September 14, 2026, and by the Town Council on October 20, 2026; and

WHEREAS, in accordance with Article II, Sections 1 and 2, Constitution of Arizona, and the laws of the State of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town and the probable impact of the proposed ordinance on the cost to construct housing for sale or rent before adopting this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. Chapter 17 of the Fountain Hills Zoning Ordinance is hereby repealed and replaced with the ordinance as provided in Exhibit A.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. EMERGENCY CLAUSE - WHEREAS, it is necessary for the preservation of the peace, health, and safety of the Town of Fountain Hills, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of adoption.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, this 20th day of October, 2026.

TOWN OF FOUNTAIN HILLS, ARIZONA

ATTEST:

Gerry M. Friedel, Mayor

Bevelyn Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Rachael Goodwin, Town Manager

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ORDINANCE NO. 26-12

EXHIBIT A

Chapter 17

Wireless Telecommunications Towers and Antennas

Section 17.01 Purpose, Intent, and Applicability

A. The purpose of this chapter is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this chapter are to:

1. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
2. Employ the “General Authority” preserved to the Town under 47 U.S.C. § 332(c)(7)(A) to the greatest extent the United States Congress intended while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B).
3. Employ the authority reserved under A.R.S. §§ 9-462.01, and 9-596.A to exercise the Town’s zoning powers, land use, planning and permitting authority, exercise its police powers, and manage access to the Town’s public rights of way.
4. Promote the location of towers in nonresidential areas;
5. Limit the total number of towers throughout the community;
6. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
7. Require users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
8. Require users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and camouflaging techniques;
9. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

10. Recognize that technology and laws regarding these facilities have changed, so the Town's regulations need to change accordingly;
11. Consider the public health and safety of communication towers; and
12. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.
13. Maintain the Town's status as a designated International Dark Sky Community and an optimum environment for stargazing,
14. Conserve and enhance the unique natural beauty, irreplaceable natural resources, historical, natural, and man-made character and appearance of Fountain Park, McDowell Mountain Preserve, Pleasantville Park, and views of Red Mountain and Four Peaks.
15. Protect Saguaro cacti as a unique natural resource promoting tourism, contributing to the aesthetic well-being of the community, high property values, high quality of life, unique lifestyles, and providing habitat protection for desert wildlife. Saguaro cacti grow slowly and cannot be replaced by a plant of like character.
16. Protect the Sonoran Desert tortoise and its habitats as a unique natural resource and an important component of Town of Fountain Hills natural environment that contributes to the aesthetic, environmental, and personal well-being of the community. The Sonoran Desert tortoise is a state-protected species in Arizona and a petitioned candidate for inclusion as a federally endangered species pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544. Populations of the Sonoran Desert tortoise has been documented in the Town of Fountain Hills.
17. Protect the quiet small-town suburban, scenic and visual character of the Town.

In furtherance of these goals, Town of Fountain Hills shall give due consideration to the Town of Fountain Hills General Plan, the Town of Fountain Hills Zoning Ordinance, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

B. It is the intent of this chapter:

1. That no wireless communication towers or antenna be sited, constructed, reconstructed, installed, materially changed, expanded, or used unless in conformity with this chapter.
2. To achieve a balance between the need to provide wireless services with the health, safety, and general welfare of the residents of Fountain Hills by balancing five (5) simultaneous objectives:
 - a. Enabling personal wireless service providers to provide adequate personal wireless services throughout the Town so that Town residents can enjoy the benefits of same from any FCC-licensed wireless carrier from which they choose to obtain such services;

- b. Minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage;
- c. Preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the Town's communities, residential areas, and individual homes; and
- d. Complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B) for permit applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.
- e. Complying with the Federal Communications Commission's (FCC) legislative rules for communications facilities including those for Radio Frequency human exposure limits in 47 C.F.R. Part 1, Subpart I and those addressing State and Local government regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities, in 47 C.F.R. Part 1, Subpart U.

This Section is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide reasonable and necessary wireless communications services; (2) prohibit or effectively prohibit any entity's ability to provide reasonable and necessary interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities solely on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply in every instance and regard with all FCC's regulations concerning such emissions; (5) prohibit any eligible facility that the Town may not deny under federal or state law; or (6) otherwise authorize the Town to violate any applicable federal or state law.

C. *Applicability.*

1. *New Towers and Antennas.* All new towers or antennas in the Town of Fountain Hills shall be subject to these regulations. The following exceptions apply:

- a. *Amateur Radio Station Operators/Receive Only Antennas.* This chapter shall not govern any tower, or the installation of any antenna, that is under the maximum building height of the zoning district in which such structure is located and which is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only operations.
- b. *Pre-existing Towers or Antennas.* Legally established pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this chapter, other than the requirements of Sections 17.06(B)(1) and 17.06(C).
- c. *AM Array.* For purposes of implementing this chapter, an AM array, consisting of one (1) or more tower units and supporting ground system which functions as one (1) AM

broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

d. *Small Wireless Facilities.* Wireless communication towers and antenna meeting the definition of small wireless facilities as contained in A.R.S. 9-591 are subject to the requirements of Article 19-1, Small Wireless Facilities, of the Town Code.

e. *Mobile or Temporary Towers.* Mobile wireless facilities, when placed on site for seven (7) consecutive days or less, provided any necessary building permit or encroachment permit is obtained.

f. *Utility Service Antennas in the Right-of-Way.* Utility service antennas as defined in this chapter placed in the public right-of-way are subject to the requirements of Article 16-3, Utility Service Antenna, of the Town Code. (24-08, Amended, 09/04/2024, Deleted and replaced)

g. Over-the-Air-Reception Devices ("OTARD") antennas as defined by 47 C.F.R. § 1.4000(a).

2. *Existing Towers and Antennas.* Any existing towers which are modified, upgraded, or changed in any manner shall be subject to the provisions of this ordinance as applicable. All existing towers and antennas shall be subject to the maintenance and operations requirements in Sec. 17.06.

Section 17.02 Definitions

For the purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings provided in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Town Code and Zoning Ordinance, and the definitions set forth herein below shall control and apply to Chapter 17 of the Zoning Ordinance and all subparagraphs herein.

"Accessory facility or accessory structure" means a facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex or an immediately adjacent lot, including, but not limited to utility or transmission equipment storage sheds or cabinets.

"ACHP" means the Federal Advisory Council on Historic Preservation.

ADA means American Disabilities Act.

“ADEQ” means the Arizona Department of Environmental Quality.

“Adequate coverage” means, as determined by the Town Council, that a specific wireless carrier’s personal wireless service coverage is such that the vast majority of its customers’ equipment can successfully connect to the carrier’s radio access network and achieve a received signal strength of -110 dBm or better and deliver a -90 dBm or better signal to the base station receiver (uplink) with a signal to noise ratio (SINR) of 3 dB or higher the vast majority of the time, in the vast majority of the geographic locations within the Town, that the Voice Drop Call Rate, e.g. the percentage ratio of dropped voice calls to total call attempts or successful call setups remains at or below 3%. A “gap” can exist when there is a lack of coverage or when coverage exists but quality is below the above metrics. The Town will assess whether a gap in a carrier’s personal wireless services are significant, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier’s customers are affected for only limited periods of time. A wireless carrier’s coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

For claimed capacity or quality shortfalls in an area that has coverage, the applicant must demonstrate through independently-verifiable data and analysis, including network generated recordings based on user equipment reports that users are consistently experiencing dropped voice calls (in contrast to dropped sessions involving non-voice communications) at an unacceptable level during peak periods, or user devices are consistently denied access to the network due to lack of overall capacity at peak periods.

If the applicant relies on signal strength data (whether network recorded or through drive tests) to demonstrate a lack of coverage or inadequate quality/capacity the applicant must disclose all underlying data, its thresholds for acceptable quality in such fashion that all claims and conclusions are independently verifiable.

The Town strongly encourages all applicants to use methods consistent with the FCC rules governing provider reports and mapping data in 47 C.F.R. Part 1, Subpart V (§§ 1.7000 – 1.7010).

“Alternative tower structure” means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

“Adjacent properties or properties adjacent” shall mean (i) those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a wireless facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

“Aesthetic or aesthetics” refers to subjective or objective determinations related to whether and if so, how well a facility will fit within the character of the area where the facility is proposed. This requires a broad range of factors including but not limited to visual effects and impact on property values. The Town will consider aesthetics for all applications and, where not prohibited by federal or state law, reserves the ability to impose careful placement conditions or restrictions.

“Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. This definition does not apply to antennas designed for amateur radio use or satellite dishes for residential or household purposes.

“Antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when Co-located on a PWSF Structure, is mounted or installed at the same time as such Antenna.

“Antenna facility” means Antenna and associated Antenna Equipment.

"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a wireless communication facility permit, site plan approval, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more wireless communication facilities.

"Application" shall mean all necessary and required documentation, information, and evidence that an applicant must submit to receive a wireless communications facility permit, building permit, or other Town approval for personal wireless service facilities from the Town.

“Backhaul network” means the lines that connect a provider’s towers/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

“Balloon test” means the raising of a balloon (or placement of a “crank up” tower, crane or temporary structure) equal to the height of a proposed personal wireless services facility tower for a period of 4 hours on a pre-determined date and time prior to approval of a wireless facility permit application to assess the visual impact of a proposed tower.

“Base station” means for purposes of eligible facilities requests the definition in the FCC’s regulations at 47 CFR § 1.6100 shall apply. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

“Board of Adjustment” means the Board of Adjustment of the Town of Fountain Hills, established pursuant to Sec. 1.07 of the Zoning Ordinance with membership, powers, duties, and responsibilities as set forth in Article 2A-2 of the Town Code.

Carriers. See Wireless Carriers.

“Cell tower” means a free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

“CEQ” means the Council on Environmental Quality, as established under NEPA.

"Collocate, colocate" or "collocation, colocation" can have different meanings depending on context.

1. When and where A.R.S. §§ 9-951 — 9-600 apply, the definition in A.R.S. §§ 9-951.8 shall also apply. That definition currently states:

"Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a wireless support structure or utility pole.

2. Where and when the FCC’s general rules for placement, construction and modification of personal wireless facilities apply, the definition in 47 C.F.R. § 1.6002(g) shall also apply. That definition currently states:

Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of “collocation” in § 1.6100(b)(2) applies to the term as used in that section.

3. Where and when the FCC’s rules for wireless facility modifications apply, the definition in 47 C.F.R. § 1.6100(b)(2) shall also apply. That definition currently states:

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

“Complete application, completed application” means an application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Development Services Director, Town Engineer or the Town’s expert or consultant, or the Council determines, based upon information provided, that any additional, further, or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the

Development Services Director, Town Engineer, Town Council or the Town's expert or consultant of the Council.

"Complex" means the entire site or facility, including all structures and equipment, located at the site.

"Council or Town Council" means the Town Council of the Town of Fountain Hills.

"DBM" (dBm) stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. It expresses power relative to 1 milliwatt (mW) on a logarithmic scale. Emissions are measured using positive whole or fractional numbers. Received signal strengths are typically recorded in negative numbers because they are usually weaker than 1 milliwatt, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal. FCC, HHS and OSHA regulate safe exposure thresholds but transmitter power (in dBm) is crucial to determining exposure, as it is the starting point for calculating current exposure limits.

"Deployment" means the placement, construction, or substantial modification of a personal wireless service facility.

"Development Services Director" (or "Director): T" means the person appointed by the Town Manager to be the Development Services Director. If there is no such person designated by the Town Manager, the Town Manager is the Development Services Director.

"Distributed antenna system, DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

"Effective prohibition" means a finding by the Town Council that if an application seeking approval for a specific new Personal Wireless Service Facility at a specific location, and a specific height, were to be denied, such denial would either: (a) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area, or areas, within the Town, or (b) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

An effective prohibition shall not be found to exist if a Wireless Carrier has Adequate Coverage in a specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services; however, the frequencies are not the "most preferred" frequencies of the Carrier.

An effective prohibition shall also not be found to exist if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

A finding of Effective Prohibition, or lack thereof, shall be based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence and the appropriate weight the Town Council deems appropriate to afford.

"Eleventh hour submissions" means an applicant's submission of new and/or additional materials in support of an application less than five (5) business days before the expiration of an applicable shot clock or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town Council to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

"Eligible facilities request" means a request that meets the requirements in 47 CFR § 1.6100 for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station and involving:

- (a) Co-location of new transmission equipment,
- (b) Removal of transmission equipment, or
- (c) Replacement of transmission equipment.

"Enure" means to operate or take effect. To serve to a person or party's use, benefit, or advantage.

"EPA" means the United States Environmental Protection Agency.

"Existing structure" means light poles, power poles, chimneys, billboards, and other similar structures, which are placed, within the Town at the time of adoption of this chapter, except existing buildings.

"FAA" means the Federal Aviation Administration or its duly designated and authorized successor agency.

"Facility" means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

"FCC" means the Federal Communications Commission.

"General population/uncontrolled exposure limits" means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3), as further described and supplemented by the FCC Office of Engineering and Technology Laboratory Division's advisory Knowledge Database (KBD), available at <https://apps.fcc.gov/oetcf/kdb/index.cfm>.

"HHS" means U.S. Department of Health and Human Services or its constituent agencies, including FDA Food and Drug Administration, charged with review and compliance, meeting or exceeding requirements of the RF-emitting consumer devices (e.g., electronic products such as cell phones) for health impacts.

“Height” means, when referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

“Historic Structure” means any structure that is either on the National Register of Historic Places or is eligible for inclusion in the national register, irrespective of whether or not an application for inclusion onto the national register has been filed or not filed.

“Illegally excessive RF radiation or illegally excessive radiation” means RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

“In-kind call testing” means testing designed to measure the gap in Personal Wireless Service coverage asserted by an applicant. In-Kind Call Testing for a claimed gap in Personal Wireless Services in buildings means call testing performed in buildings to establish the existence or absence of such a gap, unless the applicant provides an affidavit sworn under penalties of perjury demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing. In-Kind Call Testing for a claimed gap in Personal Wireless Services in vehicles or in the open air means call testing performed in vehicles or in the open to establish the existence or absence of such a gap.

“In-kind replacement” means the replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

“Least intrusive” means the location and design of a personal wireless service facility that would remedy a significant gap in Personal Wireless Service coverage and (1) does the least disservice to the objectives stated in § 270-219A(2), and (2) deviates as little as possible from (a) the preferential order of location in subsection K (Priority of siting locations) and (b) applicable design standards in subsection L.

“Macrocell” means a cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, typically ranging from 50 to 199 feet in height.

“Maintenance or routine maintenance” means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

“Monopole” means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole. Monopoles are typically unguyed.

“Necessary, or necessity, or need” means what is technologically required for the equipment to function as designed by the manufacturer and anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards or unspecified “coverage objectives.” Any situation involving a choice between or among alternatives or options is not a need or a necessity.

“NEPA” means the National Environmental Policy Act, 42 U.S.C. §4321, et seq.

“NHPA” means the National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800, et seq.

“Node, DAS node” means a fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

“Node” means a fixed antenna and antenna equipment installation that operates as part of a system of spatially separated Antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services using hand-off capabilities. A 4G (LTE) node is referred to as an ENode B, and a 5G node is referred to as a GNode B. Some sites incorporate both 4G and 5G. Some 5G capable sites still rely on a 4G network core.

“Notice address” means an address, which is required to be provided by an applicant at the time it submits an application, at which the Town, Town Council, and/or Development Services Director or Town Engineer designee can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

“Notice of incompleteness, notice of incomplete application” means a written notice, sent by electronic mail, to an applicant seeking approval for the installation of a PWSF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

“Notice of effective prohibition conditions” means a written notice, which is required to be provided to the Town at the time of the filing of any application by all applicants seeking any approval, of any type, for the siting, installation, and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the Town, would constitute an “effective prohibition” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

“Occupational/controlled exposure limits” means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

"Permit" means written permission required by an authority to install, mount, maintain, modify, operate or replace a utility pole or monopole, to collocate a wireless facility on a utility pole or wireless support structure or to collocate wireless facilities on a monopole.

“Permittee” means a holder of a Personal Wireless Service Facility Permit.

“Personal wireless service/personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

“Personal wireless service facility, personal wireless services facility or PWSF” means a facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

“Pre-existing towers and pre-existing antennas” means any tower or antenna for which a building permit has been properly issued prior to the effective date of the ordinance codified in this chapter, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

"Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

“Probative evidence” means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Town Council or other decision making authority, as the finder-of-fact in determining whether to grant or deny applications under this provision of the Town Code.

“Repairs” means the replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a

wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

“RF” means radiofrequency.

“RF radiation” means radiofrequency radiation. That being electromagnetic radiation, which is a combination of electric and magnetic fields that move through space as waves, and can include both Non-Ionizing radiation and Ionizing radiation.

“School” means a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes the real property and facilities used for such educational purpose.

“School property” means any parcel containing a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes associated playgrounds, athletic fields, administrative buildings, parking areas, and other school-related facilities.

“Section 106 Review” means a review under Section 106 of the National Historic Preservation Act.

“Setback” means the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property that is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

“Shot clock, Arizona” means the statutory timeframes within which the Town must review a wireless application for completeness of an application for wireless facilities in right-of-way pursuant to A.R.S. § 9-594.C.2 and act on a wireless application before it is otherwise deemed approved pursuant to A.R.S. § 9-594.C.2. For deemed approved purposes, the Arizona shot clock begins on the date when the Town determines the application is properly completed. For applications involving wireless facilities not in right-of-way the FCC shot clock will apply.

Shot clock, FCC: the presumptively reasonable time frame within which the Town must act on a wireless application, as defined by the FCC, shown below subject to amendment from the FCC. The shot clock begins when the applicant takes the first procedural step that the Town requires.

a. Aggregate of 60 days:

- 1) Standby emergency generators at previously permitted macro cell tower sites.
- 2) Collocation of small wireless facilities at existing small wireless facility sites.
- 3) Eligible Facilities Requests.

- b. Aggregate of 90 days:
 - 1) New small wireless facilities.
 - 2) Collocation applications for additions to existing communications facilities not defined as an eligible facilities request.
- c. Aggregate of 150 days:
 - 1) All other applications, such as development of a new communication tower or facility.

“SHPO” means the Arizona State Historic Preservation Office.

“Site developer or site developers” means individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.

“Small cell” means a fixed cellular base station that sends and receives radio signals and is typically mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

"Small wireless facility" can have different meanings depending on context.

1. When and where A.R.S §§ 9-591 – 9-599 applies, the definition in A.R.S §§ 9-591.19 shall also apply. That definition means a wireless facility that meets both of the following qualifications:

- (a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.
- (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
 - i. An electric meter.
 - ii. Concealment elements.
 - iii. A telecommunications demarcation box.
 - iv. Grounding equipment.
 - v. A power transfer switch.
 - vi. A cutoff switch.
 - vii. Vertical cable runs for the connection of power and other services

2. Where and when the FCC’s general rules for placement, construction and modification of personal wireless service facilities apply, the definition in 47 CFR §1.6002(l) shall apply. That definition states as follows:

- (a) Small wireless facilities are facilities that meet each of the following conditions:
 - (i) The facilities—
 - Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or

Are mounted on structures no more than 10 percent taller than other adjacent structures; or

Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- (ii) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of “antenna” in § 1.1320(d)), is no more than three cubic feet in volume;
- (iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (iv) The facilities do not require antenna structure registration under part 17 of this chapter;
- (v) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

"Special taxing district" means a special district formed pursuant to title ARS 48, chapter 11, 12, 17, 18, 19, 20 or 22.

“Special Use Permit” means the official document or permit granted by the Town Council pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

“State” means the State of Arizona.

“Structure” means a pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

“Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

“TCA” means the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at various provisions of Title 47 U.S.C.

“Thermal runaway” means self-heating of an electrochemical system in an uncontrollable fashion.

“Tolling or tolled” means the pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to

complete the application will end the tolling, thus causing the shot clock period to resume running, as opposed to causing the shot clock to begin running anew.

“Tower” means a mast, pole, monopole, slim stick, guyed tower, lattice tower, freestanding tower, or other structure designed to support or employed to support antennas and other equipment, including but not limited to dishes, transceivers and arrays used to provide personal wireless services and wireless communications services. A ground- or building-mounted mast greater than ten feet tall and six inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a communications tower.

“Town” means the Town of Fountain Hills.

“Town code” means the Town Code of the Town of Fountain Hills.

“Undertaking” means any application seeking Town approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

“Utility” means Arizona (under ARS § 40-360.51 (5)): A public utility includes corporations or persons engaged in furnishing water, gas, electricity, telephone service, or sewage disposal to the public for compensation.

“Utility service antennas” means antenna placed on or near utility boxes, poles, switches, storage tanks, etc., and used by a utility provider to facilitate the operation of the utility system.

“Wireless carriers or carrier” means companies that provide Personal Wireless Services to end-use consumers.

“Wireless communication” means the transmission of voice or data without cable or wires.

“Wireless communication facility” means wireless communication facilities including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities also include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio and television broadcast towers and government-operated public safety networks.

“Zoning ordinance” means the Zoning Ordinance of the Town of Fountain Hills, as codified in Chapter 1, Sec. 1.01 of the Zoning Ordinance.

Section 17.03 Requirements

A. General Requirements.

1. *Principal or Accessory Use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
2. *Lot Size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
3. *Aesthetics.* Towers and antennas shall meet the following requirements:
 - a. Towers shall, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - d. The choice of design for installing a new wireless communication facility or the substantial modification of an existing wireless communication facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties. Concealment elements should be used to camouflage the pole and antennas.
 - e. *Accessory Structures.* Unless approved by the Town Council, all equipment associated with a wireless communication tower is to be located below grade in a vault. If above grade accessory structures are approved by the Town Council, they shall comply with the following requirements.
 - i. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of specified concealment elements for communications towers may be required by the Council to blend the communications tower and/or its accessory structures further into the natural surroundings using specified concealment elements.

ii. Accessory structures shall be designed to be architecturally similar, compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one (1) building.

iii. No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than 2 square feet indicating the name of the facility owner(s) and a twenty-four (24) hour emergency telephone shall be posted adjacent to any entry gate. In addition, “no trespassing” or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.

f. *Visual Impacts.* Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

g. *Existing Vegetation.* Existing vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this chapter prior to the approval of the application.

h. *Screening.*

i. Tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the compound.

ii. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town Council.

iii. The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate noise emanating from on-site equipment, including but not limited to heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

i. *Utility Services Antennas.*

i. If placed on another utility structure such as a water tower, the antenna shall be painted to blend with the building or equipment it is placed on.

ii. If a separate tower structure is used, the design shall comply with the provisions in this section.

j. *Data-Only and Information Service Facilities.* To the maximum extent permitted by federal and state law, any wireless facility used exclusively for the provision of an information service, data collection, telemetry, machine-to-machine communication, sensing, monitoring, or another service that does not constitute a personal wireless service under 47 U.S.C. § 332(c)(7)(C) or a telecommunications service protected by 47 U.S.C. § 253 shall be installed underground or flush with grad, including its antenna, antenna equipment and accessory equipment, where technically feasible. An applicant seeking above-ground installation shall demonstrate through clear and convincing technical evidence that underground or flush-to-grade installation would prevent the facility from performing its intended function and that the proposed above-ground installation is the least visually intrusive technically feasible alternative.

Nothing in this subsection shall require underground placement to the extent the applicant demonstrates that such requirement is expressly prohibited or preempted by applicable federal or Arizona law.

4. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views and, to the degree possible while complying with FAA requirements, meet the standards set in Zoning Ordinance Chapter 8, Outdoor Lighting Control.

5. *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Town of Fountain Hills irrespective of municipal and county jurisdictional boundaries.

6. *Not Essential Services.* Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

7. *Franchises.* Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Town of Fountain Hills have been obtained and shall file a copy of all required franchises with the Community Development Director.

8. *Signs.* No signs other than those required by law shall be allowed on an antenna or tower.

9. *Co-location and Multiple Antenna/Tower Plan.* The Town of Fountain Hills encourages tower and antenna users to submit a single application for approval of multiple towers and/or antenna sites and to submit applications, which utilize co-location with an existing wireless telecommunications provider. Applications for approval of multiple sites or for co-location with an existing provider shall be given priority in the review process.

10. *Security fencing.* PWSF shall be enclosed by security fencing not less than 6 feet in height and no more than 8 feet in height, shall be constructed of a block or masonry, and shall be equipped with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements, as it deems appropriate.

11. *Noise.* Submission of applications for towers and associated equipment placed above grade, including backup generators or power supplies, shall include noise and acoustical information, prepared by a qualified firm or individual, for the base transceiver station(s), equipment buildings, and associated equipment such as air conditioning units and backup generators. The Town may require the applicant to incorporate appropriate noise baffling materials and/or strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations contained in Section 11-1-7 of the Town Code.

12. *Arizona Licensed Engineer.* Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer.

13. *Verification by Town Engineer.* Application approval issued under this chapter shall be conditioned upon verification by the Town Engineer or designee that such tower structure is structurally sound. Such verification shall be received by the applicant prior to submission.

14. *Access and Parking.* Areas sufficient for access to the tower and equipment location and for temporary off-street parking of at least two vehicles shall be provided. The type and configuration of the access and parking shall be subject to the standards set forth in Zoning Ordinance Chapter 7, Parking and Loading Requirements.

15. *Minimum Height of Antennas.* All antennas shall be located such that:

- a. Any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half (8.5) feet below the transmitting surface; and,
- b. No person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

16. *Fall Zone.* Each new tower shall maintain a fall zone having a radius of not less than one hundred twenty-five percent (125%) of the total height of the tower, measured from the base of the tower. The fall zone of any tower, pole shall not overlap, in whole or in part, any portion of a public sidewalk, street, alley, right-of-way, or occupied building.

B. *Minimum Setbacks and Separations.*

1. *Setbacks From Property Lines.* Except for utility service antennas, the following setback requirements shall apply to all towers; provided, however, that the Town Council may reasonably

reduce the standard setback requirements if the goals of this chapter would be better served thereby:

- a. Towers must be set back a distance equal to at least one hundred fifty percent (150%) of the height of the tower from any adjoining lot line. For guyed towers, the required setback shall be measured from the outermost guy wire anchor point, and shall additionally account for the manufacturer's or structural engineer's certified guy-wire failure/whip radius. In no case shall a guy wire anchor, guy wire, or its calculated failure radius be located within 500 feet of an occupied structure, public right-of-way, or property line, whichever is more restrictive.
- b. Accessory buildings must satisfy the minimum zoning district setback requirements.

2. *Separations From Adjacent Uses.* Except for utility service antennas, the following separation requirements shall apply to all towers and antennas.

a. *Separation From Residential Uses.*

- i. Tower separation shall be measured from the base of the tower to the lot line of the residential uses.
- ii. Separation requirements for towers shall be 500 feet from any residentially zoned or used land including mixed-use.

The Town Council may reduce the standard separation requirements to 300' if, through information and data presented, the Council determines the goals of this chapter would be better served thereby.

- b. *Separation Distances Between Towers.* Separation distances between towers shall be applicable for and measured between the proposed tower and pre-existing towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 17.03 B.

Table 17.03 B. Separation Distances Between Towers

	Monopole 65 ft. in height or greater	Monopole less than 65 ft. in height but greater than 40 ft. in height	Monopole less than 40 ft. in height
Monopole 65 ft. in height or greater	2,500 feet	2,000 feet	1,500 feet

	Monopole 65 ft. in height or greater	Monopole less than 65 ft. in height but greater than 40 ft. in height	Monopole less than 40 ft. in height
Monopole less than 65 ft. in height but greater than 40 ft. in height	2,000 feet	2,000 feet	1,500 feet
Monopole less than 40 ft. in height	1,500 feet	1,500 feet	1,000 feet

C. Buildings or Other Equipment Storage.

1. *Antennas Mounted on Structures or Rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:

a. Unless approved otherwise by the Town Council for good cause shown, but located in an underground vault.

b. If located above ground:

i. The cabinet or structure shall not contain more than 120 square feet of gross floor area or be more than 8 feet in height and shall be located on the ground.

ii. Equipment storage buildings or cabinets shall comply with all applicable building codes.

2. *Antennas Mounted on Utility Poles, Light Poles, or Towers.* The equipment cabinet or structure used in association with antennas shall be located, unless otherwise approved by the Town Council in an underground vault. If approved to be above ground, then in accordance with the following:

a. In residential districts, the equipment cabinet or structure may be located:

i. In a required front yard or required street side yard, provided the cabinet structure is no greater than 3.5 feet in height and 20 square feet of gross floor area and the cabinet/structure is located a minimum of 3 feet from all lot lines. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height not to exceed forty-two (42) inches.

ii. In a required rear yard, provided the cabinet or structure is no greater than 5 feet in height or 120 square feet in gross floor area. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the

structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height of 6 feet.

iii. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure.

b. In commercial or industrial districts the equipment cabinet or structure shall be no greater than 14 feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by sight-obscuring landscaping with an ultimate height of 16 feet and a planted height of at least 6 feet. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure. Such access way shall not face residentially zoned property.

3. *Modification of Building Size Requirements.* In the case of wireless facilities considered by the Town Council, the requirements of subsections (C)(1) and (C)(2) of this section may be modified by the Town Council to address site specific conditions and requirements.

4. *Battery Safety.* Any battery energy storage or backup power system installed in connection with a PSWF shall utilize lithium ion phosphate (LiFePO₄ or LPE) batteries, which are less prone to thermal runaway and fire hazard. All battery systems shall comply with applicable fire, electrical, building, and product-safety codes and standards.

D. *Co-location.*

1. Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers. Design considerations shall include sufficient area for additional ground equipment, structural design of the tower, and sufficient electrical power available for the load of at least two (2) additional wireless service providers.

2. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same support structures or site, if the Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to comply with this section.

3. *Third Party Technical Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third-party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.

4. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless

telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.

5. *Violation; penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit. (24-08, Amended, 09/04/2024, Deleted and replaced)

Section 17.04 Application Types

A. *Administrative.* The following types of applications are processed administratively by staff:

1. Applications to change or modify an existing administratively approved wireless communication facility that remains in compliance with all chapter requirements.
2. Applications to change or modify an existing wireless communication facility approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);
 - c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
 - d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.
3. Applications for co-location of additional antenna for an additional service provider on an existing administratively approved tower that remains in compliance with all chapter requirements.
4. Applications for co-location of additional antenna for an additional service provider on an existing tower approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);

- c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
 - d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.
5. Applications for new utility service antenna that comply with the height and setback requirements of the zoning district in which they are located.
 6. Applications for mobile or temporary wireless facilities for more than seven (7) consecutive days upon submittal of:
 - a. Proof of event, emergency, or documented capacity need;
 - b. A site plan showing setback and fall zone compliance; and
 - c. Proof of general liability insurance per Section 17.06.G.1.

B. *Public Review.*

1. Any new tower or modification to existing towers or antennas that do not meet the requirements in subsection (A) of this section for administrative review shall require review and approval as provided in subsection 17.05 (C).
2. Any new tower not meeting the setback or separation requirements in Section 17.03 (B).

Section 17.05 Application Submittal, Review, and Processing

A. *General.* Unless waived in writing by Zoning Administrator, the following provisions shall govern the review of all wireless communication facility applications:

1. *Complete Application.* Applications for wireless communication facilities shall be filed electronically on the Town's website by an owner of real property and shall contain the area proposed for the wireless communication facility using the process established by the Director for such applications. All such applications shall include the information required in this section. Applications filed on behalf of the property owner by a third party shall include a statement from the property owner authorizing the submittal of the application.
2. Applications shall include documentation of compliance with items listed in Section 17.03(A) as applicable to the application submitted.

3. *Inventory of Existing Sites.* Each applicant for a new tower or co-location of new antenna on an existing tower shall provide to the Development Services Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the Town of Fountain Hills or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. Each applicant shall also provide a one (1) year build-out plan for all other wireless communications facilities within the Town. The Development Services Director may share such information with other applicants applying for administrative approvals or special use permits under this chapter or with other organizations seeking to locate antennas within the jurisdiction of Town of Fountain Hills; provided, however, that the Development Services Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

4. *Utility Service Antennas.*

a. If the antenna complies with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and approved with the overall site development plans if the site is being developed concurrently. If the antenna is being added to an existing utility site, the plans will be reviewed and processed consistent with the requirements of subsection (C)(2) of this section.

b. If the antenna does not comply with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and processed consistent with the requirements of subsection (C)(3) of this section.

5. A list of the full names and contact information for all applicants, co- applicants, facility owner(s), facility operator(s), site developer(s), and wireless carrier(s), property owner(s) and other related third parties and their agent(s), if any, on whose behalf the application is being submitted.

6. Proof of Authorization for Site Occupancy. Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, it shall submit proof of authorization to occupy the site at issue.

If the applicant is leasing all or a portion of real property upon which it intends to install its facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant seeks to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

7. Fire Safety: The applicant shall submit a Fire Safety Plan that includes a general description of the personal wireless services facility for purposes of ensuring the Fire Department is fully informed and prepared in case of a fire. The Fire Safety Plan shall include:

- a. Location of all Fire Safety Plan documents.
- b. Location of the facility's alarm panel.
- c. List of emergency contacts.
- d. Specific responsibilities assigned to designated personnel.
- e. Location of signal-processing equipment.
- f. Location and listing of types of power equipment, including rectifiers, inverters, distribution cabinets, bus bars, cables, and communications raceways.
- g. Listing and location of batteries, including description of quantities and types of batteries, specifying whether batteries are lithium-ion, nickel cadmium, sodium-nickel, valve-regulated lead acid, and/or vented, and description of any associated exhaust ventilation system(s).
- h. Description of actions to detect and prevent thermal runaway events.
- i. Description of whether the facility will be located in a lightning-prone area. If the facility is to be located in a lightning-prone area, description of how the facility shall comply with NFPA 780 Standard for the Installation of Lightning Protection Systems;
- j. Description of location and types of fuses used to ensure that if the wireless transmission facility experiences overcurrent resulting from current exceeding the rating of equipment or the ampacity of a conductor, the facility shall turn off temporarily.
- k. Depowering procedures including identification of locations of electrical depowering devices, which include:
 - i. Coded floor prints located in the Fire Safety Plan document;
 - ii. Facility signage to direct fire personnel to depowering locations;
 - iii. The method of turning off power to the following:
 - 1) Alternating current power board. This is the primary source of electric power for a telecommunications facility and is supplied by the local power company.
 - 2) Standby power generator. This unit, usually a turbine or diesel generator, provides standby ac power that is transferred manually or automatically whenever a loss of ac power is experienced.

3) Direct current primary disconnect fuse or circuit breaker bay. This unit distributes dc power to the secondary fuse or circuit breaker panels throughout the central office. The secondary fuse or circuit breaker panels feed all the operating voltages to the central office branch circuits.

4) Uninterruptible power supply (UPS)

5) HVAC systems serving the facility

6) Alternative energy devices, such as wind turbines, fuel cells, photovoltaic systems, or other devices providing power to the facility.

I. Detailed electrical designs, signed and stamped by a licensed electrical engineer, demonstrating compliance with the Building, Electric and Fire Code. The Code compliance demonstration shall include all necessary underlying calculations and inputs, including but not limited to:

- a. A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
- b. A one-line diagram of the electrical system;
- c. Voltage Drop & Load Flow Study;
- d. Load Calculation;
- e. Panel Directories;

8. Soil Erosion and Sedimentation Control: A soil erosion and sedimentation control plan, prepared in accordance with the standards as established by the Town Engineering Division.

9. Engineer's Report: For the construction of all new wireless facilities and to the extent not already mandated herein, the applicant shall provide a report prepared and certified by a professional engineer certifying the integrity and safety of all proposed new towers and/or structures and indicating the location, type, and height of the proposed personal wireless services facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, all applicable American National Standards Institute (ANSI) technical and structural codes. To the extent that an application proposes the co-location of new equipment onto an existing tower or personal wireless services facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify above.

10. Visual Impact Analysis. The applicant shall provide a completed visual impact analysis that shall include the following:

- a. A “Zone of Visibility Map” to determine locations from where the new facility will be seen.
- b. A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/ or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The photographic images shall show the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening and landscaping. The analysis shall include the results of the drone/balloon test, and other information as necessary to determine visual impact of the facility. The analysis shall include a map depicting where the photos were taken. Where consistent with the natural or built environment, the analysis shall include a native vegetation landscaping plan with a visual simulation of how the chosen plants, at maturity, will screen the site.

11. For proposed towers and facilities taller than 100 feet, the applicant shall perform a balloon test and shall publish reasonably advanced public notice of the same to enable the Reviewing Authority, property owners, and the community an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community. The balloon test shall be conducted for not less than four consecutive hours between 7:00 a.m. and 6:00 p.m. The primary test shall be conducted on a weekend. Said date and time will be established by the Development Services Director in coordination with the applicant, including an alternative date in case of inclement weather. If a balloon is used, the diameter shall be equal to the largest antenna or dish proposed for the CRS tower or the width of the tower, whichever is larger. The applicant will be responsible for publishing a public notice of the balloon test in at least one local newspaper publication and notifying abutters owning property within one thousand (1,000) feet radius, via U.S. Mail at least one week prior to the test.

12. If the application is for a facility that will not be attached to an existing utility pole and the facility’s proposed height will be greater than 30 feet then structural elevations of the facility(ies) shall include any trees and other structures within twenty (20’) feet, and their height.

13. Environmental Assessment Form. A completed environmental assessment form (EAF) and a completed visual EAF addendum if required by ADEQ.

14. FCC Compliance Report.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility, the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the General Population Exposure Limits or the Occupational Exposure Limits. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

15. FCC License. A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the Town.

16. Effective Prohibition Claims.

- a. The Town is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is “necessary” to remedy one or more significant gaps in a carrier’s personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The Town is additionally aware that, in December 2018, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through twelve (12) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff’s 66-page report is made a part of this Chapter as Appendix 1.

The Town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town Council to render determinations upon applications for new wireless facilities consistent with this Chapter’s requirements and the TCA’s statutory requirements.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Town Council or the Town that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the Town, (b) that the applicant’s proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Town Council would constitute an “effective prohibition” under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

“Notice of Effective Prohibition Conditions”

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Town Council to reasonably determine:

- i. Whether or not the conditions alleged by the respective applicant exist,
- ii. Whether there exists a significant gap or gaps in an identified wireless carrier’s personal wireless services within the Town,
- iii. The geographic locations of any such gaps, and

iv. The geographic boundaries of such gaps, to enable the Town Council to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not Federal law would require the Town Council to grant the respective application, even if it would otherwise violate the Town Code, including, but not limited to, this Chapter.

b. The additional materials which the applicant shall then be required to provide shall include the following:

i. Drive Test Data and Maps. If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the Town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the Town and the Town Council with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- 1) The date and exact time of day for the test or tests,
- 2) The location, in longitude and latitude, of each point at which signal strength was recorded and
- 3) Each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
- 4). The applicant shall also submit drive test maps depicting the actual signal strengths recorded during the actual drive test for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a “minimum” signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99 to -101 DBM, and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

ii. Denial of Service and/or Dropped Call Records. If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the Town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

iii. The equipment and methodology used.

iv. A list of any concurrent special events, festivals, road closures, or unusual network conditions occurring in the test area during the test period.

17. Estimate for Cost of Removal of Facility. At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town Council's Engineer shall review this estimate. A bond for the cost of removal as required in Sec. 17.06 A. 2. shall be filed prior to commencement of construction.

18. Property Owner Consent & Liability Acknowledgement. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners both authorize the applicant to file and pursue its application and acknowledge the potential landowner's responsibility, under Section 17.08 for engineering, legal and other consulting fees incurred by the Town.

19. *Applications Using Existing Towers.*

- a. Dimensioned, to-scale drawings showing the existing and proposed antenna on the tower including the height of the tower and the antennas.
- b. The number and type of existing and proposed antennas.
- c. Engineering calculations documenting the structural changes and certifying the tower's ability to carry the new antennas.
- d. Dimensioned, to-scale drawings illustrating modification of ground equipment, if any.

20. *Applications Using New Towers*

In addition to any information required for applications for special use permits pursuant to Chapter 2, Section 2.02, applicants for a new wireless facility shall submit the following information:

- a. A site plan as required in Section 2.04 plus zoning, General Plan classification of the site and all properties within the applicable separation distances set forth in Section 17.03(B)(1), adjacent roadways, proposed means of access, elevation drawings of the proposed tower and any other structures, photo simulations showing the tower in the proposed location from at least four (4) directions, and other information deemed by the Development Services Director to be necessary to assess compliance with this chapter.
- b. The setback distance between the proposed tower and the nearest residential unit and residentially zoned properties. Include an illustration of the fall zone for the tower.
- c. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 17.03(B)(2) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
- d. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- e. A description of compliance with Sections 17.03(A)(3), 17.03(A)(4), 17.03(A)(5), 17.03(A)(7), 17.03(A)(8), 17.03(A)(9), 17.03(A)(10), 17.03(A)(11), 17.03(B), subsection (A)(3) of this section, Sections 17.06(A) and 17.06(B) and all applicable federal, state or local laws.
- f. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
- g. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
- h. Alternatives Analysis. An itemized list of alternative sites considered, with a comprehensive explanation of reasons alternative sites are not technologically feasible. Explanation shall include specific comparative analysis of how different sites would impact aesthetic values, and other environmental values.
- i. A description of the feasible alternative location(s) of future towers or antennas within the Town of Fountain Hills based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- j. A statement of compliance with Federal Communications Commission (FCC) radio frequency (RF) exposure standards.

k. A biological resource survey addressing potential impacts to locally present protected or sensitive species, including but not limited to the Sonoran Desert Tortoise (*Gopherus morafkai*). The survey shall include the following:

- i. A proposed facility description including location, height of tower as measured from the ground, description of associated equipment, width and length of access roads and driveways, and length and right-of-way width of power and communication lines;
- ii. Existing biological resources on-site including quantification of vegetation and habitat types, color photo documentation of on-site and surrounding vegetation, a description of water resources, potential habitat for federal and state-listed species, and sensitive species habitats;
- iii. The results of any focused surveys for federally listed species (if required); and
- iv. Impacts to biological resources including quantification of the habitat to be removed as a result of the proposed facility.

The director may waive this requirement based on a finding that existing information verifies the lack of such biological resources on the site.

20. *Filing Fee.* Payment of a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. No part of the filing fee shall be returnable.

B. *Shot Clocks and Tolling.* To comply with the requirements of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth hereinbelow shall be presumed to be reasonable periods within which the Town shall render determinations upon applications for wireless communication facilities.

The Town shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period listed below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Town's control.

1. *Application Shot Clocks.*

a. *Receipt of Initial Application.* Upon receipt of an application, the Development Services Director, or designee, shall review the application for completeness. If the Director determines the application is: (i) incomplete, (ii) missing required application materials, (iii) is the wrong type of application, or (iv) is otherwise defective, then, within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the Town's receipt of the application, the Director, or their designee, shall notify the applicant of the finding and state what is needed to have a complete application.

The notice of incompleteness shall toll the shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues identified in the notice of incomplete application. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again notify the applicant within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the applicant having filed its supplemental or corrected materials to the Town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

If Applicant does not cure the stated deficiencies within 30 days, the application shall be considered withdrawn or closed.

b. *Application Review.* The shot clock for administrative applications is ninety (90) days. The shot clock for applications with new towers, monopoles, utility poles and other wireless facilities that trigger public review applications is one hundred fifty (150) days.

2. *Shot Clock Tolls, Extensions and Reasonable Delay Periods.* Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within subsection (B) of this section shall generally be presumed to be sufficient periods within which the Town shall render decisions upon applications.

Notwithstanding the same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Town, and the Town shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

a. *Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error.* As provided for within subsection (B)(1) of this section, in the event that the Development Services Director deems an application incomplete, the Director shall send a notice of incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Director sends a notice of incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Town is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the Town receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically resume running, but shall not be deemed to start running anew.

The applicable shot clock period shall, once again, be tolled if the Director thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the Town, from the applicant, up to that point.

b. *Shot Clock Extension by Mutual Agreement.* The Town shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Town shall include the Town's authority to request, at any time, and for any period of time the Town may deem reasonable or appropriate under the circumstances, consent from a respective applicant to extend the applicable shot clock period to enable the Town, the applicant, or any relevant third party, to complete any type of undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Town, to the extent that any such undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law and/or the requirements of any provision of the Town Code, including but not limited to this chapter.

In response to any request by the Town, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative, can consent to any extension of any applicable shot clock by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Town shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Town within the review process.

c. *Reasonable Delay Extensions of Shot Clock Periods.* The Town recognizes that there may be situations wherein, due to circumstances beyond the control of the Town and/or the Town Council, the review and issuance of a final decision upon an application for a wireless communication facility cannot reasonably be completed within the application shot clock periods delineated within subsection (B) of this section.

If, despite the exercise of due diligence by the Town, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Town shall be permitted to continue and complete its review and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

- i. In the event that the rendering of a final decision upon an application under this chapter is delayed due to natural and/or unnatural events and/or forces which are not

within the control of the Town, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

ii. In the event that applicant tenders eleventh-hour submissions to the Town in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Town at such late point in the proceedings, the Town shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Town, even if such review or services extend beyond the applicable shot clock period, so long as the Town completes such review and retains and secures such expert services within a reasonable period of time thereafter and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

C. Review and Processing of Applications.

1. Conformity to the following shall be considered in review of all applications:
 - a. The application is consistent with the objectives of this chapter.
 - b. The height of the proposed tower.
 - c. The adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.) that provide for the ability to comply with the provisions of this chapter.
 - d. The extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.
 - e. The extent to which the proposed telecommunications facility uses concealment elements.
 - f. The extent to which the proposed facility is integrated with existing structures (i.e., buildings, signs, utility poles, etc.) with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - g. An applicant's compliance with all town requirements with respect to previous applications.

- h. Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.
 - i. Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.
 - j. Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.
 - k. Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.
 - l. Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.
2. *Review of Administrative Applications.*
- a. Administrative applications will be reviewed by staff using the Town's standard building permit review processes.
 - b. Applications for mobile or temporary wireless facilities which remain in place for more than seven (7) consecutive days must submit a request for a temporary use permit as provided in Section 2.03.
3. *Review and Processing of Public Review Applications.*
- a. Applications which require public review and approval on private property will be processed as special use permits and follow the requirements listed in Section 2.02 for special use permits. Applications on Town owned property will not require a special use permit but will follow the same requirements for notice for review by the Town Council.
 - b. Factual Determinations.

To decide applications under this Section, the Town Council shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Council shall render local zoning determinations according to Section i. hereinbelow.

Then, if, and only if, an applicant asserts claims that a denial of its application would effectively prohibit an identified Wireless Carrier from providing Personal Wireless Services within the Town, or its proposed wireless facility or installation is necessary to remedy a significant gap in personal wireless services for an explicitly identified Wireless Carrier, and that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps.

The Council shall then additionally render TCA determinations in accord with Section ii. herein below.

The Council shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence-based upon which it rendered each of its factual determinations.

Each factual determination made by the Council shall be based upon Substantial Evidence. For purposes of this provision, "Substantial Evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence that the Council may consider shall include any evidence submitted in support of an application and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Council may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess and any documents, records, or other evidence which is a matter of public record, irrespective of whether such public record is a record of the Town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the Town, its residents, and property owners, and not applicants.

If, and to the extent that the Town Council fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town Council.

i Local Zoning Determination

The Council shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this Chapter.

(a) Compliance with Section 2.02

Whether the proposed installation will meet each of the conditions and standards set forth within Section 2.02 in the absence of which the Town Council is not authorized to grant a special use permit.

(b) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties located adjacent to, or in close proximity to, the proposed site or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(c) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(d) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(e) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including, but not limited to, historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(f) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

(g) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icfall, debris fall, and fire.

(h) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If, when applying the evidentiary standards set forth in Section 17.05 C. 3. b. i. hereinabove, the Town Council determines that the proposed facility would not meet the standards set forth within Section 2.02 or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the Town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town Council shall deny the respective application unless the Council additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections 17.05 C. 3. b. ii. and iii immediately hereinbelow.

ii. TCA Determinations

In cases within which an applicant has filed a “Notice of Effective Prohibition Conditions,” the Town Council shall determine if a denial of the respective application would “Effectively Prohibit” a specifically identified Wireless Carrier from providing Personal Wireless Services within any geographic area or areas in the Town.

More specifically, the Town Council shall determine whether a denial of the specific application would either: (i) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

In determining whether a denial of any specific application would constitute an “Effective Prohibition,” the Town Council shall determine: (1) whether an applicant has established that an identified Wireless Carrier suffers from one or more significant gaps in its Personal Wireless Services, and (2) whether its proposed installation is the least intrusive means of remedying any such gap or gaps.

(a) Significant Gap in Personal Wireless Services of an Identified Carrier

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific Wireless Carrier suffers from a significant gap in its personal wireless services within the Town.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (1) Whether the identified Wireless Carrier, which is alleged to suffer from any significant gap in their personal wireless services, already provides Adequate Service in its Personal Wireless Services to its customers at any frequency being used by the carrier to provide personal wireless services to its end-use customers,
- (2) Whether any such alleged gap is relatively large or small in geographic size,
- (3) Whether the number of the carrier’s customers affected by the gap is relatively small or large,
- (4) Whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or
- (5) Overall, whether the gap is relatively insignificant or otherwise relatively de minimis.

An Effective Prohibition shall not be found to exist under subparagraph (iii) hereinbelow if a Wireless Carrier has adequate coverage in any specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier’s Personal Wireless Services, but the frequency at which the customers are using such services is not the frequency most desired by the Carrier.

(b) Least Intrusive Means of Remedying Gap(s) in Service

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility at the specific site proposed by the applicant and the specific portion of the site proposed by the applicant, and at the specific height

proposed by the applicant, is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proven to exist as determined by the Town Council based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

- (1) Whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location,
- (2) Whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation
- (3) Whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service,
- (4) Whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas,
- (5) Whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or
- (6) Overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations.

An Effective Prohibition shall also not be found to exist in subparagraph (iii) hereinbelow if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

iii. Finding of Effective Prohibition or Lack of Effective Prohibition

After considering the evidence presented before it, the Town Council shall determine whether or not a denial of the respective application would constitute an effective Prohibition.

If the Town Council affirmatively determines that the applicant has failed to establish either: (i) that a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas

within the Town or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application does not constitute an Effective Prohibition.

If the Town Council affirmatively determines that: (i) a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town, or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application would constitute an Effective Prohibition, and the Town Council shall grant the subject application, irrespective of whether or not the granting of same would otherwise be inconsistent with any other provision of this Section §17.05 C. 3. b. Provided, the Town reserves the right to deny an application even if doing so leads to an effective prohibition to the extent allowed by the safe harbors contained in 47 U.S.C. §§ 253(b) and (c) and incorporated into 332(c)(7)(B)(i), based on the evidence of record.

c. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- i. No existing towers or structures are located within the geographic area, which meet applicant's reasonable engineering and personal wireless service related quality requirements. This evidence cannot be merely conclusory and must be supported by propagation maps that include the underlying analysis models, engineering reports speaking to the technical infeasibility, dropped call logs, and other data showing that a new tower is the only means of accommodating the proposed antenna.
- ii. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- iii. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- iv. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or

structures would cause interference with the applicant's proposed antenna as certified by an RF engineer.

v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

vi. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

vii. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

d. Following approval by the Town Council, the applicant may apply for a building permit through the standard application process. Construction shall not commence prior to approval of the building permit.

4. Environmental Impacts

If, and to the extent that, the Town Council determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of ADEQ and/or the NEPA, then the Council shall be expected to comply with the requirements of ADEQ in determining both:

- a. The extent of adverse impacts upon the environment and/or historic properties; and,
- b. What mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or impacts upon historic sites, structure and/or districts.

If a respective applicant fails to obtain a review from the ADEQ and/or NEPA and opinion letters from the ADEQ and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council may make direct requests to the ADEQ and the FCC for their review of the application. The Town Council may request the FCC's review and input in completing the statutorily-required environmental impact analysis pursuant to ADEQ and NEPA.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete an ADEQ review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement and, if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

5. Historic Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the Town's historic preservation law requirements and comprehensive plan and ADEQ.

If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on a historic site or a historic district within the meaning of ADEQ and/or the NHPA (especially if the historic site at issue is listed upon the National Register of historic places), then the Council shall comply with the requirements of both ADEQ and Town law in determining both:

- a. The extent of adverse impacts upon the historic properties, and
- b. What mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a SHPO and/or a Section 106 review under NHPA, and opinion letters from SHPO and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council shall make direct requests to SHPO and the FCC for their review of the application. They shall request SHPO and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to ADEQ and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the Town recognizes each application for a special use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete a SEQ ADEQ RA review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

6. Tribal Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any tribal lands associated with the Fort McDowell Yavapai Nation and the Salt River Pima-Maricopa Indian Community near or within the general area of Fountain Hills, Arizona. If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on such tribal lands, then the Council shall issue notice to tribal representatives and request tribal review of the application.

7. Force Majeure

In the event that the rendering of a final decision upon an application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town or the Town Council, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

8. In granting a permit, the Town may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

Section 17.06 Maintenance and Operation

A. Removal of Abandoned Antennas and Towers; Bond Required.

1. Any antenna or tower that is not operated for a continuous period of ninety (90) days shall be deemed abandoned. Within ninety (90) days of receipt of notice from the Town of Fountain Hills notifying the owner of such abandonment, the owner of such antenna or tower shall completely remove the same and all related equipment and improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Code. Failure to remove an abandoned antenna or tower within said ninety (90) day period shall be grounds to remove the tower or antenna at the owner's expense. The Town shall have the right (but not the obligation) to perform such removal and restoration with or without notice. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower for the prescribed period.

2. Upon receiving a special use permit approval from the Town Council and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the Town a bond for a length of no less than three (3) years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond

must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time the Town has good cause to question the sufficiency of the bond at the end of any three-year (3) period, the owner and/or operator of the facility, upon request by the Town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for the removal of the facility at the owner's expense. Each facility will require a separate bond, regardless of the number of owners or location.

B. State or Federal Requirements.

1. Compliance with state and federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

2. Prohibition against illegally excessive emissions and RF testing.

As disclosed on the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the Town is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the Town, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The Town deems it to be of critical importance to the health, safety, and welfare of the Town, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe

by the FCC, and/or are imposed under CFR. The FCC has recognized that 47 U.S.C. § 332(c)(7)(B)(iv) permits state and local governments, when making decisions on the placement, construction, and modification of personal wireless service facilities, to consider whether such facilities comply with the Commission's regulations concerning RF emissions. In re Human Exposure to Radiofrequency Electromagnetic Fields et al., 34 FCC Rcd 11687, 11739, ¶114 (2019).

In accord with the same, the Town enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in Section 17.02 or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3) unless the operator implements and retains responsibility for ongoing effectiveness of the mitigation actions contained in 47 C.F.R. §1.1307(b)(4).

To ensure continuing compliance with such limits by all owners and/or operators of wireless communication facilities within the Town, all owners, and operators of wireless communication facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by the owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town Council or any other body or representative of the Town is subject to modification or revocation by the Town Council following a public hearing.

- a. *Certification of Compliance with Applicable RF Radiation Limits.* Within forty-five (45) days of initial operation or a substantial modification of a wireless communication facility, the owner and/or operator of each telecommunications antenna shall submit to the Development Services Director a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall also measure the emissions of the approved wireless facility, including the cumulative impact from other nearby wireless facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's maximum permissible exposure (MPE) limits shall be submitted to the Development Services Director.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The Town may require, at the applicant's expense, independent verification of the results of the analysis.

b. *Random RF Radiofrequency Testing.* At the operator's expense, the Town may retain an engineer to conduct random unannounced RF radiation testing of such wireless facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one (1) test per facility per calendar year unless such testing reveals that one (1) or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the wireless facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective wireless facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town Council at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks' written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town Council shall have the power to and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town Council, Board of Adjustment, Town Engineer and/or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town may issue a civil citation of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

c. Annual Testing. The owner or operator of all PWSF shall provide for and conduct an inspection of radio frequency radiation at least once annually by a licensed radio frequency engineer. Three copies of a report shall be provided to the Development Services Department, verifying that the radio frequency radiation is in compliance with FCC Guidelines.

3. *Actions for Noncompliance.* If the Town at any time finds that there is good cause to believe that a wireless communication facility and/or one (1) or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town's Zoning Administrator at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

The owner and/or operator shall be afforded not less than two (2) weeks' written notice of the hearing.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town shall have the power to revoke any permit, building permit, and/or any other form of approval(s) which the Town Council or any

other representative of the Town may have then issued to the owner and/or operator, for the respective facility. The Zoning Administrator may revoke an administrative approval. The decision of the Zoning Administrator may be appealed to the Town Manager. If the tower or antenna was approved by the Town Council, revocation will be considered by the Town Council in the same manner as the original approval.

In addition, the Town may issue a civil citation for noncompliance as provided in Section 1-8-3 of the Town Code.

In the event that an owner or operator of one (1) or more wireless communication facility is found to violate subsection (B)(1) of this section three (3) or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

C. *Building Codes; Safety Standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Fountain Hills concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

D. *Noise.* Wireless facilities and all related equipment must comply with all noise regulations and shall not exceed such regulations, either individually or collectively. Backup generators shall only be operated during power outages and/or for testing and maintenance purposes between the hours of 9:00 a.m. and 4:00 p.m.

E. *Maintenance.* Prior to scheduling a final inspection for construction of a tower and associated equipment, the applicant shall file with the Town a bond in the amount **of X to** cover the ongoing maintenance of the tower, equipment, and landscaping. The bond amount shall be reviewed and revised every three years thereafter. Should the owner of the tower, equipment, and/or landscaping fail to maintain said facilities consistent with the Town's approval and ordinance requirements, and after notice for correction by the Town, the Town may call and utilize the bonds to perform the needed maintenance activities.

F. *Maintenance Contact Information.* Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll-free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). The contact information for the agent responsible for the maintenance of the

facility must include at least one natural person. Contact information shall be updated within seven (7) days of any change.

G. Indemnity and liability for damages.

1. The wireless telecommunications facility provider shall defend, indemnify, and hold harmless the Town or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the Town, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The Town shall promptly notify the provider(s) of any such claim, action or proceeding if the Town bears its own attorney's fees and costs, and the Town defends the action in good faith.
2. Wireless telecommunications facility operators shall be strictly liable for interference caused by their facilities with Town communications systems. The operator shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the Town attributable to the interference.

H. *Certificate of Insurance required.* The applicant shall maintain adequate and sufficient liability insurance during the construction period and thereafter, the carrier shall maintain liability insurance, issued by an insured authorized to do business in the State of Arizona meeting the criteria of this section throughout the life of any PWSF erected within the Town of Fountain Hills, at least as broad as follows:

1. Commercial General Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, commercial General Liability ("CGL") insurance on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; (iv) bodily injury or damage from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit.

2. Environmental Pollution Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the personal wireless services facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

3. Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

4. Endorsements. The relevant policy(ies) shall name the Town, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) days' prior notice to the Town of the cancellation or material modification of any applicable insurance policy.

5. Verification of Coverage. Permittee shall furnish the Development Services Department with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the Development Services Department before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. Permittee shall furnish updated certificates and endorsements to the Town annually. The Town reserves the right to require updated certificates and endorsements or complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

6. Permittee Has Full Liability: The permittee shall assume full liability for damage or injury caused to any property or person by the personal wireless services facility.

7. Permittee shall provide an executed agreement, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the Town, its officers, employees, agents, attorneys, and volunteers, from (i) any claim, action or proceeding brought against the Town or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Town or (ii) a successful legal action brought against the Town for loss of property value or other harm caused by the placement or operation of a small cell installation. Such indemnification shall include damages, judgments, settlements,

penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the Town and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the Town for all of the Town's costs, fees and damages which the Town incurs in enforcing the indemnification provisions of this Section.

All insurance required under this Chapter shall be issued by an insurer holding a current A.M. Best rating of A- or better, that is not an affiliate, subsidiary, or captive insurance entity of the applicant, permittee, or any parent or related company thereof. Self-insurance and insurance issued by a special-purpose or single-project entity created by the applicant shall not satisfy this requirement. The Town reserves the right to request and independently verify the insurer's rating and independence prior to permit issuance and at each renewal.

I. ADA Accommodations. The Town seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent they are entitled to same under the Act.

J. Decommissioning and Reclamation Plan shall include the following information:

1. A plan for disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations detailing the types and quantities of waste materials and methods of disposal;
2. A description of how and on what schedule stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. Permittee should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover;
3. An estimate of costs for the decommissioning of the personal wireless services facility with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate;
4. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum requirements meet the standards of this Ordinance. Such plan must be filed in the Town Office prior to the first operation of the personal wireless services facility;
5. An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during the implementation of the decommissioning plan.

Section 17.07 Nonconforming Uses

A. *Not Expansion of Nonconforming Use.* Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. *Pre-existing Towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this chapter.

C. *Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas.* Notwithstanding other provisions of this chapter, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain a special use permit and without having to meet the separation requirements specified in Section 17.03. The type, height, and location of the tower on site shall be of the same type and intensity as the original facility approval; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within ninety (90) days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 17.06(A).

Section 17.08 Retention of Consultants

A. *Use of Consultants.* Where deemed reasonably necessary by the Town Council and/or the Town, the Town Council and/or the Town may retain the services of professional consultants to assist the Town in carrying out its duties in review and approval of personal wireless service facilities. Where the Town Council uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the Town for such services. That responsibility shall not exceed the actual cost to the Town of such engineering, legal, or other consulting services.

B. *Advance Deposits for Consultant Costs.* The Town and/or Town Council may require advance periodic monetary deposits held by the Town on account of the applicant or landowner to secure the reimbursement of the Town's consultant expenses. The Town Council shall establish policies and procedures for the fixing of deposits and the management of payment from them. After the review and approval of itemized invoices by the Development Services Director, or designee, as to the reasonableness and necessity of the consultant charges, the Town may make payments from the deposited monies for engineering, legal, or consultant services. Upon receiving a request by the applicant or landowner, the Town shall supply copies of such invoices to the applicant and/or landowner reasonably in advance of review and approval, appropriately redacted where necessary to

shield legally privileged communications between Town officers or employees and the Town's consultant. When it appears that the remaining deposit held for the applicant or landowner by the Town may be insufficient to pay current or anticipated invoices, the Town shall cause the applicant or landowner to deposit additional monies to meet such expenses or anticipated expenses in accordance with policies and procedures established by the Town Council. Consultants shall undertake no review on any matter scheduled before the Town until the initial deposit has been made or requested replenishment of the deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with deposit requirements.

C. Reasonable Limit Upon Consultant Expenses. A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The Town may also take into account any special conditions for consideration as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants for a service that was rendered to assist the Town in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the Town or its residents; (b) assessing potential adverse environmental impacts such as those identified within an ADEQ process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, enabling the Council to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

D. Audits Upon the Request of an Applicant. Upon request of the applicant or landowner, the Town Council shall review all invoices and determine whether such engineering, legal, and consulting expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of an application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the Town Council on reasonable advance notice.

E. Liability for Consultant Expenses. For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the Town for funds expended to compensate services rendered to the Town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the Town for its consulting expenses, notwithstanding that the deposit account may be insufficient to cover such expenses. No building permit or other permit shall be issued

until reimbursement of costs and expenses determined by the Town to be due. In the event of failure to reimburse the Town for such fees, the following shall apply:

The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.

Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal, and consulting fees expended by the Town shall be remedied by charging such sums against the real property that is the subject of the application by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected simultaneously and in the same manner as Town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal, and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

Chapter 17

Wireless Telecommunications Towers and Antennas

Section 17.01 Purpose, Intent, and Applicability

A.  The purpose of this chapter is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this chapter are to:

1. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
2.  Employ the "General Authority" preserved to the Town under 47 U.S.C. § 332(c)(7)(A) to the greatest extent the United States Congress intended while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B).
3. Employ the authority reserved under A.R.S. §§ 9-462.01, and 9-596.A to exercise the Town's zoning powers, land use, planning and permitting authority, exercise its police powers, and manage access to the Town's public rights of way.
24.  ~~Encourage~~ Promote the location of towers in nonresidential areas;
35. ~~Minimize~~ Limit the total number of towers throughout the community;
46. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
57. ~~Encourage~~ Require users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
68. ~~Encourage~~ Require users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

~~79.~~ Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

10. Recognize that technology and laws regarding these facilities have changed, so the Town's regulations need to change accordingly;

~~811.~~ Consider the public health and safety of communication towers; and

~~912.~~ Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

13. Maintain the Town's status as a designated International Dark Sky Community and an optimum environment for stargazing.

14. Conserve and enhance the unique natural beauty, irreplaceable natural resources, historical, natural, and man-made character and appearance of Fountain Park, McDowell Mountain Preserve, Pleasantville Park, and views of Red Mountain and Four Peaks.

15. Protect Saguaro cacti as a unique natural resource promoting tourism, contributing to the aesthetic well-being of the community, high property values, high quality of life, unique lifestyles, and providing habitat protection for desert wildlife. Saguaro cacti grow slowly and cannot be replaced by a plant of like character.

16. Protect the quiet small-town suburban, scenic and visual character of the Town.

In furtherance of these goals, Town of Fountain Hills shall give due consideration to the Town of Fountain Hills General Plan, the Town of Fountain Hills Zoning Ordinance, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

B. It is the intent of this chapter:

1. That no wireless communication towers or antenna be sited, constructed, reconstructed, installed, materially changed, expanded, or used unless in conformity with this chapter.
2. To achieve a balance between the need to provide wireless services with the health, safety, and general welfare of the residents of Fountain Hills by balancing five (5) simultaneous objectives:

-
- a. Enabling personal wireless service providers to provide adequate personal wireless services throughout the Town so that Town residents can enjoy the benefits of same from any FCC-licensed wireless carrier from which they choose to obtain such services;
 - b. Minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage;
 - c. Preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the Town's communities, residential areas, and individual homes; and
 - d. Complying with all the legal requirements which the Telecommunications Act of 1996, as amended ("TCA") imposes upon the Town, when the Town receives, processes and determines each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B) for permit applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.
 - e. Complying with the Federal Communications Commission's (FCC) legislative rules for communications facilities including those for Radio Frequency human exposure limits in 47 C.F.R. Part 1, Subpart I and those addressing State and Local government regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities, in 47 C.F.R. Part 1, Subpart U.

This Section is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide reasonable and necessary wireless communications services; (2) prohibit or effectively prohibit any entity's ability to provide reasonable and necessary interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities solely on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply in every instance and regard with all FCC's regulations concerning such emissions; (5) prohibit any eligible facility that the Town may not deny under federal or state law; or (6) otherwise authorize the Town to violate any applicable federal or state law.

C. *Applicability.*

1. *New Towers and Antennas.* All new towers or antennas in the Town of Fountain Hills shall be subject to these regulations. The following exceptions apply:

- a. *Amateur Radio Station Operators/Receive Only Antennas.* This chapter shall not govern any tower, or the installation of any antenna, that is under the maximum building height of the zoning district in which such structure is located and which is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only operations.
- b. *Pre-existing Towers or Antennas.* Legally established pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this chapter, other than the requirements of Sections 17.06(B)(1) and 17.06(C).
- c. *AM Array.* For purposes of implementing this chapter, an AM array, consisting of one (1) or more tower units and supporting ground system which functions as one (1) AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.
- d. *Small ~~Cell Towers~~ ~~Wireless Facilities~~ in the ~~Right-of-Way~~.* Wireless communication towers and antenna meeting the definition of small wireless facilities as contained in A.R.S. 9-591 are subject to the requirements of Article 16-2, Small Wireless Facilities, of the Town Code.
- e. *Mobile or Temporary Towers.* Mobile wireless facilities, when placed on site for seven (7) consecutive days or less, provided any necessary building permit or encroachment permit is obtained.
- f. *Utility Service Antennas in the Right-of-Way.* Utility service antennas as defined in this chapter placed in the public right-of-way are subject to the requirements of Article 16-3, Utility Service Antenna, of the Town Code. (24-08, Amended, 09/04/2024, Deleted and replaced)
- g. Over-the-Air-Reception Devices ("OTARD") antennas as defined by 47 C.F.R. § 1.4000(a).

2. Existing Towers and Antennas. Any existing towers which are modified, upgraded, or changed in any manner shall be subject to the provisions of this ordinance as applicable. All existing towers and antennas shall be subject to the maintenance and operations requirements in Sec. 17.06.

Section 17.02 Definitions

For the purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings provided in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Town Code and Zoning Ordinance, and the definitions set forth herein below shall control and apply to Chapter 17 of the Zoning Ordinance and all subparagraphs herein. As used in this chapter, the following terms shall have the meanings set forth below:

"Accessory facility or accessory structure" means a facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex or an immediately adjacent lot, including, but not limited to utility or transmission equipment storage sheds or cabinets.

"ACHP" means the Federal Advisory Council on Historic Preservation.

ACHP

Review and compliance, meeting or exceeding the requirements of the Federal Advisory Council on Historic Preservation.

ADA means American Disabilities Act.

Review and compliance, meeting or exceeding the requirements of the ADA is codified in Title 42 of the United States Code, starting at Section 12101

ADEQ Arizona Department of Environmental Quality

Review and compliance, meeting or exceeding requirements of the ADEQ operates under the statutory authority found in Arizona Revised Statutes (A.R.S.) 55 49-101 et seq., and its regulatory rules are detailed in Arizona Administrative Code (A.A.C.) Title 18, Chapters 1 through 18.

"ADEQ" means the Arizona Department of Environmental Quality.

"Adequate coverage" means, as determined by the Town Council, that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers' equipment can successfully use connect to the carrier's radio access network and achieve a received signal strength of -110 dBm or better and deliver a -90 dBm or better signal to the base station receiver (uplink) with a signal to noise ratio (SINR) of 3 dB or higher the vast majority of the time, in the vast majority of the geographic locations within the Town, that the Voice Drop Call Rate, e.g. the percentage ratio of dropped voice calls to total call attempts or successful call setups remains at or below 3%. ~~personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the Town, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps.~~ A "gap" can exist when there is a lack of coverage or when coverage exists but quality is below the above metrics. The Town will assess whether a gap in a carrier's personal wireless services are significant, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

For claimed capacity or quality shortfalls in an area that has coverage, the applicant must demonstrate through independently-verifiable data and analysis, including network generated recordings based on user equipment reports that users are consistently experiencing dropped voice calls (in contrast to dropped sessions involving non-voice communications) at an unacceptable level during peak periods, or user devices are consistently denied access to the network due to lack of overall capacity at peak periods.

If the applicant relies on signal strength data (whether network recorded or through drive tests) to demonstrate a lack of coverage or inadequate quality/capacity the applicant must disclose all

underlying data, its thresholds for acceptable quality in such fashion that all claims and conclusions are independently verifiable.

The Town strongly encourages all applicants to use methods consistent with the FCC rules governing provider reports and mapping data in 47 C.F.R. Part 1, Subpart V (§§ 1.7000 – 1.7010).

“Alternative tower structure” means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

“Adjacent properties or properties adjacent” shall mean (i) those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a wireless facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

“Aesthetic or aesthetics” refers to subjective or objective determinations related to whether and if so, how well a facility will fit within the character of the area where the facility is proposed. This requires a broad range of factors including but not limited to visual effects and impact on property values. The Town will consider aesthetics for all applications and, where not prohibited by federal or state law, reserves the ability to impose careful placement conditions or restrictions.

“Antenna” means ~~any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.~~ an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. This definition does not apply to antennas designed for amateur radio use or satellite dishes for residential or household purposes.

“Antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when Co-located on a PWSF Structure, is mounted or installed at the same time as such Antenna.

"Antenna facility" means Antenna and associated Antenna Equipment.

~~"Antenna" means an apparatus designed for emitting radiofrequency (RF) radiation to be operated or operating from a fixed location for personal wireless service.~~

ANTENNA

~~Similar definition in Section 17.02~~

~~An apparatus designed for emitting radiofrequency (RF) radiation to be operated or operating from a fixed location for personal wireless service.~~

~~ANTENNA-An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of Personal Wireless Services and any commingled information services. For purposes of this definition, the term Antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15 (Radio Frequency Devices).~~

ANTENNA EQUIPMENT

~~Equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when Co-located on a PWSF Structure, is mounted or installed at the same time as such Antenna.~~

ANTENNA FACILITY

~~Antenna and associated Antenna Equipment.~~

"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a wireless communication facility permit, site plan approval, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more wireless communication facilities.

~~"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a special use~~

~~permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.~~

"Application" shall mean all necessary and required documentation, information, and evidence that an applicant must submit to receive a wireless communications facility permit, building permit, or other Town approval for personal wireless service facilities from the Town.

~~"Application" refers to all necessary and required documentation and evidence that an applicant must submit to receive a special use permit, building permit, or other approval for personal wireless service facilities from the Town.~~

"Backhaul network" means the lines that connect a provider's towers/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

"Balloon test" means the raising of a balloon (or placement of a "crank up" tower, crane or temporary structure) equal to the height of a proposed personal wireless services facility tower for a period of 4 hours on a pre-determined date and time prior to approval of a wireless facility permit application to assess the visual impact of a proposed tower.

"Base station" means for purposes of eligible facilities requests the definition in the FCC's regulations at 47 CFR § 1.6100 shall apply. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

BASE STATION

~~*Shall have the definition in the FCC's regulations at 47 CFR § 1.6100.*~~

~~"Board of Adjustment" means the Board of Adjustment of the Town of Fountain Hills, established pursuant to Sec. 1.07 of the Zoning Ordinance with membership, powers, duties, and responsibilities as set forth in Article 2A-2 of the Town Code.~~

~~Carriers. See Wireless Carriers.~~

~~"Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.~~

~~"Cell tower" means a free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.~~

~~"CEQ" means the Council on Environmental Quality, as established under NEPA.~~

"Collocate, colocate" or "collocation, collocation" can have different meanings depending on context.

1. When and where A.R.S. §§ 9-951 — 9-600 apply, the definition in A.R.S. §§ 9-951.8 shall also apply. That definition currently states:

"Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a wireless support structure or utility pole.

2. Where and when the FCC's general rules for placement, construction and modification of personal wireless facilities apply, the definition in 47 C.F.R. § 1.6002(g) shall also apply. That definition currently states:

Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of "collocation" in § 1.6100(b)(2) applies to the term as used in that section.

3. Where and when the FCC's rules for wireless facility modifications apply, the definition in 47 C.F.R. § 1.6100(b)(2) shall also apply. That definition currently states:

(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Complete application, completed application" means an application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Development Services Director, Town Engineer or the Town's expert or consultant, or the Council determines, based upon information provided, that any additional, further, or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Development Services Director, Town Engineer, Town Council or the Town's expert or consultant of the Council.

"Complex" means the entire site or facility, including all structures and equipment, located at the site.

CEQ Council on Environmental Quality,

Review and compliance, meeting or exceeding requirements of the Council on Environmental Quality

"The Council on Environmental Quality derives its authority from the National Environmental Policy Act of 1969 (42 U.S.C. § 4342) and implements regulations at 40 C.F.R. §§ 1500–1508."

"Council or Town Council" means the Town Council of the Town of Fountain Hills.

"Colocation, co-location, and/or co-locate means to install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services by a different provider of such services, wireless carrier or site developer.

CO-LOCATION and/or CO-LOCATE

The mounting or installation of an Antenna Facility on a pre-existing PWSF Structure, or the modification of a PWSF Structure for the purpose of mounting or installing an Antenna Facility on that PWSF Structure.

"dBm" (dBm) stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers. It expresses power relative to 1 milliwatt (mW) on a logarithmic scale. Emissions are measured using positive whole or fractional numbers. Received signal strengths are typically recorded in negative numbers because they are usually weaker than 1 milliwatt, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal. FCC, HHS and OSHA regulate safe exposure thresholds but transmitter power (in dBm) is crucial to determining exposure, as it is the starting point for calculating current exposure limits.

~~dBm (decibel-milliwatts) is a unit of power used in radio, microwave, and fiber optic communication systems. It expresses power relative to 1 milliwatt (mW) on a logarithmic scale. FCC and OSHA regulate safe exposure thresholds, not device power directly—but transmitter power (in dBm) is crucial to determining exposure~~

"Deployment" means the placement, construction, or substantial modification of a personal wireless service facility.

"Development Services Director" (or "Director): T" means the person appointed by the Town Manager to be the Development Services Director. If there is no such person designated by the Town Manager, the Town Manager is the Development Services Director.

"Distributed antenna system, DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

"Effective prohibition" means a finding by the Town Council that if an application seeking approval for a specific new Personal Wireless Service Facility at a specific location, and a specific height, were to be denied, such denial would either: (a) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area, or areas, within the Town, or (b) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

An effective prohibition shall not be found to exist if a Wireless Carrier has Adequate Coverage in a specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services; however, the frequencies are not the "most preferred" frequencies of the Carrier.

An effective prohibition shall also not be found to exist if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

A finding of Effective Prohibition, or lack thereof, shall be based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence and the appropriate weight the Town Council deems appropriate to afford.

~~EFFECTIVE PROHIBITION Denial by the Town of a PWSF approval or permit for a~~

~~Personal Wireless Service Facility that is the Least Intrusive Means of remedying a significant gap in Personal Wireless Service coverage (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network).~~

"Eleventh hour submissions" means an applicant's submission of new and/or additional materials in support of an application less than five (5) business days before the expiration of an applicable shot clock or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town Council to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

"Eligible facilities request" means a request that meets the requirements in 47 CFR § 1.6100 for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station and involving:

- (a) Co-location of new transmission equipment.
- (b) Removal of transmission equipment, or
- (c) Replacement of transmission equipment.

"Enure" means to operate or take effect. To serve to a person or party's use, benefit, or advantage.

"EPA" means the United States Environmental Protection Agency.

~~EPA United States Environmental Protection Agency.~~

~~Review and compliance, meeting or exceeding requirements of the EPA regulations~~

"Existing structure" means light poles, power poles, chimneys, billboards, and other similar structures, which are placed, within the Town at the time of adoption of this chapter, except existing buildings.

~~"FAA" means the Federal Aviation Administration.~~

~~"FAA" means the Federal Aviation Administration or its duly designated and authorized successor agency.~~

~~FAA~~

~~The Federal Aviation Administration or its duly designated and authorized successor agency.~~

~~Review and compliance, meeting or exceeding requirements of the FAA~~

~~"Facility" means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.~~

~~FACILITY~~

~~A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.~~

~~See Personal Wireless Service Facility or PWSF.~~

"FCC" means the Federal Communications Commission.

~~FCC~~

~~Review and compliance, meeting or exceeding requirements of the The Federal Communications Commission. Sets limits on RF emissions for wireless and broadband devices (47 CFR §§ 1.1307-1.1310)~~

~~FDA Food and Drug Administration~~

~~Review and compliance, meeting or exceeding requirements of the RF-emitting consumer devices (e.g., cell phones) for health impacts~~

"General population/uncontrolled exposure limits" means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

"HHS" means U.S. Department of Health and Human Services or its constituent agencies, including FDA Food and Drug Administration, charged with review and compliance, meeting or exceeding requirements of the RF-emitting consumer devices (e.g., electronic products such as cell phones) for health impacts.

"Height" means, when referring to a tower or other structure, the vertical distance measured from the natural grade level to the highest point of the structure directly above the natural grade when such structure is not located in a platted subdivision. If the structure is located in a platted subdivision, the height shall be the vertical distance measured from the finished grade as shown on the subdivision grading plans or finished grade as shown on the individual lot's grading plans (whichever is lower), to the highest point of the structure directly above the finished grade. In the event that terrain problems prevent an accurate determination of height, the Zoning Administrator shall rule as to height and appeal from that decision shall be to the Board of Adjustment.

"Height" means, when referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

The distance measured from the pre-existing grade level to the highest point of a Personal Wireless Service Facility.

"Historic Structure" means any structure that is either on the National Register of Historic Places or is eligible for inclusion in the national register, irrespective of whether or not an application for inclusion onto the national register has been filed or not filed.

Review and compliance, meeting or exceeding requirements of National Register of Historic Places

"Illegally excessive RF radiation or illegally excessive radiation" means RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

"In-kind call testing" means testing designed to measure the gap in Personal Wireless Service coverage asserted by an applicant. In-Kind Call Testing for a claimed gap in Personal Wireless Services in buildings means call testing performed in buildings to establish the existence or absence of such a gap, unless the applicant provides an affidavit sworn under penalties of perjury demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing. In-Kind Call Testing for a claimed gap in Personal Wireless Services in vehicles or in the open air means call testing performed in vehicles or in the open to establish the existence or absence of such a gap.

"In-kind replacement" means the replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

LAST-MINUTE SUBMISSIONS

An applicant's submission of new and/or additional materials in support of an application within 48 hours of the expiration of an applicable Shot Clock Period, or at an otherwise unreasonably short period of time before the expiration of the Shot Clock Period, making it impracticable for the Planning Board, Director of Planning or Director of Code Enforcement to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the Shot Clock Period.

"Least intrusive" means the location and design of a personal wireless service facility that would remedy a significant gap in Personal Wireless Service coverage and (1) does the least disservice to the objectives stated in § 270-219A(2), and (2) deviates as little as possible from (a) the preferential order of location in subsection K (Priority of siting locations) and (b) applicable design standards in subsection L.

"Macrocell" means a cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, typically ranging from 50 to 199 feet in height.

"Maintenance or routine maintenance" means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates reliably and in a safe manner, presents no

threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

"Monopole" means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole. Monopoles are typically unguyed.

"Necessary, or necessity, or need" means what is technologically required for the equipment to function as designed by the manufacturer and anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. "Necessary" or "need" does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant's specific chosen design standards or unspecified "coverage objectives." Any situation involving a choice between or among alternatives or options is not a need or a necessity.

"NEPA" means the National Environmental Policy Act, 42 U.S.C. §4321, et seq.

~~8 NEPA regulations and compliance. Review and compliance, meeting or exceeding requirements of NEPA~~

"NHPA" means the National Historic Preservation Act, 54 U.S.C. 300101 et seq. and 36 CFR Part 800, et seq.

~~Review and compliance, meeting or exceeding requirements of NHPA~~

~~NIOSH National Institute for Occupational Safety and Health~~

~~OSHA sets enforceable limits, NIOSH provides science-based guidance through RELs (Recommended Exposure Limits) Risk assessments Hazard evaluations~~

~~Review and compliance, meeting or exceeding requirements of OSHA~~

"Node, DAS node" means a fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

"Node" means a fixed antenna and antenna equipment installation that operates as part of a system of spatially separated Antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services using hand-off capabilities. A 4G (LTE) node is referred to as an ENode B, and a 5G node is referred to as a GNode B. Some sites incorporate both 4G and 5G. Some 5G capable sites still rely on a 4G network core.

"Notice address" means an address, which is required to be provided by an applicant at the time it submits an application, at which the Town, Town Council, and/or Development Services Director or Town Engineer designee can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

"Notice of incompleteness, notice of incomplete application" means a written notice, sent by electronic mail, to an applicant seeking approval for the installation of a PWSE, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting forth the reason or reasons why the application is incomplete and/or defective.

"Notice of effective prohibition conditions" means a written notice, which is required to be provided to the Town at the time of the filing of any application by all applicants seeking any approval, of any type, for the siting, installation, and/or construction of a PWSE, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the Town, would constitute an "effective prohibition" within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

"Occupational/controlled exposure limits" means the applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

OSHA requirements and compliance

Review and compliance, meeting or exceeding requirements of the Occupational Safety and Health Act

"Permit" means written permission required by an authority to install, mount, maintain, modify, operate or replace a utility pole or monopole, to collocate a wireless facility on a utility pole or wireless support structure or to collocate wireless facilities on a monopole.

"Permittee" means a holder of a Personal Wireless Service Facility Permit.

"Personal wireless service/personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

"Personal wireless service facility, personal wireless services facility or PWSF" means a facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

~~The permit granted by the Director of Code Enforcement pursuant to which an applicant is allowed to construct and use a Personal Wireless Service Facility.~~

~~PERSONAL WIRELESS SERVICE FACILITY or PWSF~~

~~An Antenna Facility and a PWSF Structure, or any components thereof, used for the provision of Personal Wireless Service, whether such Personal Wireless Service is provided on a stand-alone basis or commingled with other wireless communications services.~~

~~PWSF STRUCTURE~~

~~A pole, Tower, Base Station, or other building, whether or not it has an existing Antenna Facility, that is used or to be used for the provision of Personal Wireless Service (whether on its own or comingled with other types of services). PWSF Structure also includes the on-site fencing, equipment, switches,~~

wiring, cabling, power sources, shelters, and cabinets associated with that PWSF Structure but not installed as part of an Antenna.

"Pre-existing towers and pre-existing antennas" means any tower or antenna for which a building permit has been properly issued prior to the effective date of the ordinance codified in this chapter, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

"Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

"Probative evidence" means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Town Council or other decision making authority, as the finder-of-fact in determining whether to grant or deny applications under this provision of the Town Code.

"Repairs" means the replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

"RF" means radiofrequency.

"RF radiation" means radiofrequency radiation. That being electromagnetic radiation, which is a combination of electric and magnetic fields that move through space as waves, and can include both Non-Ionizing radiation and Ionizing radiation.

"School" means a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes the real property and facilities used for such educational purpose.

"School property" means any parcel containing a public, charter, or private educational institution providing instruction for elementary and secondary grades as defined in A.R.S. § 15-101 and includes associated playgrounds, athletic fields, administrative buildings, parking areas, and other school-related facilities.

"Section 106 Review" means a review under Section 106 of the National Historic Preservation Act.

"Setback" means the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property that is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

"Shot clock, Arizona" means the statutory timeframes within which the Town must review a wireless application for completeness of an application for wireless facilities in right-of-way pursuant to A.R.S. § 9-594.C.2 and act on a wireless application before it is otherwise deemed approved pursuant to A.R.S. § 9-594.C.2. For deemed approved purposes, the Arizona shot clock begins on the date when the Town determines the application is properly completed. For applications involving wireless facilities not in right-of-way the FCC shot clock will apply.

Shot clock, FCC: the presumptively reasonable time frame within which the Town must act on a wireless application, as defined by the FCC, shown below subject to amendment from the FCC. The shot clock begins when the applicant takes the first procedural step that the Town requires.

a. Aggregate of 60 days:

1) Standby emergency generators at previously permitted macro cell tower sites.

2) Collocation of small wireless facilities at existing small wireless facility sites.

3) Eligible Facilities Requests.

b. Aggregate of 90 days:

1) New small wireless facilities.

2) Collocation applications for additions to existing communications facilities not defined as an eligible facilities request.

c. Aggregate of 150 days:

1) All other applications, such as development of a new communication tower or facility.

~~"Shot clock" means the applicable period, which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application approval for the installation or substantial modification of a personal wireless services facility or structure to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.~~

~~SHOT CLOCK PERIOD- The sum of the number of days specified by federal regulation as the presumptively reasonable time for the Town to act on the relevant Personal Wireless Services Facility application type, plus the number of days of any applicable Tolling period, per 47 CFR § 1.6003.~~

~~"SHPO" means the Arizona State Historic Preservation Office.~~

~~"Site developer or site developers" means individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.~~

~~"Small cell" means a fixed cellular base station that sends and receives radio signals and is typically mounted upon poles or support structures at substantially lower elevations than macrocell facilities.~~

~~"Small wireless facility" means a personal wireless service facility that meets all of the following criteria~~

~~(a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet from ground level to the top of the structure, and any equipment affixed thereto ;~~

~~(b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume;~~

~~(c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;~~

~~(d) The facility is not located on tribal land; and~~

~~(e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).~~

~~SMALL WIRELESS FACILITY~~

~~A personal wireless service facility that meets all of the following criteria~~

~~_____ The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet from ground level to the top of the structure, and any equipment affixed thereto;~~

~~_____ Each antenna associated with the deployment is no more than three (3) cubic feet in volume;~~

~~_____ All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;~~

~~_____ The facility is not located on tribal land; and~~

~~_____ The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).~~

~~_____ SMALL WIRELESS FACILITY STRUCTURE A PWSF Structure for a Small Wireless~~

~~_____ Facility.~~

"Small wireless facility" can have different meanings depending on context.

1. When and where A.R.S §§ 9-591 – 9-599 applies, the definition in A.R.S §§ 9-591.19 shall also apply. That definition means a wireless facility that meets both of the following qualifications:

(a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

- (i) An electric meter.
- (i) Concealment elements.
- (i) A telecommunications demarcation box.
- (i) Grounding equipment.
- (i) A power transfer switch.
- (i) A cutoff switch.
- (i) Vertical cable runs for the connection of power and other services

2. Where and when the FCC's general rules for placement, construction and modification of personal wireless service facilities apply, the definition in 47 CFR §1.6002(l) shall apply. That definition states as follows:

(a) Small wireless facilities are facilities that meet each of the following conditions:

(i) The facilities—

- . Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- . Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- . Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(ii) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of "antenna" in § 1.1320(d)), is no more than three cubic feet in volume;

(iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(iv) The facilities do not require antenna structure registration under part 17 of this chapter;

(v) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

"Special taxing district" means a special district formed pursuant to title ARS 48, chapter 11, 12, 17, 18, 19, 20 or 22.

"Special Use Permit" means the official document or permit granted by the Town Council pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

"State" means the State of Arizona.

~~"Stealth or stealth technology" means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.~~

~~"Structure" means a pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.~~

~~"Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.~~

~~"TCA" means the Telecommunications Act of 1996, 47 U.S.C. §332(c) Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at various provisions of Title 47 U.S.C.~~

~~"Tolling or tolled" means the pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional~~

materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to resume running, as opposed to causing the shot clock to begin running anew.

~~“Tower” means any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term also includes the structure and any support thereto a mast, pole, monopole, slim stick, guyed tower, lattice tower, freestanding tower, or other structure designed to support or employed to support antennas and other equipment, including but not limited to dishes, transceivers and arrays used to provide personal wireless services and wireless communications services. A ground- or building-mounted mast greater than ten feet tall and six inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a communications tower.~~

~~TOWER, Commented~~

~~Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.~~

~~A structure built for the sole or primary purpose of supporting FCC-licensed or authorized Antennas. The term Tower also includes the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, and cabinets associated with that Tower but not installed as part of an Antenna.~~

~~“Tower, telecommunications tower” means any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.~~

~~“Town” means the Town of Fountain Hills.~~

~~“Town code” means the Town Code of the Town of Fountain Hills.~~

~~“Undertaking” means any application seeking Town approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.~~

"Utility" means Arizona (under ARS § 40-360.51 (5)): A public utility includes corporations or persons engaged in furnishing water, gas, electricity, telephone service, or sewage disposal to the public for compensation.

"Utility service antennas" means antenna placed on or near utility boxes, poles, switches, storage tanks, etc., and used by a utility provider to facilitate the operation of the utility system.

"Wireless carriers or carrier" means companies that provide Personal Wireless Services to end-use consumers.

"Wireless communication" means the transmission of voice or data without cable or wires.

"Wireless communication facility" means wireless communication facilities including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities also include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio and television broadcast towers and government-operated public safety networks.

"Zoning ordinance" means the Zoning Ordinance of the Town of Fountain Hills, as codified in Chapter 1, Sec. 1.01 of the Zoning Ordinance.

Section 17.03 Requirements

A. General Requirements.

1. *Principal or Accessory Use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
2. *Lot Size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of

the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

3. *Aesthetics.* Towers and antennas shall meet the following requirements:

- a. Towers shall, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
- b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- d. The choice of design for installing a new wireless communication facility or the substantial modification of an existing wireless communication facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties. ~~Stealth designs~~ Concealment elements such as mono-palms or flagpoles should be utilized to camouflage the pole and antennas.
- e. *Accessory Structures.* Unless approved by the Town Council, all equipment associated with a wireless communication tower is to be located below grade in a vault. If above grade accessory structures are approved by the Town Council, they shall comply with the following requirements.
 - i. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage specified concealment elements for communications towers may be required by the Council to blend the communications tower and/or its accessory structures further into the natural surroundings using specified concealment elements. ~~"Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.~~

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- ii. Accessory structures shall be designed to be architecturally similar, compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one (1) building.
 - iii. No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than 2 square feet indicating the name of the facility owner(s) and a twenty-four (24) hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.
- f. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.
- g. *Existing Vegetation.* Existing vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this chapter prior to the approval of the application.
- h. *Screening.*
- i. Tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the compound. Additional palm trees may be required to accompany towers which use a palm tree stealth design.
 - ii. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town Council.
 - iii. The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate noise emanating from on-site equipment, including but not limited to heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall

comply with all applicable sections of this chapter as it pertains to noise control and abatement.

i. *Utility Services Antennas.*

i. If placed on another utility structure such as a water tower, the antenna shall be painted to blend with the building or equipment it is placed on.

ii. If a separate tower structure is used, the design shall comply with the provisions in this section.

4. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views and, to the degree possible while complying with FAA requirements, meet the standards set in Zoning Ordinance Chapter 8, Outdoor Lighting Control.

5. *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Town of Fountain Hills irrespective of municipal and county jurisdictional boundaries.

6. *Not Essential Services.* Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

7. *Franchises.* Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Town of Fountain Hills have been obtained and shall file a copy of all required franchises with the Community Development Director.

8. *Signs.* No signs other than those required by law shall be allowed on an antenna or tower.

9. *Co-location and Multiple Antenna/Tower Plan.* The Town of Fountain Hills encourages tower and antenna users to submit a single application for approval of multiple towers and/or antenna sites and to submit applications, which utilize co-location with an existing wireless telecommunications provider. Applications for approval of multiple sites or for co-location with an existing provider shall be given priority in the review process.

10. *Security fencing.* ~~Towers PWSF~~ shall be enclosed by security fencing not less than 6 feet in height and no more than 8 feet in height, shall be constructed of a block or masonry, and shall be equipped with an appropriate anti-climbing device; provided, however, that the Town Council may waive such requirements, as it deems appropriate.

11. *Noise.* Submission of applications for towers and associated equipment placed above grade, including backup generators or power supplies, shall include noise and acoustical information, prepared by a qualified firm or individual, for the base transceiver station(s), equipment buildings, and associated equipment such as air conditioning units and backup generators. The Town may require the applicant to incorporate appropriate noise baffling materials and/or strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations contained in Section 11-1-7 of the Town Code.

12. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by an Arizona licensed professional engineer.

13. Application approval issued under this chapter shall be conditioned upon verification by the Town Engineer or designee that such tower structure is structurally sound. Such verification shall be received by the applicant prior to submission.

14. Access and Parking. Areas sufficient for access to the tower and equipment location and for temporary off-street parking of at least two vehicles shall be provided. The type and configuration of the access and parking shall be subject to the standards set forth in Zoning Ordinance Chapter 7, Parking and Loading Requirements.

B. *Minimum Setbacks and Separations.*

1. *Setbacks From Property Lines.* Except for utility service antennas, the following setback requirements shall apply to all towers; provided, however, that the Town Council may reasonably reduce the standard setback requirements if the goals of this chapter would be better served thereby:

- a. Towers must be set back a distance equal to at least one hundred ~~twenty~~ fifty percent (~~100~~120150%) of the height of the tower from any adjoining lot line; provided, however, that the setback distance shall be increased as required to comply with the separation distances from residential uses in accordance with Table 1 set forth below.

b. Accessory buildings must satisfy the minimum zoning district setback requirements.

2. *Separations From Adjacent Uses.* Except for utility service antennas, the following separation requirements shall apply to all towers and antennas; ~~provided, however, that the Town Council may reasonably reduce the standard separation requirements if the goals of this chapter would be better served thereby.~~

a. *Separation From Residential Uses.*

i. Tower separation shall be measured from the base of the tower to the lot line of the residential uses.

ii. Separation requirements for towers shall ~~comply with the minimum standards established in Table 1~~ be 500 feet from any residentially zoned or used land including mixed-use.

~~Table 1. Separation Requirements From Offsite Uses/Areas~~

Off Site Use/Designated Area	Separation Distance
Single-family or duplex residential buildings <u>Residentially zoned or used land^{1, 2,}</u>	200 feet or 300% of tower height, whichever is greater <u>500 feet³</u>
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary plat approval which is not expired²	200 feet or 300% of tower height, whichever is greater²
Vacant unplatted residentially zoned lands³	100 feet or 100% of tower height, whichever is greater
Existing multifamily residential units greater than duplex units	
Nonresidentially zoned lands or nonresidential uses	None, only setbacks apply

~~¹Includes modular homes and mobile homes used for living purposes. Separation measured from base of tower to the closest building wall.~~

~~2 If vacant residential property, separation measured from base of tower to closest building setback line.~~

~~3 Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan and any multifamily residentially zoned land greater than a duplex. The Town Council may reduce the standard separation requirements to 300' if, through information and data presented, the Council determines the goals of this chapter would be better served thereby.~~

b. *Separation Distances Between Towers.* Separation distances between towers shall be applicable for and measured between the proposed tower and pre-existing towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2. Separation Distances Between Towers

	Monopole 65 ft. in height or greater	Monopole less than 65 ft. in height but greater than 40 ft. in height	Monopole less than 40 ft. in height
Monopole 65 ft. in height or greater	2,000 feet	1,500 feet	1,000 feet
Monopole less than 65 ft. in height but greater than 40 ft. in height	1,500 feet	1,500 feet	1,000 feet
Monopole less than 40 ft. in height	1,000 feet	1,000 feet	750 feet

C. *Buildings or Other Equipment Storage.*

1. *Antennas Mounted on Structures or Rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:

a. Unless approved otherwise by the Town Council for good cause shown, but located in an underground vault.

b. If located above ground:

i. The cabinet or structure shall not contain more than 120 square feet of gross floor area or be more than 8 feet in height and shall be located on the ground.

bii. Equipment storage buildings or cabinets shall comply with all applicable building codes.

