

**Proposed Flagstaff Zoning Code Amendment.**

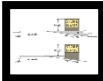
**Case No. PZ-19-00169 Updates to Zoning Code 2019 - Telecommunication Facilities.**

**HOW TO READ THIS DOCUMENT**


Unless otherwise stated, provisions that are being deleted are shown in bold red strikethrough text, like this: ~~Provisions that are being deleted are shown with a bold red strikethrough text.~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Graphics/Figures that are being deleted are indicated with an “X” over the graphic/figure.

Graphics/Figures that are being added are indicated with a border  around the graphic/figure.

Tables that are being deleted are indicated with an “X” over the Tables.

Tables that are being added are indicated with a thick border  around the Tables.

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.60.310 Telecommunication Facilities, subsection B. Permitting Applicability, as follows:

**10-40.60.310 Telecommunication Facilities**

**B. Permitting Applicability.**

**1. Uses Permitted by Right.**

- a. **FM/DTV/Low Wattage AM Broadcasting Facilities.** All applications for new FM/DTV/low wattage AM broadcasting facilities shall be subject to review and approval by the Director, in compliance with the procedures provided in Division 10-20.30, Common Procedures.
- b. **Attached Telecommunications Facilities.**
  - (1) All applications for new attached telecommunications facilities shall be subject to review and approval by the Director, in compliance with the procedures provided in Division 10-20.30, Common Procedures.
  - (2) The Director may require ~~an application~~ **the approval of a Conditional Use Permit** for ~~co-location~~ **an attached telecommunications facility to be considered by the Planning Commission at a public hearing** on the basis of potential location, aesthetic or visually related impacts.
- c. **Collocation Facilities.**

- (1) All applications for collocation of a new wireless communications facility on an existing antenna-supporting structure that has been designed and approved to accommodate multiple wireless communications facility providers shall be subject to review and approval by the Director, in compliance with the procedures provided in Division 10-20.30, Concept Plan Review.
  - (2) The Director may require an application for co-location to be considered by the Planning Commission at a public hearing on the basis of potential location, aesthetic or visually related impacts.
- d. **Stealth Telecommunication Facilities.** All applications for new stealth telecommunications facilities shall be subject to review and approval by the Director, in compliance with the procedures provided in Section 10-20.30.050, Concept Plan Review.
2. **Uses Requiring a Conditional Use Permit.**
- a. **Antenna-Supporting Structures.** All new antenna-supporting structures and replacement antenna-supporting structures intended for commercial and emergency services or public facility use shall obtain a conditional use permit in compliance with Section 10-20.40.050, Conditional Use Permits, prior to submittal for building permit approval and the initiation of construction.
  - b. **AM Broadcasting Facilities.** All applications for new AM broadcasting facilities shall obtain a conditional use permit in compliance with Section 10-20.40.050, Conditional Use Permits, prior to submittal for building permit approval and the initiation of construction.

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.310 Telecommunication Facilities, subsection F. Applications and Procedure., as follows:

**10-40.60.310 Telecommunication Facilities**

**F. Applications and Procedure.**

1. **Permit Requirements.** An application for a conditional use permit for a telecommunications facility shall be submitted on a form prescribed by the City in compliance with Section 10-20.30.020, Application Process. The application shall include the information and materials specified in the checklist for applications for a telecommunications facility, together with the required fee established in Appendix 2 , **as amended**, Planning Fee Schedule. Additional submittal requirements are also listed below.

- a. **Engineering Report.** Each application shall include a report from a structural engineer licensed in the State of Arizona documenting the following:
  - (1) Telecommunications facility height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design;
  - (2) Total anticipated capacity of the telecommunications facility, including, in the case of a tower, the number and types of antennas that can be accommodated;
  - (3) Evidence of structural integrity; and
  - (4) Structural failure characteristics of the telecommunications facility and demonstration that site and setbacks are adequate to contain debris.
  
- b. **Five-Year Plan and Site Inventory.** Each application shall include a five-year facility plan and site inventory addressing the following:
  - (1) A description of the type of technology (cellular, PCS, radio, television, etc.) that will be provided using the telecommunication facility over the next five years, including the radio frequencies to be used for each technology and the types of consumer services (voice, video, data transmission) to be offered;
  - (2) A list of all of the applicant's existing telecommunications facility sites within the City and the Flagstaff Metropolitan Planning Organization Area, a list of all of the applicant's proposed telecommunications facility sites within the City and the Flagstaff Metropolitan Planning Organization Area for which the applicant has filed a conditional use permit application, and a map showing location of these sites and service boundaries of other facilities operated by the applicant/provider in the area; and
  - (3) If the applicant does not know specific future telecommunications facility site locations but does know of the areas where the telecommunications facilities will be needed within the next five years to provide service, the applicant shall identify the areas.
  
- c. **Additional Information for Sites that ~~Are are Disfavored~~ ~~Not-Preferred Sites~~.** Whenever an applicant proposes to construct a telecommunications facility on a site that is ~~a disfavored not a preferred site~~, as defined in subsection (E)~~(1)~~ of this section, the applicant shall provide the following additional information:
  - (1) A map showing the area in which the proposed telecommunications facility could be sited to provide the needed coverage, and all preferred sites in that area; and

(2) A justification as to why the applicant is not proposing a preferred site, including the best efforts made to secure each of the preferred sites, why such efforts were unsuccessful, and why each of the preferred sites is not technically or legally feasible.

**(3) All information required by the Planning Director in order for the City's independent technical expert to make a thorough analysis of an application, and make the required determinations indicated subsection F.2. and F.6. of this section.**

**d. Additional Information for Towers.**

(1) The applicant must explain why existing towers and other supporting structures cannot accommodate the proposed telecommunications facility. The applicant should describe in detail its best efforts made to obtain the use of such facilities, including, where applicable, the names and phone numbers of property owners contacted, summaries of meetings held with property owners, and written documentation from property owners denying use of their property;

(2) The applicant must state whether additional antennas can be co-located on the new tower and, if not, explain why the tower is not being constructed to accommodate future co-location; and

(3) The applicant must prepare a site review plan application that meets the requirements of Section 10-20.40.140, Site Plan Review and Approval.

~~2.—Technical Experts. The Director is authorized to employ on behalf of the City an independent technical expert to review any technical material submitted under this section. The applicant shall pay all costs of said review, including any administrative costs incurred by the City. Any proprietary information disclosed to the City or the City's technical expert hired shall remain confidential and shall not be disclosed to any third party.~~

**2. Independent Review.**

**a. The Director is authorized to employ, on behalf of the City, an independent technical expert to review any technical information submitted to fulfill the requirements this section. Any proprietary information that the applicant discloses to the City or the City's technical expert shall remain confidential and shall not be disclosed to any third party.**

- b. The applicant shall pay all costs associated with the independent technical expert's review of an application, including any associated administrative costs incurred by the City.
  - (1) Prior to the Director determining that an application is administratively complete, the applicant shall pay to the City the estimated cost for the City's independent technical expert's review of the application and any associated administrative costs incurred by the City. The applicant shall be refunded any funds paid under this subsection that were not expensed for the independent technical expert's review of the application or any City associated administrative costs.
  - (2) Prior to the Director scheduling a public hearing of the Planning Commission for the application, the applicant shall pay to the City any additional costs in excess of the amount received in accordance with subsection F.2.b.(1) of this section.
- c. The independent technical expert's review of a disfavored site shall address the following:
  - (1) The proposed location is necessary to provide adequate service to the service area indicated in the application;
  - (2) Whether an available preferred location will provide similar or greater service to the service area indicated in the application;
  - (3) Whether the service provider represented by the applicant has an existing location that could be modified in accordance with the Flagstaff City Code to provide similar or greater service to the service area indicated in the application; and
  - (4) Other items specified by the Director, excluding items that are not within the City's jurisdiction as delineated by the laws and regulations of the State of Arizona and the U.S. Government. All other items that are to be reviewed by the independent technical expert at the request of the Director shall be disclosed to the applicant.
- 3. **Legal Counsel.** The City Attorney may employ on behalf of the City legal counsel to assist in the review of an application for a conditional use permit submitted. The applicant shall pay all costs of said review, including any administrative costs incurred by the City.
- 4. **Procedure – General.** Applications for a conditional use permit for a telecommunications facility shall be subject to the general procedural requirements found in Section 10-20.40.050, Conditional Use Permits. Any decision to deny an application for a conditional use permit for a

telecommunications facility, including on appeal to the Council, shall be in writing and shall be supported by substantial evidence in the written record.

5. **Report of Director.** In connection with the report of the Director required by Section 10-20.30.020, Application Process, the Director may require the applicant to submit additional justifications, documentation and other information in support of the showings that the applicant must make in compliance with the section. For each applicable showing or requirement of this section, the report shall:
  - a. Review the application and the supporting documentation submitted by the applicant and any information prepared by or on behalf of the City or received by the City , **excluding any proprietary information provided by the applicant**; and
  - b. Explain how the information reviewed (or lack of information submitted) supports the recommendation to the Planning Commission required by Section 10-20.30.020, Application Process. Failure of the applicant to submit such information as the Director may require in compliance with this section shall be noted in the report and may be considered by the Planning Commission.
6. **Review.** The Planning Commission shall not **issue approve** a conditional use permit for a telecommunications facility, as required by subsection (B)(2) of this section, until:
  - a. The applicant has submitted an application in the form set forth in subsection (F)(1) of this section;
  - b. The Planning Commission has determined that the requirements set forth in subsection (C) of this section have been met; and
  - c. The Planning Commission has made the findings required under Section 10-20.30.090, Findings Required. In addition, the following findings shall be required, where applicable:
    - (1) **For Telecommunications Facilities ~~Not on Preferred Sites~~ Neutral or Disfavored Sites.** Applications for a conditional use permit for a telecommunications facility on a site other than a preferred site, as defined in subsection (E)~~(1)~~ of this section, shall not be granted unless the applicant has ~~shown that it made its best efforts to locate the telecommunications facility on a preferred site and that it is not technically or legally feasible or aesthetically desirable to locate the telecommunications facility on a preferred site.~~ **has demonstrated that:**
      - (a) **Best efforts have been made to locate the proposed telecommunications facility on a preferred or neutral site;**

- (b) It is not technically feasible to locate the telecommunication facility on a preferred site that would adequately enable service to be provided to the service area indicated in the application, and the City's independent technical expert has confirmed the feasibility; and
  - (c) It is not legally feasible to locate the telecommunication facility on a preferred site; or,
  - (d) It is not aesthetically desirable to locate the telecommunications facility on a preferred site.
  - (e) The denial of the conditional use permit would unreasonably discriminate among providers of functionally equivalent personal wireless services or prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. § 332(c)(7)(B)(i), as amended.
- (2) **For Towers.** Applications for a conditional use permit for a tower shall not be granted unless the applicant has **shown demonstrated** that:
- (a) Existing towers **in and near the service area indicated in the application** cannot accommodate the proposed telecommunications facility , **which has been confirmed by the City's independent technical expert;**
  - ~~(b) The new tower will have room to co-locate additional facilities or it is not technically or legally feasible or aesthetically desirable to construct a tower with such co-location capacity; and~~
  - (b) The new tower will accommodate additional co-located telecommunication facilities, unless:
    - i. It is not technically feasible, which has been confirmed by the City's independent technical expert,
    - ii. It is not legally feasible, or
    - iii. It is not aesthetically desirable to construct a tower with telecommunication co-location capacity;
  - (c) Construction of the tower will not disrupt existing ~~utilities.~~ **utilities; and In addition, the applicant also must meet the requirements set forth in subsection (D) of this section.**
  - (d) The applicant has demonstrated compliance with the requirements set forth in subsection (D) of this section.

(e) The denial of the conditional use permit would unreasonably discriminate among providers of functionally equivalent personal telecommunication or wireless services or prohibit or have the effect of prohibiting the provision of personal telecommunication or wireless services within the meaning of 47 U.S.C. § 332(c)(7)(B)(i), as amended.

~~(3) For Telecommunications Facilities on Disfavored Sites. Applications for a conditional use permit for a telecommunications facility on a disfavored site, as defined in subsection (E)(4) of this section, shall not be granted unless the applicant has shown, that:~~

~~(a) It has made its best efforts to locate the telecommunications facility on a site that is not a disfavored site;~~

~~(b) It is not technically or legally feasible or it is aesthetically undesirable to locate the telecommunications facility on a site that is not a disfavored site; and~~

~~(c) Denial of the conditional use permit would unreasonably discriminate among providers of functionally equivalent personal wireless services or prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. § 332(c)(7)(B)(i).~~

7. **Additional Information.** The Planning Commission may require the applicant to submit additional information or provide further justification if the Planning Commission believes it is necessary or appropriate in light of the showings required by subsection (F)(6) of this section, the report submitted by the Director, the application, or the requirements of this section.
8. **Waived Requirements for Collocation.** The Director may waive the requirements for a conditional use permit for telecommunications facilities that meet all the criteria in subsection (C) of this section if the new facility or equipment is co-located on or adjoining an existing telecommunications facility.