

SECTION 23
COMMUNICATIONS FACILITIES

23.1 PURPOSE AND LEGISLATIVE INTENT:

The purpose of this Code section is to establish guidelines for the siting of wireless, broadcast, wireless internet, digital television, and amateur (ie. *ham*) radio towers, antennas, ground equipment, and related structures.

Specifically, the purpose of this Code section is to:

- A.** Allow sufficient, up-to-date communication in the County.
- B.** Encourage co-location of facilities and avoid a proliferation of towers where possible.
- C.** Locate communication towers, antennas, and related equipment and shelters, minimizing adverse impacts on the County.
- D.** Encourage design and construction of towers, antennas, and related facilities to minimize adverse visual impacts.
- E.** Encourage communications providers to deliver services in the County effectively and efficiently.
- F.** Promote the health, safety, and general welfare of the public by regulating the siting of wireless communications facilities.
- G.** Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulations consistent with Federal law and regulations.
- H.** Protect the character of the County while meeting the needs of its citizens to enjoy the benefits of communications services.
- I.** To complete County permitting within the time frames established by Federal law and regulation.

23.2 PERMITTING AND ZONING:

- A.** Communications facilities are permitted in all zoning districts, subject to the provisions of this Section with a Communications Facility Permit (CFP) as provided for in this Section.
- B.** All new communications facilities and modifications to existing facilities shall obtain approval and/or permitting as provided for in this Section. Approval shall be initiated by submittal to the Department of a Communications Facility Permit Application.
- C.** A separate Special Use Permit is not required.
- D.** The County may approve permits for new communications towers and facilities with a duration not exceeding a period of up to 20 years.

- E. Applications will be processed within the timeframes established by Federal law and regulation.

23.3 **DEFINITIONS:**

Words not defined herein shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence, Section, and Subsection in which they occur.

The word(s) “**map**” or “**zoning map**” means the Zoning Map of Ouray County.

ABANDONED. No longer in use and has not been in use for more than 365 days.

ALTERNATIVE TOWER STRUCTURE. Light/power poles, electric transmission towers, and similar natural or man-made alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. A transducer that couples electromagnetic energy between the air and communications equipment for the purpose of sending or receiving data.

BLEND. That which does not stand in stark contrast to the immediate surroundings.

CO-LOCATION. The placement of the antennas of two or more service providers upon a single tower or alternative tower structure.

COVERAGE AREA MAP. A map which indicates the coverage area of the signal for the particular service. For services licensed by the FCC, the coverage area must agree with the service area of the license (as specified in the Code of Federal Regulations) using the FCC-specified coverage model for the service. For unlicensed services or services where there is no clear FCC specification, industry best-practice definitions of coverage area must be used by employing an industry accepted coverage model for the service. Coverage maps may also indicate signal keep-out-areas when relevant due to potential interference or regulatory issues.

C.O.W. Acronym for “*Carrier On Wheels*”. Communications equipment mounted on a vehicle, trailer, or other similar apparatus, intended to provide temporary service during maintenance or outage.

DEPARTMENT. The Ouray County Land Use Department.

EQUIPMENT SHELTER. A permitted structure, built to house communications and associated equipment, that supports a communications installation.

EXISTING STRUCTURES. Those communications related structures which were in place prior to the adoption of this Code section.

F.A.A. The Federal Aviation Administration.

F.C.C. The Federal Communications Commission.

FACILITIES / SUPPORT STRUCTURES. Something designed, built, installed, etc. related to a communications equipment installation.

GOVERNING AUTHORITY. The Board of County Commissioners of Ouray County.

HEIGHT. When referring to a tower or other structure, the term *height* shall mean the distance measured from the ground level to the highest point on the tower structure or appurtenance.

MONOPINE TOWER. See “Stealth Tower”.

MONOPOLE TOWER. Any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or other supporting wires.

NON-SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

PHOTO-SIMULATION. A facsimile of a building or structure, superimposed on to an actual photo of a proposed site, area, or location, typically produced in a software package such as Adobe Photoshop.

PUBLIC OFFICER. Shall mean the Planning Director or other representative of the Land Use Department.

RADIO FREQUENCY (RF). Any of the wave frequencies that lie in the range extending from around 3 kHz to 300 GHz, which include those frequencies used for communication or radar signals. (RF usually refers to electrical rather than mechanical oscillations.)

REPLACEMENT. A substitution of an existing item for a new, different, or revised item.

STEALTH TOWER. A communications structure consisting of a tower and antennae that have been designed to effectively blend in with the existing environment by use of camouflaging techniques, such as a faux tree or similar.

SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

TEMPORARY EQUIPMENT. Items installed at or in a communications facility for a particular purpose, but not intended or approved by the County to be part of the permanent structure or overall facility installation.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, telecommunication towers, man-made trees (with accessory buildings/structures) and other similar structures.

23.4 REQUIREMENTS FOR COMMUNICATIONS FACILITIES APPLICATIONS:

A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures that would produce a similar and acceptable coverage area, as indicated by an industry accepted coverage model for the frequency band or bands in use.

- (1) Applicant shall provide desired coverage area map*, including the reference signal level value which defines the edge and end-of-coverage boundary on the map. Map shall also include any interference based, FCC, or other agency required coverage *keep out* areas where coverage reference level or other specified level is forbidden for interference or other regulatory reasons.
- (2) Applicant shall demonstrate that the requirements of the coverage areas of the reference map are not met by any existing antenna site that are within the desired coverage area. Applicant shall also provide any information regarding possible tower exclusions due to other possible restrictions, including but not necessarily limited to RF exposure limits.
- (3) The inventory shall include all such structures that lie within the desired coverage area per the provided *coverage area map*. Such map shall include specific information about the location (latitude and longitude coordinates), height, design, tower type, including any site transmitter power restrictions, site separation distance requirements from other stations, site human RF exposure limits, general suitability for co-location, and any other pertinent information as may be required by the Department.
- (4) The Department may share such information with other applicants for a communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

Note: Ouray County will accept any industry-standard coverage model as long as the same model is used for the entire proposed site.

C. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities may be permitted in County-approved PUDs and subdivisions, and subdivisions filed prior to 1974.

Note: *Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.*

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all cellular communications towers, shall be designed and installed to accommodate the co-location of additional similar communications equipment.

E. Co-location; Availability of Suitable Existing Structures:

No new cellular communication towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure, within the coverage area as detailed in the coverage area map provided by the Applicant, can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) Site separation distance requirements from other stations.
- (5) Site RF human exposure limits.
- (6) The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- (7) Site transmitter power restrictions that conflict with the applicant's proposed equipment/antenna(s).
- (8) The applicant adequately demonstrates that the existing site is not generally suitable for co-location or there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of 80 feet.
- (2) Proposals for towers at a height of greater than 80 feet must include a Longley-Rice or similar industry standard coverage area map, supporting the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.
- (4) Applicants proposing towers at a height of greater than 80 feet may be required to reimburse the County for additional costs related to review by a qualified engineer.

G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

- (1) All new or total replacement tower/antenna structures may be required to be designed as alternative tower structures or camouflage/stealth towers. Tower location, height,

design, and overall visibility will be considered in determining the extent of camouflage elements required. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.

- (2) Unless otherwise required by FCC regulation, all towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness. Applicants may propose alternatives to these requirements based upon specific technical requirements, maintenance concerns, or potential anodization issues.
- (3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.
- (4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.
- (5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the County shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by the FCC or other governmental authority.
- (7) For alternative tower structures, the co-location design requirement may be waived by Staff.
- (8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

H. Setbacks:

The following setbacks shall apply to all communication towers:

- (1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.
- (2) Guy wires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.
- (3) All structures shall meet the setback, screening, and buffer requirements contained herein.
- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential or commercial structure, including homes, businesses, garages, and greenhouses.

I. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

J. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.
- (5) Tree or shrub based landscaping will not be required where the applicant demonstrates that ground radial or lightning protection/mitigation system ground lines might be adversely effected by tree roots.

K. Additional Requirements:

- (1) Along with all information required on the County application, Applicant shall provide information regarding any overall site power limit, if applicable.
- (2) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (3) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (4) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.
- (5) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, head gates, ditches, and ditch rights-of-way.
- (6) Applicant must submit a geo-hazard mitigation report for any proposed facility located within any area subject to potential geo-hazards, including, but not limited to: rock-fall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.

- (7) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (8) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (9) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (10) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: *The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.*

L. Pre-Existing Towers and Facilities:

- (1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.
- (2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities without notice to the County.

M. SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation).

Note: *Modifications deemed substantial shall require approval of a Communications Facility Permit.*

N. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

O. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; **or**
 - (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.

- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING – NEW TOWERS/FACILITIES:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the Department within thirty (30) days of transmittal of the application to the municipality.
- B. After the receipt of a complete application for a Communications Facility Permit by the Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
 - (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C. Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
 - (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.
 - (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 HEARINGS, NOTICE, SCHEDULING – SUBSTANTIAL MODIFICATIONS:

- A. Before granting a Communications Facility Permit for a *substantial modification* of an existing tower/facility, the BOCC shall hold a public hearing on the matter.

- (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
- (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
- (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.

- (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.7 EXCEPTIONS / VARIANCE / APPEALS:

- A. For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B. An Applicant has the right to appeal a denial by Staff per Section 12 of this Code.

23.8 FEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility Permits, or renewal fees of Communications Facility Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.9 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.10 BUILDING PERMIT AND AS-BUILT DRAWINGS REQUIRED:

- A. All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. Refer to application form for specific submittal requirements.
- B. As-built drawings and photographs of the completed tower, site, or approved modification must be submitted to the Land Use Department within 30-days from the date of the completion of the project. Final sign-off and Certificate of Completion will *not* be issued until drawings are submitted.

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance, but no expansion, of such facility with notification to Staff.
- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of C.O.W.'s or other temporary equipment for a period not to exceed 90 days.

Notes: *The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.*

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: *Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowner's association covenants and regulations that may affect the installation of radio equipment and towers in their area.*

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A.** Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B.** If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where H.O.A. covenants/C.C.R.'s are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an H.O.A. The County does not enforce H.O.A. covenants.

23.15 SEVERABILITY:

- A.** In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.
- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.