2. *Antennas Mounted on Utility Poles, Light Poles, or Towers.* The equipment cabinet or structure used in association with antennas shall be located unless otherwise approved by the Town Council in an underground vault. If approved to be above ground, then in accordance with the following:

a. In residential districts, the equipment cabinet or structure may be located:

i. In a required front yard or required street side yard, provided the cabinet structure is no greater than 3.5 feet in height and 20 square feet of gross floor area and the cabinet/structure is located a minimum of 3 feet from all lot lines. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height not to exceed forty-two (42) inches.

ii. In a required rear yard, provided the cabinet or structure is no greater than 5 feet in height or 120 square feet in gross floor area. The cabinet/structure shall be screened by sight obscuring landscaping which obscures at least ninety-five percent (95%) of the structure at planting and throughout the duration of the cabinet or structure's existence with an ultimate height of 6 feet.

iii. The entry or access side of a cabinet or structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure.

b. In commercial or industrial districts the equipment cabinet or structure shall be no greater than 14 feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by sight-obscuring landscaping with an ultimate height of 16 feet and a planted height of at least 6 feet. The entry or access side of a cabinet or

structure shall be gated by a solid, sight-obscuring gate that is separate from the cabinet or structure. Such access way shall not face residentially zoned property.

3. *Modification of Building Size Requirements.* In the case of wireless facilities considered by the Town Council, the requirements of subsections (C)(1) and (C)(2) of this section may be modified by the Town Council to address site specific conditions and requirements.

D. *Co-location.*

1. Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers. Design considerations shall include sufficient area for additional ground equipment, structural design of the tower, and sufficient electrical power available for the load of at least two (2) additional wireless service providers.

2. *Good Faith.* Applicants and permittees shall cooperate and exercise good faith in co-locating wireless telecommunications facilities on the same support structures or site, if the Town so requests. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and may include negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing such information normally will not be considered as an excuse to comply with this section.

3. *Third Party Technical Review.* In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require the applicant to obtain a third-party technical study at the applicant's expense. The Town may review any information submitted by the applicant and permittee(s) in determining whether good faith has been exercised.

4. *Exceptions.* No co-location may be required where the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing wireless telecommunications facilities or failure of the existing wireless telecommunications facilities to meet federal standards for emissions.

5. *Violation; penalty.* Failure to comply with co-location requirements when feasible may result in denial of a permit request or revocation of an existing permit. (24-08, Amended, 09/04/2024, Deleted and replaced)

Section 17.04 Application Types

A. *Administrative.* The following types of applications are processed administratively by staff:

1. Applications to change or modify an existing administratively approved wireless communication facility that remains in compliance with all chapter requirements.
2. Applications to change or modify an existing wireless communication facility approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);
 - c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
 - d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.
3. Applications for co-location of additional antenna for an additional service provider on an existing administratively approved tower that remains in compliance with all chapter requirements.
4. Applications for co-location of additional antenna for an additional service provider on an existing tower approved through public review; provided, that the modification will not:
 - a. Increase the approved height of the supporting structure by more than ten percent (10%) or 20 feet, whichever is greater;
 - b. Cause the original approved number of antennas to be exceeded by more than fifty percent (50%);

-
- c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
 - d. Add new, additional, or larger microwave antenna dishes;
 - e. Expand the footprint of said support structure; or
 - f. Potentially cause significant adverse impacts on the existing support structure or the surrounding area.

5. Applications for new utility service antenna that comply with the height and setback requirements of the zoning district in which they are located.

6. Applications for mobile or temporary wireless facilities for more than seven (7) consecutive days.

~~7. Applications for new towers in the following locations:~~

~~a. Town property with the tower located at least 300 feet from a residential zoning boundary.~~

~~b. On commercial, industrial, utility, or lodging zoned property and located at least 300 feet from a residential zoning boundary.~~

~~c. Alternative tower structures when such structures and their accompanying equipment are appropriately blended into the surrounding terrain, are within the height limitations of the underlying zoning district and are at least 300 feet from a residential zoning boundary.~~

B. *Public Review.*

1. Any new tower or modification to existing towers or antennas that do not meet the requirements in subsection (A) of this section for administrative review shall require review and approval as provided in subsection 17.05 (C)(~~2~~).

2. Any new tower not meeting the setback or separation requirements in Section 17.03(B).

Section 17.05 Application Submittal, Review, and Processing

A. *General.* Unless waived in writing by Zoning Administrator, the following provisions shall govern the review of all wireless communication facility applications:

1. *Complete Application.* Applications for wireless communication facilities shall be filed electronically on the Town's website by an owner of real property and shall contain the area proposed for the wireless communication facility using the process established by the Director for such applications. All such applications shall include the information required in this section. Applications filed on behalf of the property owner by a third party shall include a statement from the property owner authorizing the submittal of the application.
2. Applications shall include documentation of compliance with items listed in Section 17.03(A) as applicable to the application submitted.
3. *Inventory of Existing Sites.* Each applicant for a new tower or co-location of new antenna on an existing tower shall provide to the Development Services Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the Town of Fountain Hills or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. Each applicant shall also provide a one (1) year build-out plan for all other wireless communications facilities within the Town. The Development Services Director may share such information with other applicants applying for administrative approvals or special use permits under this chapter or with other organizations seeking to locate antennas within the jurisdiction of Town of Fountain Hills; provided, however, that the Development Services Director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
4. *Utility Service Antennas.*
 - a. If the antenna complies with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and approved with the overall site development plans if the site is being developed concurrently. If the antenna is being added to an existing utility site, the plans will be reviewed and processed consistent with the requirements of subsection (C)(2) of this section.

b. If the antenna does not comply with the height requirements of the underlying zoning district, the plans for the antenna will be reviewed and processed consistent with the requirements of subsection (C)(3) of this section.

5. A list of the full names and contact information for all applicants, co- applicants, facility owner(s), facility operator(s), site developer(s), and wireless carrier(s), property owner(s) and other related third parties and their agent(s), if any, on whose behalf the application is being submitted.

56. Proof of Authorization for Site Occupancy. Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, it shall submit proof of authorization to occupy the site at issue.

If the applicant is leasing all or a portion of real property upon which it intends to install its facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant seeks to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

7. Fire Safety: The applicant shall submit a Fire Safety Plan that includes a general description of the personal wireless services facility for purposes of ensuring the Fire Department is fully informed and prepared in case of a fire. The Fire Safety Plan shall include:

- a. Location of all Fire Safety Plan documents.
- b. Location of the facility's alarm panel.
- c. List of emergency contacts.
- d. Specific responsibilities assigned to designated personnel.
- e. Location of signal-processing equipment.

f. Location and listing of types of power equipment, including rectifiers, inverters, distribution cabinets, bus bars, cables, and communications raceways.

g. Listing and location of batteries, including description of quantities and types of batteries, specifying whether batteries are lithium-ion, nickel cadmium, sodium-nickel, valve-regulated lead acid, and/or vented, and description of any associated exhaust ventilation system(s).

h. Description of actions to detect and prevent thermal runaway events.

i. Description of whether the facility will be located in a lightning-prone area. If the facility is to be located in a lightning-prone area, description of how the facility shall comply with NFPA 780 Standard for the Installation of Lightning Protection Systems;

j. Description of location and types of fuses used to ensure that if the wireless transmission facility experiences overcurrent resulting from current exceeding the rating of equipment or the ampacity of a conductor, the facility shall turn off temporarily.

k. Depowering procedures including identification of locations of electrical depowering devices, which include:

(a) Coded floor prints located in the Fire Safety Plan document;

(b) Facility signage to direct fire personnel to depowering locations;

(c) The method of turning off power to the following:

i. Alternating current power board. This is the primary source of electric power for a telecommunications facility and is supplied by the local power company.

ii. Standby power generator. This unit, usually a turbine or diesel generator, provides standby ac power that is transferred manually or automatically whenever a loss of ac power is experienced.

iii. Direct current primary disconnect fuse or circuit breaker bay. This unit distributes dc power to the secondary fuse or circuit breaker panels throughout

the central office. The secondary fuse or circuit breaker panels feed all the operating voltages to the central office branch circuits.

iv. Uninterruptible power supply (UPS)

v. HVAC systems serving the facility

vi. Alternative energy devices, such as wind turbines, fuel cells, photovoltaic systems, or other devices providing power to the facility.

I. Detailed electrical designs, signed and stamped by a licensed electrical engineer, demonstrating compliance with the Building, Electric and Fire Code. The Code compliance demonstration shall include all necessary underlying calculations and inputs, including but not limited to:

(a) A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;

(b) A one-line diagram of the electrical system;

(c) Voltage Drop & Load Flow Study;

(d) Load Calculation;

(e) Panel Directories;

8. Soil Erosion and Sedimentation Control: A soil erosion and sedimentation control plan, prepared in accordance with the standards as established by the Town Engineering Division.

9. Engineer's Report: For the construction of all new wireless facilities and to the extent not already mandated herein, the applicant shall provide a report prepared and certified by a professional engineer certifying the integrity and safety of all proposed new towers and/or structures and indicating the location, type, and height of the proposed personal wireless services facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, all applicable American National Standards Institute (ANSI)

technical and structural codes. To the extent that an application proposes the co-location of new equipment onto an existing tower or personal wireless services facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify above.

10. Visual Impact Analysis. The applicant shall provide a completed visual impact analysis that shall include the following:

a. A "Zone of Visibility Map" to determine locations from where the new facility will be seen.

b. A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The photographic images shall show the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening and landscaping. The analysis shall include the results of the drone/balloon test, and other information as necessary to determine visual impact of the facility. The analysis shall include a map depicting where the photos were taken. Where consistent with the natural or built environment, the analysis shall include a

native vegetation landscaping plan with a visual simulation of how the chosen plants, at maturity, will screen the site.

11. For proposed towers and facilities taller than 100 feet, the applicant shall perform a balloon test and shall publish reasonably advanced public notice of the same to enable the Reviewing Authority, property owners, and the community an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community. Said date and time will be established by the Development Services Director in coordination with the applicant, including an alternative date in case of inclement weather. If a balloon is used, the diameter shall be equal to the largest antenna or dish proposed for the CRS tower or the width of the tower, whichever is larger. The applicant will be responsible for publishing a public notice of the balloon test in at least one local newspaper publication and notifying abutters owning property within one thousand (1,000) feet radius, via U.S. Mail at least one week prior to the test.

12. If the application is for a facility that will not be attached to an existing utility pole and the facility's proposed height will be greater than 30 feet then structural elevations of the facility(ies) shall include any trees and other structures within twenty (20') feet, and their height.

13. Environmental Assessment Form. A completed environmental assessment form (EAF) and a completed visual EAF addendum if required by ADEQ.

14. FCC Compliance Report.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility, the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will or

will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the General Population Exposure Limits or the Occupational Exposure Limits. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

815. FCC License. A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the Town.

916. Effective Prohibition Claims.

a. The Town is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The Town is additionally aware that, in ~~August 2020~~ December 2018, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through ~~nine~~

(9)twelve (12) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff's 66-page report is made a part of this Chapter as Appendix 1.

The Town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town Council to render determinations upon applications for new wireless facilities consistent with this Chapter's requirements and the TCA's statutory requirements.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Town Council or the Town that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the Town, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Town Council would constitute an "effective prohibition" under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

"Notice of Effective Prohibition Conditions"

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Town Council to reasonably determine:

- i. Whether or not the conditions alleged by the respective applicant exist,
- ii. Whether there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the Town,

iii. The geographic locations of any such gaps, and

iv. The geographic boundaries of such gaps, to enable the Town Council to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not Federal law would require the Town Council to grant the respective application, even if it would otherwise violate the Town Code, including, but not limited to, this Chapter.

b. The additional materials which the applicant shall then be required to provide shall include the following:

i. Drive Test Data and Maps. If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the Town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the Town and the Town Council with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

(a) The date and time for the test or tests.

(b) The location, in longitude and latitude, of each point at which signal strength was recorded and

(c) Each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

(d). The applicant shall also submit drive test maps depicting the actual signal strengths recorded during the actual drive test for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant

shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99 to -101 DBM, and - 102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

ii. Denial of Service and/or Dropped Call Records. If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the Town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier’s customers were unable to initiate, maintain and conclude the use of the carrier’s personal wireless services without actual loss of service, or interruption of service.

~~1017.~~ Estimate for Cost of Removal of Facility. At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town Council’s Engineer shall review this estimate. A bond for the cost of removal as required in Sec. 17.06 A. 2. shall be filed prior to commencement of construction.

~~1118.~~ Property Owner Consent & Liability Acknowledgement. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking

installation of its proposed personal wireless service facility, wherein the owner or owners both authorize the applicant to file and pursue its application and acknowledge the potential landowner's responsibility, under Section 17.08 for engineering, legal and other consulting fees incurred by the Town.

~~512~~19. *Applications Using Existing Towers.*

- a. Dimensioned, to-scale drawings showing the existing and proposed antenna on the tower including the height of the tower and the antennas.
- b. The number and type of existing and proposed antennas.
- c. Engineering calculations documenting the structural changes and certifying the tower's ability to carry the new antennas.
- d. Dimensioned, to-scale drawings illustrating modification of ground equipment, if any.

~~613~~20. *Applications Using New Towers – Information Required.*

In addition to any information required for applications for special use permits pursuant to Chapter 2, Section 2.02, applicants for a new wireless facility shall submit the following information:

- a. A site plan as required in Section 2.04 plus zoning, General Plan classification of the site and all properties within the applicable separation distances set forth in Section 17.03(B)(1), adjacent roadways, proposed means of access, elevation drawings of the proposed tower and any other structures, photo simulations showing the tower in the proposed location from at least four (4) directions, and other information deemed by the Development Services Director to be necessary to assess compliance with this chapter.
- b. The setback distance between the proposed tower and the nearest residential unit and residentially zoned properties. Include an illustration of the fall zone for the tower.
- c. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 17.03(B)(2) shall be shown on an updated site plan

or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

d. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

e. A description of compliance with Sections 17.03(A)(3), 17.03(A)(4), 17.03(A)(5), 17.03(A)(7), 17.03(A)(8), 17.03(A)(9), 17.03(A)(10), 17.03(A)(11), 17.03(B), subsection (A)(3) of this section, Sections 17.06(A) and 17.06(B) and all applicable federal, state or local laws.

f. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

g. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.

h. ~~A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.~~ Alternatives Analysis. An itemized list of alternative sites considered, with a comprehensive explanation of reasons alternative sites are not technologically feasible. Explanation shall include specific comparative analysis of how different sites would impact aesthetic values, and other environmental values.

i. A description of the feasible alternative location(s) of future towers or antennas within the Town of Fountain Hills based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

j. A statement of compliance with Federal Communications Commission (FCC) radio frequency (RF) exposure standards.

~~714~~20. *Filing Fee.* Payment of a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. No part of the filing fee shall be returnable.

B. *Shot Clocks and Tolling.* To comply with the requirements of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth hereinbelow shall be presumed to be reasonable periods within which the Town shall render determinations upon applications for wireless communication facilities.

The Town shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period listed below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Town's control.

1. *Application Shot Clocks.*

a. *Receipt of Initial Application.* Upon receipt of an application, the Development Services Director, or designee, shall review the application for completeness. If the Director determines the application is: (i) incomplete, (ii) missing required application materials, (iii) is the wrong type of application, or (iv) is otherwise defective, then, within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the Town's receipt of the application, the Director, or their designee, shall notify the applicant of the finding and state what is needed to have a complete application.

The notice of incompleteness shall toll the shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues identified in the notice of incomplete application. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again notify the applicant within ten (10) days for administrative applications and thirty (30) days for public hearing applications of the applicant having filed its supplemental or corrected materials to the Town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

If Applicant does not cure the stated deficiencies within 30 days, the application shall be considered withdrawn or closed.

b. *Application Review.* The shot clock for administrative applications ~~which do not involve new towers~~ is ninety (90) days. The shot clock for ~~administrative~~ applications with new towers, monopoles, utility poles and other wireless facilities that trigger public review applications is one hundred fifty (150) days.

2. *Shot Clock Tolls, Extensions and Reasonable Delay Periods.* Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within subsection (B) of this section shall generally be presumed to be sufficient periods within which the Town shall render decisions upon applications.

Notwithstanding the same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Town, and the Town shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

a. *Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error.* As provided for within subsection (B)(1) of this section, in the event that the Development Services Director deems an application incomplete, the Director shall send a notice of incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Director sends a notice of incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Town is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the Town receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically resume running, but shall not be deemed to start running anew.

The applicable shot clock period shall, once again, be tolled if the Director thereafter provides a second notice that the application is still incomplete or defective, despite any

additional submissions which have been received by the Town, from the applicant, up to that point.

b. *Shot Clock Extension by Mutual Agreement.* The Town shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Town shall include the Town's authority to request, at any time, and for any period of time the Town may deem reasonable or appropriate under the circumstances, consent from a respective applicant to extend the applicable shot clock period to enable the Town, the applicant, or any relevant third party, to complete any type of undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Town, to the extent that any such undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law and/or the requirements of any provision of the Town Code, including but not limited to this chapter.

In response to any request by the Town, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative, can consent to any extension of any applicable shot clock by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Town shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Town within the review process.

c. *Reasonable Delay Extensions of Shot Clock Periods.* The Town recognizes that there may be situations wherein, due to circumstances beyond the control of the Town and/or the Town Council, the review and issuance of a final decision upon an application for a wireless communication facility cannot reasonably be completed within the application shot clock periods delineated within subsection (B) of this section.

If, despite the exercise of due diligence by the Town, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Town shall be permitted to continue and complete its review and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those

enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

- i. In the event that the rendering of a final decision upon an application under this chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.
- ii. In the event that applicant tenders eleventh-hour submissions to the Town in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Town at such late point in the proceedings, the Town shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Town, even if such review or services extend beyond the applicable shot clock period, so long as the Town completes such review and retains and secures such expert services within a reasonable period of time thereafter and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

C. Review and Processing of Applications.

- 1. Conformity to the following shall be considered in review of all applications:
 - a. The application is consistent with the objectives of this chapter.
 - b. The height of the proposed tower.
 - c. The adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural

features, streets, relationship of adjacent uses, etc.) that provide for the ability to comply with the provisions of this chapter.

d. The extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.

e. The extent to which the proposed telecommunications facility ~~is camouflaged (i.e., use of stealth technology)~~ uses concealment elements.

f. The extent to which the proposed facility is integrated with existing structures (i.e., buildings, signs, utility poles, etc.) with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

g. An applicant's compliance with all town requirements with respect to previous applications.

h. Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

i. Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

j. Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

k. Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

l. Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the

part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

2. *Review of Administrative Applications.*

a. Administrative applications will be reviewed by staff using the Town's standard building permit review processes.

~~b. Applications for new towers shall provide staff with the same information as required in subsection of this section for public review applications.~~

~~eb.~~ Applications for mobile or temporary wireless facilities which remain in place for more than seven (7) consecutive days must submit a request for a temporary use permit as provided in Section 2.03.

3. *Review and Processing of Public Review Applications.*

a. Applications which require public review and approval on private property will be processed as special use permits and follow the requirements listed in Section 2.02 for special use permits. Applications on Town owned property will not require a special use permit but will follow the same requirements for notice for review by the Town Council.

~~b. In addition to the factors listed in subsection (C)(1) of this section for review of applications, public review applications will also be subject to the standards for consideration of special use permit applications pursuant to Chapter 2, Section 2.02 of this chapter. Factual Determinations.~~

To decide applications under this Section, the Town Council shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Council shall render local zoning determinations according to Section i. hereinbelow.

Then, if, and only if, an applicant asserts claims that a denial of its application would effectively prohibit an identified Wireless Carrier from providing Personal Wireless Services within the Town, or its proposed wireless facility or installation is necessary to

remedy a significant gap in personal wireless services for an explicitly identified Wireless Carrier, and that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps.

The Council shall then additionally render TCA determinations in accord with Section ii. herein below.

The Council shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence-based upon which it rendered each of its factual determinations.

Each factual determination made by the Council shall be based upon Substantial Evidence. For purposes of this provision, "Substantial Evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence that the Council may consider shall include any evidence submitted in support of an application and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Council may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess and any documents, records, or other evidence which is a matter of public record, irrespective of whether such public record is a record of the Town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the Town, its residents, and property owners, and not applicants.

If, and to the extent that the Town Council fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town Council.

i Local Zoning Determination

The Council shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this Chapter.

(a) Compliance with Section 2.02

Whether the proposed installation will meet each of the conditions and standards set forth within Section 2.02 in the absence of which the Town Council is not authorized to grant a special use permit.

(b) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties located adjacent to, or in close proximity to, the proposed site or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(c) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(d) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(e) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including.

but not limited to, historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(f) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town, including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the Town.

(g) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

(h) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If, when applying the evidentiary standards set forth in Section 17.05 C. 3. b. i. hereinabove, the Town Council determines that the proposed facility would not meet the standards set forth within Section 2.02 or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the Town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town Council shall deny the respective application unless the Council additionally finds that a denial of the application

would constitute an Effective Prohibition, as provided for in Sections 17.05 C. 3. b. ii. and iii immediately hereinbelow.

ii. TCA Determinations

In cases within which an applicant has filed a "Notice of Effective Prohibition Conditions," the Town Council shall determine if a denial of the respective application would "Effectively Prohibit" a specifically identified Wireless Carrier from providing Personal Wireless Services within any geographic area or areas in the Town.

More specifically, the Town Council shall determine whether a denial of the specific application would either: (i) prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town.

In determining whether a denial of any specific application would constitute an "Effective Prohibition," the Town Council shall determine: (1) whether an applicant has established that an identified Wireless Carrier suffers from one or more significant gaps in its Personal Wireless Services, and (2) whether its proposed installation is the least intrusive means of remedying any such gap or gaps.

(a) Significant Gap in Personal Wireless Services of an Identified Carrier

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific Wireless Carrier suffers from a significant gap in its personal wireless services within the Town.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

(1) Whether the identified Wireless Carrier, which is alleged to suffer from any significant gap in their personal wireless services, already provides Adequate Service in its Personal Wireless Services to its customers at any

frequency being used by the carrier to provide personal wireless services to its end-use customers.

(2) Whether any such alleged gap is relatively large or small in geographic size.

(3) Whether the number of the carrier's customers affected by the gap is relatively small or large.

(4) Whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or

(5) Overall, whether the gap is relatively insignificant or otherwise relatively de minimis.

An Effective Prohibition shall not be found to exist under subparagraph (iii) hereinbelow if a Wireless Carrier has adequate coverage in any specified geographic area, such that its end-use customers can use their cellular telephones to connect to landlines using the Carrier's Personal Wireless Services, but the frequency at which the customers are using such services is not the frequency most desired by the Carrier.

(b) Least Intrusive Means of Remediating Gap(s) in Service

The Town Council shall determine whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility at the specific site proposed by the applicant and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant, is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proven to exist as determined by the Town Council based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Council shall consider factors including, but not necessarily limited to:

(1) Whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has

reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location,

(2) Whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation

(3) Whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service,

(4) Whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas,

(5) Whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or

(6) Overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations.

An Effective Prohibition shall also not be found to exist in subparagraph (iii) hereinbelow if an applicant fails to establish before the Town Council that any existing geographic gap or capacity deficiency in the specific Wireless Carrier's coverage cannot be remedied through a less intrusive means than what is being proposed, including, but not limited to, potential installations on alternative less intrusive sites, a shorter tower or facility, the incorporation of a more stealthy design, etc.

iii. Finding of Effective Prohibition or Lack of Effective Prohibition

After considering the evidence presented before it, the Town Council shall determine whether or not a denial of the respective application would constitute an effective Prohibition.

If the Town Council affirmatively determines that the applicant has failed to establish either: (i) that a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to

enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application does not constitute an Effective Prohibition.

If the Town Council affirmatively determines that: (i) a denial of the application would prevent an identified Wireless Carrier from providing personal wireless services within a specific geographic area or areas within the Town, or (ii) that a denial of the application would prevent a specific Wireless Carrier from constructing a sufficient number of such facilities necessary to enable it to provide Personal Wireless Services within the Town, then the Town Council shall find that a denial of the application would constitute an Effective Prohibition, and the Town Council shall grant the subject application, irrespective of whether or not the granting of same would otherwise be inconsistent with any other provision of this Section §17.05 C. 3. b. Provided, the Town reserves the right to deny an application even if doing so leads to an effective prohibition to the extent allowed by the safe harbors contained in 47 U.S.C. §§ 253(b) and (c) and incorporated into 332(c)(7)(B)(i), based on the evidence of record.

c. *Availability of Suitable Existing Towers, Other Structures, or Alternative Technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Town Council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

i. No existing towers or structures are located within the geographic area, which meet applicant's reasonable engineering and personal wireless service related quality requirements. This evidence cannot be merely conclusory and must be supported by propagation maps that include the underlying analysis models, engineering reports speaking to the technical infeasibility, dropped call logs, and other data showing that a new tower is the only means of accommodating the proposed antenna.

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- ii. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - iii. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - iv. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna as certified by an RF engineer.
 - v. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - vi. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - vii. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
 - ~~viii. If the applicant asserts a claim that a proposed facility is necessary to remedy one (1) or more existing significant gaps in an identified wireless carrier's personal wireless services, the Council may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Council to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application.~~

d. Following approval by the Town Council, the applicant may apply for a building permit through the standard application process. Construction shall not commence prior to approval of the building permit.

4. Environmental Impacts

If, and to the extent that, the Town Council determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of ADEQ and/or the NEPA, then the Council shall be expected to comply with the requirements of ADEQ in determining both:

- a. The extent of adverse impacts upon the environment and/or historic properties; and,
- b. What mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or impacts upon historic sites, structure and/or districts.

If a respective applicant fails to obtain a review from the ADEQ and/or NEPA and opinion letters from the ADEQ and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council may make direct requests to the ADEQ and the FCC for their review of the application. The Town Council may request the FCC's review and input in completing the statutorily-required environmental impact analysis pursuant to ADEQ and NEPA.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete an ADEQ review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement and, if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

5. Historic Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the Town's historic preservation law requirements and comprehensive plan and ADEQ.

If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on a historic site or a historic district within the meaning of ADEQ and/or the NHPA (especially if the historic site at issue is listed upon the National Register of historic places), then the Council shall comply with the requirements of both ADEQ and Town law in determining both:

- a. The extent of adverse impacts upon the historic properties, and
- b. What mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a SHPO and/or a Section 106 review under NHPA, and opinion letters from SHPO and the FCC pertaining to its proposed installation prior to a first public hearing before the Town Council for the respective application, then the Town Council shall make direct requests to SHPO and the FCC for their review of the application. They shall request SHPO and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to ADEQ and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the Town recognizes each application for a special use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Town Council shall comply with the statutory requirements of ADEQ to complete a SEQ ADEQ RA review, make determinations of significance, and, where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Town Council acts with reasonable diligence in completing its ADEQ and NHPA review, if compliance with the statutory requirements for historic preservation review

requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

6. Tribal Site Impacts

The Town Council shall consider the potential adverse impacts of any proposed facility upon any tribal lands associated with the Fort McDowell Yavapai Nation and the Salt River Pima-Maricopa Indian Community near or within the general area of Fountain Hills, Arizona. If, and to the extent that, the Town Council determines that a proposed installation bears the potential for a significant adverse impact on such tribal lands, then the Council shall issue notice to tribal representatives and request tribal review of the application.

67. Force Majeure

In the event that the rendering of a final decision upon an application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town or the Town Council, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

478. In granting a permit, the Town may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

Section 17.06 Maintenance and Operation

A. Removal of Abandoned Antennas and Towers: Bond Required.

1. Any antenna or tower that is not operated for a continuous period of ninety (90) days shall be ~~considered~~ deemed abandoned, ~~and, Within ninety (90) days of receipt of notice from the Town of Fountain Hills notifying the owner of such abandonment,~~ the owner of such antenna or tower shall completely remove the same and all related equipment and improvements and shall restore all affected areas to a condition compliant with all

applicable laws, which includes without limitation the Code within ninety (90) days of receipt of notice from the Town of Fountain Hills notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) day period shall be grounds to remove the tower or antenna at the owner's expense. The Town shall have the right (but not the obligation) to perform such removal and restoration with or without notice. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower for the prescribed period.

2. Upon receiving a special use permit approval from the Town Council and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the Town a bond for a length of no less than three (3) years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time the Town has good cause to question the sufficiency of the bond at the end of any three-year (3) period, the owner and/or operator of the facility, upon request by the Town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for the removal of the facility at the owner's expense. Each facility will require a separate bond, regardless of the number of owners or location.

B. State or Federal Requirements.

1. **Compliance with state and federal requirements.** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or

federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

2. Prohibition against illegally excessive emissions and RF testing.

As disclosed on the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the Town is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the Town, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The Town deems it to be of critical importance to the health, safety, and welfare of the Town, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR. The FCC has recognized that 47 U.S.C. § 332(c)(7)(B)(iv) permits state and local governments, when making decisions on the placement, construction, and modification of personal wireless service facilities, to consider whether such facilities comply with the Commission's regulations concerning RF emissions. In re Human Exposure to Radiofrequency Electromagnetic Fields et al., 34 FCC Rcd 11687, 11739, ¶1114 (2019).

In accord with the same, the Town enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §17-2 or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made

applicable pursuant to 47 CFR §1.1310(e)(3) unless the operator implements and retains responsibility for ongoing effectiveness of the mitigation actions contained in 47 C.F.R. §1.1307(b)(4).

To ensure continuing compliance with such limits by all owners and/or operators of wireless communication facilities within the Town, all owners, and operators of wireless communication facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by the owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town Council or any other body or representative of the Town is subject to modification or revocation by the Town Council following a public hearing.

a. *Certification of Compliance with Applicable RF Radiation Limits.* Within forty-five (45) days of initial operation or a substantial modification of a wireless communication facility, the owner and/or operator of each telecommunications antenna shall submit to the Development Services Director a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall also measure the emissions of the approved wireless facility, including the cumulative impact from other nearby wireless facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's maximum permissible exposure (MPE) limits shall be submitted to the Development Services Director.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought

into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The Town may require, at the applicant's expense, independent verification of the results of the analysis.

b. *Random RF Radiofrequency Testing.* At the operator's expense, the Town may retain an engineer to conduct random unannounced RF radiation testing of such wireless facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one (1) test per facility per calendar year unless such testing reveals that one (1) or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the wireless facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective wireless facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town Council at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks' written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment

caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town Council shall have the power to and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town Council, Board of Adjustment, Town Engineer and/or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town may issue a civil citation of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

c. Annual Testing. The owner or operator of all PWSF shall provide for and conduct an inspection of radio frequency radiation at least once annually by a licensed radio frequency engineer. Three copies of a report shall be provided to the Development Services Department, verifying that the radio frequency radiation is in compliance with FCC Guidelines.

3. *Actions for Noncompliance.* If the Town at any time finds that there is good cause to believe that a wireless communication facility and/or one (1) or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town's Zoning Administrator at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

The owner and/or operator shall be afforded not less than two (2) weeks' written notice of the hearing.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town shall have the power to revoke any permit, building permit, and/or any other form of approval(s) which the Town Council or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility. The Zoning Administrator may revoke an administrative approval. The decision of the Zoning Administrator may be appealed to the Town Manager. If the tower or antenna was approved by the Town Council, revocation will be considered by the Town Council in the same manner as the original approval.

In addition, the Town may issue a civil citation for noncompliance as provided in Section 1-8-3 of the Town Code.

In the event that an owner or operator of one (1) or more wireless communication facility is found to violate subsection (B)(1) of this section three (3) or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Town Council shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

C. *Building Codes; Safety Standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Fountain Hills concludes that a tower fails to comply with such codes and standards and

constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

D. *Noise.* Wireless facilities and all related equipment must comply with all noise regulations and shall not exceed such regulations, either individually or collectively. Backup generators shall only be operated during power outages and/or for testing and maintenance purposes between the hours of 9:00 a.m. and 4:00 p.m.

E. *Maintenance.* Prior to scheduling a final inspection for construction of a tower and associated equipment, the applicant shall file with the Town a bond in the amount of X to cover the ongoing maintenance of the tower, equipment, and landscaping. The bond amount shall be reviewed and revised every three years thereafter. Should the owner of the tower, equipment, and/or landscaping fail to maintain said facilities consistent with the Town's approval and ordinance requirements, and after notice for correction by the Town, the Town may call and utilize the bonds to perform the needed maintenance activities.

F. *Indemnity and liability for damages.*

1. The wireless telecommunications facility provider shall defend, indemnify, and hold harmless the Town or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the Town, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The Town shall promptly notify the provider(s) of any such claim, action or proceeding if the Town bears its own attorney's fees and costs, and the Town defends the action in good faith.

2. Wireless telecommunications facility operators shall be strictly liable for interference caused by their facilities with Town communications systems. The operator shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the Town attributable to the interference.

~~G. Certificate of Insurance required. The applicant shall maintain adequate and sufficient liability insurance during the construction period and thereafter, the carrier shall maintain liability insurance meeting the criteria of this section throughout the life of any PWSF erected within the Town of Fountain Hills. Prior to the issuance of any necessary permit, whether special permit or building permit, documentation that liability insurance in the amount of at least \$1,000,000 single occurrence, \$3,000,000 aggregate has been secured identifying the Town as coinsured shall be submitted to the Development Services Department, such policy shall not include a pollution exclusion. The carrier's maintenance without interruption of liability insurance in like or greater amount with the Town named as coinsured is a continuing condition of any permit or certificate of building compliance.~~, issued by an insured authorized to do business in the State of Arizona meeting the criteria of this section throughout the life of any PWSF erected within the Town of Fountain Hills, at least as broad as follows:

1. Commercial General Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, commercial General Liability ("CGL") insurance on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; (iv) bodily injury or damage from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit.

5. Environmental Pollution Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup.

removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the personal wireless services facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

6. Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

7. Endorsements. The relevant policy(ies) shall name the Town, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) days' prior notice to the Town of the cancellation or material modification of any applicable insurance policy.

8. Verification of Coverage. Permittee shall furnish the Development Services Department with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the Development Services Department before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. Permittee shall furnish updated certificates and endorsements to the Town annually. The Town reserves the right to require updated certificates and endorsements or complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

9. Permittee Has Full Liability: The permittee shall assume full liability for damage or injury caused to any property or person by the personal wireless services facility.

10. Permittee shall provide an executed agreement, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the Town, its officers, employees, agents, attorneys, and volunteers, from (i) any claim, action or proceeding brought against the Town or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Town or (ii) a successful legal action brought against the Town for loss of property value or other harm caused by the placement or operation of a small cell installation. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the Town and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the Town for all of the Town's costs, fees and damages which the Town incurs in enforcing the indemnification provisions of this Section.

H. ADA Accommodations. The Town seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent they are entitled to same under the Act.

I. Decommissioning and Reclamation Plan shall include the following information:

1. A plan for disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations detailing the types and quantities of waste materials and methods of disposal;
2. A description of how and on what schedule stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. Permittee should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover;
3. An estimate of costs for the decommissioning of the personal wireless services facility with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate;

4. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum requirements meet the standards of this Ordinance. Such plan must be filed in the Town Office prior to the first operation of the personal wireless services facility;

5. An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during the implementation of the decommissioning plan.

Section 17.07 Nonconforming Uses

A. *Not Expansion of Nonconforming Use.* Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. *Pre-existing Towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this chapter.

C. *Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas.* Notwithstanding other provisions of this chapter, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain a special use permit and without having to meet the separation requirements specified in Section 17.03. The type, height, and location of the tower on site shall be of the same type and intensity as the original facility approval; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within ninety (90) days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 17.06(A).

Section 17.08 Retention of Consultants

A. Use of Consultants

Where deemed reasonably necessary by the Town Council and/or the Town, the Town Council and/or the Town may retain the services of professional consultants to assist the Town in carrying out its duties in review and approval of personal wireless service facilities. Where the Town Council uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the Town for such services. That responsibility shall not exceed the actual cost to the Town of such engineering, legal, or other consulting services.

B. Advance Deposits for Consultant Costs

The Town and/or Town Council may require advance periodic monetary deposits held by the Town on account of the applicant or landowner to secure the reimbursement of the Town's consultant expenses. The Town Council shall establish policies and procedures for the fixing of deposits and the management of payment from them. After the review and approval of itemized invoices by the Development Services Director, or designee, as to the reasonableness and necessity of the consultant charges, the Town may make payments from the deposited monies for engineering, legal, or consultant services. Upon receiving a request by the applicant or landowner, the Town shall supply copies of such invoices to the applicant and/or landowner reasonably in advance of review and approval, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's consultant. When it appears that the remaining deposit held for the applicant or landowner by the Town may be insufficient to pay current or anticipated invoices, the Town shall cause the applicant or landowner to deposit additional monies to meet such expenses or anticipated expenses in accordance with policies and procedures established by the Town Council. Consultants shall undertake no review on any matter scheduled before the Town until the initial deposit has been made or requested replenishment of the deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with deposit requirements.

C. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The Town may also take into account any special conditions for consideration as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants for a service that was rendered to assist the Town in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the Town or its residents; (b) assessing potential adverse environmental impacts such as those identified within an ADEQ process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, enabling the Council to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

D. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the Town Council shall review all invoices and determine whether such engineering, legal, and consulting expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of an application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the Town Council on reasonable advance notice.

E. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the Town for funds expended to compensate services rendered to the Town

under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the Town for its consulting expenses, notwithstanding that the deposit account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the Town to be due. In the event of failure to reimburse the Town for such fees, the following shall apply:

The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.

Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal, and consulting fees expended by the Town shall be remedied by charging such sums against the real property that is the subject of the application by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected simultaneously and in the same manner as Town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal, and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.



Outlook

Lori Troller Ordinance Points of Concern - For distribution to Planning & Zoning Commission members

From Lori Troller <[REDACTED]>
 Date Mon 8/31/2026 12:18 AM
 To John Wesley <jwesley@fountainhillsaz.gov>

EXTERNAL EMAIL - This email was sent by a person from outside your organization. Exercise caution when clicking links, opening attachments or taking further action, before validating its authenticity.

Secured by Check Point

You don't often get email from [REDACTED]. [Learn why this is important](#)

Hi John - These are my areas of concerns after the last P&Z presentation of the updated ordinances.

Please distribute this email to the Commission.

Summary Action Items for Staff/Counsel Follow-Up

1. Confirm EHT/McCullough review timeline for the updated **application forms**.
2. Obtain and attach at least one precedent-tested **sample denial letter**.
3. Add **Sonoran Desert Tortoise** habitat assessment trigger to environmental review section.
4. **Confirm FCC Small Cell Order compatibility of the underground-first SWF standard.**
5. Attach the **as-built compliance checklist** as an ordinance appendix.
6. Define minimum **staff/consultant qualifications** and funding mechanism.
7. **Confirm guy-wire anchor point and whip-radius setback measurement.**
8. Finalize **grandfathering scope**, emissions protocol (EOT **Bulletin 65**), compliance timeline, and daily penalty amount.
9. Finalize four-**bond structure** and amounts.
10. Federal RF exposure standard - Call out **OET Bulletin 65**
11. Finalize **contact-information penalty to safeguard** shot-clock tolling language and ongoing maintenance contacts.
12. Finalize **balloon test duration/time-of-day** requirements.
13. Confirm **100% fall-zone clearance** language.
14. Finalize **drive-by test metadata** requirements.
15. **Add temporary mobile supplemental antenna (COW/COLT) permitting section.**
16. Finalize **shell-company insurance exclusion language.**
17. Request **third-party reviewer recommendations** from McCullough.
18. **Draft satellite dish orientation section;** confirm federal preemption question with McCullough.

19. **Add stealth-structure antenna height/setback standard; request SRP jurisdiction citation from Town Attorney; commission inventory of existing faux-cactus structures.**

Telecom & Small Wireless Facility (SWF) Ordinance Rewrite

Talking Points and Suggested Verbiage for Planning & Zoning Presentation

Note: This document provides discussion points and draft language for staff/counsel review. It is not a substitute for review by the Town Attorney or telecom counsel (McCullough). All bracketed items [] require Town specific data before adoption.

1. Updated Application Package

Talking point: The application overhaul is only useful if it is legally synchronized with the rewritten ordinance — an outdated application invites incomplete submittals, which invites shot clock disputes and appeals. Recommend a formal cross reference step before adoption.

Suggested action item / verbiage:

"Prior to final adoption, Town Staff shall coordinate with EHT [Environmental Health Trust] and McCullough [telecom counsel] to review and certify that the Telecommunications Facility Application and the Small Wireless Facility Application conform in substance and structure to this Chapter, including all submittal checklists, required exhibits, and fee schedules. No application shall be deemed complete unless it is submitted on the then current Town approved form."

Recommend asking staff directly: "What is the target date for EHT/McCullough sign-off on the revised application forms, and will that occur before or after ordinance adoption?"

2. Model / Sample Denial Letters

Talking point: This is a well documented risk area — courts and the FCC shot clock rules have overturned denials not because the underlying justification was wrong, but because of particular verbiage. A template tied directly to ordinance findings reduces this exposure.

Suggested action item / verbiage:

"The Town Attorney and/or telecom counsel shall prepare, and maintain in the application packet, a template denial letter format that is a proven acceptable format and verbiage."

Ask staff: "Has counsel provided at least one sample denial letter that has withstood judicial or FCC review, and can it be attached as an appendix to the ordinance/application packet?"

3. Sonoran Desert Tortoise – Environmental Study Trigger

Talking point: The ordinance already protects dark-sky conditions and saguaros as community/environmental values; the Sonoran Desert Tortoise (*Gopherus morafkai*) is a state-protected species in Arizona (AZGFD Species of Greatest Conservation Need, and a petitioned candidate under the federal ESA) with documented populations in [Fountain Hills/FH]. Omitting it is inconsistent with the ordinance's existing environmental protection framework.

Suggested verbiage (add to Environmental Review / SUP findings section):

"Applications for new towers, poles, or ground-disturbing SWF installations shall include a habitat assessment addressing potential impacts to the Sonoran Desert Tortoise (*Gopherus morafkai*) and other locally-present protected or sensitive species. Where the Arizona Game and Fish Department Habitat Assessment Guidelines identify suitable tortoise habitat within the project disturbance area, the applicant shall retain a qualified biologist to conduct a pre-construction survey and shall implement any recommended avoidance, minimization, or relocation protocol prior to issuance of a construction permit."

4. SWF Above-Ground vs. Underground Requirement

Talking point: Small Wireless Facilities deliver a utility service, and the Town already requires other utilities (power, cable, in many zones) to be placed underground for aesthetic and safety reasons. The ordinance should state affirmatively that underground/concealed conduit and equipment is the baseline expectation, with above ground antennas permitted only where technically infeasible — not the reverse.

Suggested verbiage:

"All ground mounted equipment associated with a Small Wireless Facility, including but not limited to cabinets, meters, and battery backup units, shall be placed underground in a vault or otherwise fully concealed from view, unless the applicant demonstrates by clear and convincing technical evidence that underground placement is not feasible due to physical site constraints, in which case above ground equipment shall be screened per Section []. This requirement shall not be construed to limit the Town's authority to require concealment consistent with 47 U.S.C. §1455 and applicable FCC Small Cell Order provisions."

Note for discussion: Confirm with counsel how this interacts with FCC's 2018 Small Cell Order, which limits aesthetic requirements to those that are "reasonable," "no more burdensome than those applied to other types of infrastructure deployments," and "objectively published in advance" — underground requirements are generally defensible if applied evenly to comparable utility infrastructure.

5. As-Built Verification Protocol / Checklist

Talking point: Without a written post-construction verification checklist, there is no enforceable mechanism to confirm the built facility matches the approved plans (height, setbacks, camouflage, RF equipment count, emissions, etc.).

Suggested verbiage:

"Within thirty (30) days of substantial completion, the applicant shall submit an As-Built Certification, prepared and stamped by a licensed engineer, verifying conformance with the approved construction drawings as to: (a) tower/pole height; (b) setback and fall-zone distances; (c) antenna count, RAD center, and orientation; (d) concealment/camouflage elements; (e) equipment shelter/cabinet footprint; and (f) landscaping and screening. The Town shall conduct a field verification inspection using the As-Built Compliance Checklist maintained by [Planning Department], and no final Certificate of Occupancy or facility activation approval shall issue until the as-built is certified compliant or a variance is granted."

Ask staff: Request that the checklist itself (not just the requirement) be attached as an ordinance appendix, so it's enforceable rather than aspirational.

6. Staffing Qualifications for Application Review and Ongoing Monitoring

Talking point: RF engineering, structural tower analysis, and FCC/TCA legal timelines are specialized — general planning staff may not have the technical background to independently evaluate RF emissions reports, structural certifications, or shot clock compliance. The ordinance should either require in house qualified staff or authorize third party technical review (see also Item 17 below) funded through application fees.

Suggested verbiage:

"The Town shall designate or contract with qualified personnel possessing demonstrated expertise in radio frequency engineering, structural engineering as applicable to telecommunications towers, and federal telecommunications law (including shot clock and preemption requirements under 47 U.S.C. §332 and §1455), to review applications and conduct ongoing compliance monitoring under this Chapter. Costs of third party technical review shall be borne by the applicant through the application fee schedule."

7. Chapter 17 — Guy Wire Whip/Whiplash in the 500-Foot Setback

Talking point: Guyed towers present a distinct fall/failure geometry — a guy wire failure ("whip") can travel outside the footprint of the tower itself. If the 500-foot setback is measured only from the tower base, it may not account for guy anchor points or wire recoil radius.

Suggested verbiage:

"For guyed towers, the required setback shall be measured from the outermost guy wire anchor point, and shall additionally account for the manufacturer's or structural engineer's certified guy-wire failure/whip radius. In no case shall a guy wire anchor, guy wire, or its calculated failure radius be located within 500 feet of an occupied structure, public right-of-way, or property line, whichever is more restrictive."

Ask staff: "Does the current 500 foot setback measurement point account for guy anchors, or only the tower centerline?"

8. Existing (Legacy) Towers Under the New Ordinance

This is a multi part item; suggest breaking into sub sections in the ordinance itself.

8a. Grandfathering — talking point: Blanket 100% grandfathering is a legal and public-safety risk. Standard municipal practice is to grandfather *lawfully existing, non-conforming dimensional* aspects (height, setback) while still requiring compliance with life-safety, emissions, maintenance, and reporting requirements going forward.

Suggested verbiage:

"Towers and facilities lawfully constructed prior to the effective date of this Chapter shall be considered legal non-conforming structures with respect to dimensional standards (height, setback, and fall zone) only. Such facilities remain fully subject to: (a) RF emissions compliance and reporting under Section []; (b) **structural inspection and maintenance obligations under Section []**; (c) current contact-information requirements under Section []; and (d) **decommissioning obligations under Section []**. Non-conforming status shall not be construed as exemption from any performance, safety, or monitoring standard adopted herein."

8b. Emissions measurement — talking point: Need a defined measurement protocol (see Item 9 — Bulletin 65) and a defined responsible party (Town hired third party vs. carrier self certification).

Suggested verbiage:

"Emissions compliance shall be measured and evaluated in accordance with FCC OET Bulletin 65, 'Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,' as may be amended. The Town may require, at the facility owner's expense, an independent third party RF compliance report not more than once every [24] months, or at any time upon receipt of a documented complaint."

8c. Non-compliance enforcement — talking point: Needs a specific timeline and a specific daily fee — vague "reasonable time" language is unenforceable.

Suggested verbiage:

"Upon written notice of an emissions exceedance or other violation of this Chapter, the facility owner shall submit a remediation plan within fourteen (14) calendar days and shall achieve full compliance within forty-five (45) calendar days of notice, unless an extension is granted by the [Town Engineer/Planning Director] for good cause shown. Failure to achieve compliance within the applicable period shall result in a civil penalty of \$[] per

day of continued non-compliance, in addition to any other remedy available to the Town, including suspension of operating permit."

9. Bonds

Talking point: Four distinct bond types serve four distinct risks and should not be combined into a single generic "performance bond," since each has a different trigger, amount basis, and release condition.

Suggested verbiage:

"Prior to issuance of a permit, the applicant shall post the following separate surety instruments, each payable to the Town:

1. **Operating Compliance Bond** — securing ongoing compliance with emissions, structural, and maintenance standards of this Chapter, in the amount of \$[], renewable annually.
 2. **Fire Bond** — securing costs of fire mitigation, vegetation clearance, and fire suppression equipment maintenance associated with the facility, in the amount of \$[].
 3. **Maintenance Bond** — securing the cost of facility, landscaping, and screening upkeep for a minimum of [] years, in the amount of \$[].
 4. **Decommissioning Bond** — securing the full cost of tower/facility removal and site restoration, in an amount equal to 100% of a current engineer's estimate of removal cost, adjusted every [] years for inflation, and required for the life of the facility."
-

10. Federal RF Exposure Standard — Call out

Talking point / for the record: The applicable federal document is **FCC OET Bulletin 65** ("Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," and its Supplement C for mobile/portable devices) — Recommend this exact citation be inserted wherever emissions/RF exposure standards are referenced (see also Item 8b above), so the ordinance references an actual, citable federal document.

Suggested verbiage:

"All references in this Chapter to federal radiofrequency exposure standards shall mean FCC Office of Engineering and Technology (OET) Bulletin 65, 'Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,' including any applicable supplements, as amended."

11. Current Telecom Contact Information — Fine for Non-Compliance

Talking point: This is a shot-clock protection measure, not a punitive administrative rule. If a carrier's application contact is unreachable, the Town can be forced to either act without adequate information

or risk a "deemed granted" outcome under FCC shot-clock rules — a consequence entirely outside the Town's control. The ordinance should make clear that maintaining current contact information is the applicant's affirmative obligation, and that the shot-clock is tolled for periods of contact unavailability caused by the applicant.

Suggested verbiage:

"Each Telecommunications/SWF permit holder shall maintain current, accurate, and actively-monitored contact information (name, phone, email, and physical address) on file with the Town at all times. Failure to maintain current contact information, or failure to respond to Town inquiries within [5] business days, shall: (a) result in a civil penalty of \$[] per occurrence; and (b) toll any applicable federal or state shot-clock period for the duration of the resulting delay, consistent with FCC rules permitting mutual agreement or applicant-caused delay to extend review timeframes."

12. Balloon Test — Duration and Time-of-Day Requirements

Talking point: An 8am–5pm weekday test window systematically excludes the working population who would actually see and be affected by the facility during their normal commute, evening, or weekend hours — skewing the visual-impact record toward whoever happens to be home during business hours (often retirees). The test should be defined with enough duration and varied timing to produce a representative record. Also included in the test metadata is citation of any special events concurrent with the testing.

Suggested verbiage:

"The balloon or crane test required under Section [] shall be conducted over a minimum of seven (7) consecutive calendar days and shall include, at minimum: (a) one weekday morning period between 6:30 a.m. and 8:30 a.m.; (b) one weekday evening period between 4:30 p.m. and 7:00 p.m.; (c) one full weekend day; and (d) notice to the public of the test schedule not less than 10 days in advance. Photographic documentation shall be taken from all publicly-accessible vantage points identified by Staff, with date and time stamps, as **well as any special events taking place at the time of the testing.**"

13. Fall Zone Clearance

Talking point: The requirement should be unambiguous — 100% clearance, not "adequate" or "sufficient" clearance, which invites dispute.

Suggested verbiage:

"The certified fall zone of any tower or pole shall not overlap, in whole or in part, any portion of a public sidewalk, street, alley, right of way, or occupied building. No variance to this subsection shall be granted absent a certified engineering analysis demonstrating an equivalent or greater level of public safety."

14. Drive-By (Coverage) Test Data Requirements

Talking point: Coverage/propagation data can be manipulated by timing tests during unusually low traffic conditions or special events that temporarily inflate perceived need. Requiring full metadata makes the record auditable.

Suggested verbiage:

"Any drive by or coverage test submitted in support of a gap in coverage showing shall include, at minimum: (a) the date and exact time of day of each test segment; (b) the equipment and methodology used; (c) a list of any concurrent special events, festivals, road closures, or unusual network conditions occurring in the test area during the test period; and (d) raw data logs sufficient for independent verification by the Town's technical reviewer."

15. On-Site Mobile Supplemental Antennas (COWs/COLTs)

Talking point: Temporary "cell on wheels" or "cell on light truck" deployments **if allowed at all** (e.g., for events, emergencies, or capacity overflow) are often not addressed in standard tower ordinances, creating a gap where permanent facility standards don't apply but no temporary use standard exists either.

Suggested verbiage:

"Temporary mobile supplemental wireless facilities (including Cell on Wheels and Cell on Light Truck units) deployed for a period not to exceed [] **consecutive days may be permitted administratively upon submittal of: (a) proof of event, emergency, or documented capacity need; (b) a site plan showing setback and fall zone compliance; and (c) proof of general liability insurance per Section [].** No more than [] such temporary deployments per site per calendar year shall be permitted without Planning Director approval."

16. Insurance Requirements — No Shell-Company Insurers

Talking point: This closes a real and documented loophole: a facility owner insures through an affiliated shell entity, and when a claim arises (fire, tower collapse, injury), the shell entity simply dissolves or files bankruptcy, leaving the Town and injured parties without recourse. Requiring insurance to be issued directly by an independent, rated carrier — not a captive or affiliated entity of the applicant — closes this gap.

Suggested verbiage:

"All insurance required under this Chapter shall be issued by an insurer holding a current A.M. Best rating of A or better, that is not an affiliate, subsidiary, or captive insurance entity of the applicant, permittee, or any parent or related company thereof. Self insurance and insurance issued by a special purpose or single project entity created by the applicant shall not satisfy this requirement. The Town reserves the right to request and

independently verify the insurer's rating and independence prior to permit issuance and at each renewal."

17. Third-Party Application Review Firms

Talking point: This connects directly to Item 6 (staffing qualifications) — if the Town lacks in-house RF/structural expertise, identifying pre-vetted third-party reviewers in advance avoids delay-by-procurement once an application is already in the shot-clock window.

Suggested action item:

"Staff shall identify and present to Council/P&Z a list of not fewer than [two] qualified third-party firms capable of providing RF engineering, structural, and/or telecommunications-legal review services on an as-needed, applicant-funded basis, for inclusion as a pre-approved vendor list referenced in this Chapter."

(Recommend requesting names from McCullough directly, since telecom counsel firms typically maintain working relationships with RF/structural consultants used in other municipal engagements.)

18. Satellite Dishes (Starlink and Similar) — Residential Installation Orientation

Talking point: This is an emerging technology gap in most existing ordinances. Consumer satellite terminals are typically pole- or roof-mounted and aimed at a fixed elevation angle toward orbiting satellites — the concern is ensuring residential installations are oriented so the dish (and any associated glare, RF beam, or visual sightline) points skyward/upward rather than horizontally toward a neighboring property.

Suggested verbiage (starting point — confirm technical specifics with McCullough and/or the manufacturer's installation standards before finalizing):

"Residential satellite internet or communications terminals (including but not limited to low-earth-orbit satellite dishes) shall be mounted and oriented such that the terminal's operating elevation angle is not directed horizontally toward any adjoining property. Installations shall comply with the manufacturer's minimum elevation-angle specifications, and in no case shall a terminal be mounted or aimed in a manner that directs its primary transmission/reception path across a shared property line at a height and angle likely to intersect an adjoining residence, yard, or occupied outdoor living area. This section does not apply to hand-held or portable units not permanently affixed to a structure."

Action item: Flag this specifically for McCullough's review — confirm whether FCC equipment authorization rules for these terminals (which already mandate certain minimum elevation angles for interference avoidance) preempt local orientation requirements, so the Town's language complements rather than conflicts with federal equipment rules.

19. "Stealth" / Disguised Towers (e.g., Faux-Cactus Installations) — Antenna Placement Height

Talking point: This is a significant and fixable public safety gap. If a concealment design (faux cactus, monopine, etc.) places antenna arrays at a height corresponding to average pedestrian head/chest level rather than at the top of the structure, it defeats the safety rationale for height based RF exposure limits — the entire point of mounting antennas high is to keep the maximum intensity zone away from pedestrians at close range. A structure that is "tall" overall but has antennas mounted low, close to a sidewalk, does not provide the same protection as a genuinely elevated antenna array.

Suggested verbiage:

"For any concealed or camouflaged wireless support structure (including but not limited to faux trees, cacti, or similar designs), all antenna arrays and RF emitting elements shall be mounted at a minimum height of **[] feet above finished grade, regardless of the overall height of the concealment structure. No RF-emitting element shall be mounted at a height, or in a location, that places the element within [] feet of a public sidewalk, trail, or pedestrian path measured horizontally.** Applications shall include an elevation drawing clearly dimensioning the RAD center height of each antenna above grade, independent of the total structure height."

Talking point on jurisdiction (SRP): It is worth stating plainly, on the record, that SRP's statutory right-of-way authority is generally tied to its role as a water/canal delivery entity (irrigation district powers), and that authority does not automatically extend to electric or telecommunications infrastructure sited outside canal easements. Recommend counsel confirm the specific statutory basis (Arizona irrigation/agricultural improvement district statutes) so the Town's position is grounded in citation, not just precedent/practice, before asserting it to SRP.

Suggested talking point for the record:

"Staff requests that the Town Attorney confirm and cite the specific statutory basis distinguishing SRP's canal/water-related right-of-way authority from its electric distribution and communications infrastructure siting, in order to formally document the Town's jurisdiction to require relocation or remediation of existing faux-concealment structures sited outside of canal easements, including those situated in close proximity to sidewalks and fall zones."

Action item: Request an inventory (Town GIS or field survey) of the approximately 14 existing faux cactus/disguised structures, with antenna RAD center height and distance to sidewalk noted for each, to support a remediation or relocation timeline under the new ordinance's non conforming structure provisions (see Item 8).