

ORDINANCE OF 2003-11

Amended: 10/07/15

TOWN OF EDGEWOOD

A LOCAL ORDINANCE REGULATING THE SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES

Section 1. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Town of Edgewood's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Town of Edgewood finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town of Edgewood.

Section 2. Title.

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the Town of Edgewood.

Section 3. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Special Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

Section 4. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given 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.

1. "Accessory Facility or Structure" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or

lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

2. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
3. **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.
4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), microwave Telecommunications and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building and permitting authority.
5. **“Co-location”** means the use of a Tower or structure to support Antennae for the provision of wireless services without increasing the height of the Tower or structure.
6. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
7. **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
8. **“Council”** means the Town Council of the Town of Edgewood.
9. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
10. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
11. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
12. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

13. **“NIER”** means Non-Ionizing Electromagnetic Radiation
14. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
15. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
16. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
17. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities.
18. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
19. **“Stealth”** or **“Stealth Technology”** means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,.
20. **“State”** means the State of New Mexico.
21. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
22. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
23. **“Temporary”** means, temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
24. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Tower”**, **“Tower”**, and **“Telecommunications Site”** and **“Personal Wireless Facility”** means a structure, facility or location designed, or intended to be used as, or used to support, Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an Antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal Telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building and permitting authority, excluding those used exclusively for the Town’s fire, police or exclusively for private, non-commercial radio and television reception and private citizen’s bands, amateur radio and other similar non-commercial Telecommunications where the height of the facility is below the height limits set forth in this ordinance.

Section 5. Permitting Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Town hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- 4) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,.

Section 6. Special Use Permit Application and Other Requirements.

- A) All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. Unless otherwise provided for herein, the Town Council is the officially designated agency or body of the Town to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for Wireless Telecommunications Facilities. The Town may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Town Council with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for Wireless Telecommunications Facilities.
- B) An application to co-locate on an existing tower or other structure that does not result in an increase in the height of the Tower or size of the structure, or structural integrity shall be considered ministerial pursuant to the requirements of Federal law, and shall be processed administratively without the need for separate approval from the governing body. For all such ministerial reviews, the Town Administrator, or his/her designee, shall accept, review, analyze, and make a determination with respect to the granting, not granting, or revoking a Special Use Permit for those facilities. The Town Administrator shall notify the Town Council when a Special Use Permit is administratively granted, not granted, or revoked at the next scheduled Town Council meeting after the permit is granted, not granted, or revoked.
- C) An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application. At the discretion of the Town, any false or misleading statement in the Application may subject the

Applicant to denial of the Application without further consideration or opportunity for correction.

- D) The Town may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- E) The Applicant shall include a statement in writing:
 - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Town in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the Town, and the Special Use Permit has been issued.
- F) All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the State. The Application shall include the following information:
 - 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
 - 2) The Name, address and phone number of the person preparing the report;
 - 3) The Name, address, and phone number of the property owner, operator, and Applicant, and to include the legal form of the Applicant;
 - 4) The Postal address and tax map parcel number of the property;
 - 5) The Zoning District or designation in which the property is situated;
 - 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
 - 7) The Location of nearest residential structure;
 - 8) The Location, size and height of all structures on the property which is the subject of the Application;
 - 9) The Location, size and height of all proposed and existing antennae and all appurtenant structures;
 - 10) The Type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - 11) The number, type and design of the Tower(s) and Antenna(s) proposed and the basis for the calculations of the Tower's capacity to accommodate multiple users;
 - 12) The make, model and manufacturer of the Tower and Antenna(s);
 - 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 14) The frequency, modulation and class of service of radio or other transmitting equipment;

- 15) The actual intended transmission and the maximum effective radiated power of the Antenna(s);
 - 16) Direction of maximum lobes and associated radiation of the Antenna(s);
 - 17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
 - 18) Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
 - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
 - 20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site.
- G) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the Application, along with any letters of rejection stating the reason for rejection.
- H) The Applicant shall certify that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads.
- D) The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- K) The Applicant shall furnish a Visual Impact Assessment, which shall include:
- 1) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the Tower may be seen.
 - 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
 - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- L) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.

- M) Any and all representations made by the Applicant to the Town on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Town.
- N) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- O) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be stealth in nature having the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facility.
- P) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may required by the Town.
- Q) At a Telecommunications Site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- R) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- S) A holder of a Special Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- T) An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities.
- V) The Applicant shall examine the feasibility of designing a proposed Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is

not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

- 1) The foreseeable number of FCC licenses available for the area;
 - 2) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - 3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - 4) Available space on existing and approved Towers.
- W) The owner of the proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
1. Respond within 60 days to a request for information from a potential shared-use Applicant;
 2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit for the Tower.

- X) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- Y) The holder of a Special Use Permit shall notify the Town of any intended Modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.
- Z) In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall, hold a "balloon test" prior to the public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town. The Applicant shall inform the Town, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

AA)The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

BB)The applicant shall protect cultural properties, archaeological sites and unmarked burials as required by the Cultural Properties Act (18-6-1 to 18-6-17 NMSA 1978.) A Cultural Properties Study shall be submitted as part of the application.

Section 7. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and six (6) being the lowest priority.
- 1) On existing Towers or other structures without increasing the height of the tower or structure;
 - 2) On Town-owned properties;
 - 3) On properties in areas characterized predominately by Heavy Industrial use;
 - 4) On properties in areas zoned, or if not zoned, characterized predominately by Commercial use;
 - 5) On properties in areas zoned, or if not zoned, characterized predominately by Agricultural use;
 - 6) On properties in areas zoned, or if not zoned, characterized predominately by Residential use.
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons.