

SECTION 10: TOWER REGULATIONS

Section 10.01 Purpose and Goals

The purpose of this ordinance is to establish general guidelines for the siting of Wireless Communication Facilities (WCFs).

The goals of this ordinance are to:

1. accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community;
2. facilitate the provision of wireless telecommunication services to the residents and businesses of the City;
3. minimize adverse visual effects of WCFs through careful design and siting standards;
4. avoid potential damage to adjacent properties from WCF failure through structural standards and setback requirements;
5. maximize the use of existing and approved WCFs and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of WCFs needed to serve the community; and,
6. be in accordance with all aspects of the Federal Telecommunications Act of 1996.

Section 10.02 Definitions

1. **ANTENNA ARRAY** - An Antenna Array is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure defined below.
2. **ATTACHED WIRELESS COMMUNICATION FACILITY (Attached WCF)** An Attached WCF is an Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include but not be limited to utility poles, signs, water towers, with any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

3. **COLLOCATION/SITE SHARING** - Collocation/Site Sharing shall mean use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity.
4. **DEVELOPMENT STANDARDS** - As used herein, Development Standards shall mean those standards set forth in Section 10.04.
5. **EQUIPMENT FACILITY** - An Equipment Facility is any structure used to contain ancillary equipment for a WCF which includes cabinets, shelters, a buildout of an existing structure, pedestals, and other similar structures.
6. **HEIGHT** - When referring to a WCF Height shall mean the distance measured from ground level to the highest point on the WCF, including the Antenna Array.
7. **LATTICE TOWER** - A guyed or self-supporting three- or four-sided, open steel frame structure used to support telecommunications equipment.
8. **MONOPOLE** - A structure composed of a single spire used to support telecommunications equipment.
9. **RESIDENTIAL DISTRICT** - Any section of the City zoned for Single Family (RI), Duplex (R2), 3/4-Plex (M1), Multi-family (M2), Mobile Home (MH) or Planned Development (PD) designated on site plan as residential use
10. **REVIEW PROCESS** - As used herein, Review Process shall mean those processes set forth in Section 10.05,
11. **SETBACK** - Setback shall mean the required distance from the property line of the parcel on which the WCF is located to the Support Structure.
12. **SUPPORT STRUCTURE** - A Support Structure is a structure designed and constructed specifically to support an Antenna Array, and may include a monopole, self supporting (lattice) tower, guy-wire support tower and other similar structures. Any device (Attachment Device) of a maximum of 20 feet in height which is used to attach a WCF to an existing building-or structure (Attachment Structure) shall be excluded from the definition of and regulations applicable to Support Structures,
13. **TEMPORARY WIRELESS COMMUNICATION FACILITY (Temporary WCF)** - Temporary Wireless Communication Facility shall mean a WCF to be placed in use for one hundred twenty (120) or fewer days.

14. TOWER - A stand alone structure consisting of a support structure, antenna and associated equipment. The support structure may be a wooden pole, monopole, lattice tower, light standard, or other vertical support.
15. WIRELESS COMMUNICATIONS - Wireless Communications shall mean any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.
16. WIRELESS COMMUNICATION FACILITY (WCF) - A WCF is any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.

Section 10.03 Applicability and Severability

- A. Pre-Existing WCFs - WCFs for which a permit has been issued prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance as further specified in Section 10.08 below.
- B. Exclusion for Amateur Radio Facilities - This ordinance shall not govern the installation of any amateur radio facility that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- C. Relationship to Other Ordinances - This ordinance shall supersede all conflicting requirements of other codes and ordinances regarding the locating and permitting of WCFS.
- D. The Department of Planning shall create a map indicating pre-existing WCFs and shall maintain map of new structures as they enter Harlingen.
- E. If any section, subsection, sentence, clause, phrase or portion of this ordinance, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of remaining portion thereof.

Section 10.04 Development Standards for WCFs

- A. WCFs and antennas are a permitted use in any general retail, light industry or heavy industry zoned district if all the following requirements are satisfied.

1. The WCF is a minimum of 200 feet from any residential zoning district; (See definition in Section 10.02.9);
 2. WCF height, excluding antenna array, does not exceed;
 - a. 100 feet, if the WCF is at least 200 up to 250 feet from any residential district,
 - b. 125 feet, if the WCF is at least 250, up to 540 feet from any residential district;
 - c. 150 feet, if the WCF is 540 feet or more from any residential district;
 3. The antenna array does not exceed WCF height by more than 20 feet;
 4. All guys and guy anchors are set back a minimum of 20 feet from any property line;
 5. The WCF is erected and operated in compliance with current Federal Communication Commission and other applicable federal, state and county standards, and
 6. The WCF is of monopole construction if located within 540 feet of any residential district.
- B. The requirement of Section 10.04 A(1) shall be waived:
- If the proposed WCF is erected to replace existing poles and either;
- a. The pole replaced is a functioning utility pole or tight standard within a utility easement or public right of way, recreation facility light pole or WCF; or
 - b. Replacement WCF height, including antenna array, does not exceed;
 - i. The height of the original utility, light standard, or recreation facility pole by more than 10 feet; or
 - ii. The height of the original WCF and antenna array by more than 10 feet; and
 - iii. The replacement WCF does not obstruct a public sidewalk, public alley, or other public right of way; and
 - iv. Pole function is not significantly altered.

2. If the WCF erected is to be used by a public agency for police, fire, EMS, 911, or other similar public emergency communications for the City of Harlingen.
- C. Temporary WCF'S, for emergency purposes, for a term not to exceed 120 days, with a possible 60-day extension with approval of the chief building official, are permitted outright.
- D. Distances in this section shall be measured along a single straight line between the center of the tower base and the nearest point on any property line of a residential zoning district or use. For the purposes of applying the restrictions set forth in Section 10.04 A(1), (2) and (6), the term "residential district" excludes property that is:
- 1 Vacant, unplatted and unzoned;
 2. Used as a public or private primary or secondary educational facility;
 - 3 Used as a college or university education facility;
 4. Owned by the United States, the State of Texas, Cameron County or the City of Harlingen, and not used for residential uses;
 5. Used primarily for religious assembly; or
 6. Occupied by non-residential, nonconforming use(s).
- E. Setbacks.
- 1 . WCFs shall be located so as to provide a minimum distance from the tower to all property lines equal to twenty percent (20%) of the height of the tower.
 2. WCFs shall be set back a minimum of fifty feet (50') from any existing or planned street right-of-way line.
- F. Fencing and Landscaping.
1. All WCFs and support facilities shall be surrounded by a chain link fence with some privacy covering six feet (6') in height from finished grade. Access to the WCF shall be through a locked gate. Barbed wire may be allowed along the top of the fence if it is necessary to preclude unauthorized access to the WCF.
 2. The fence shall be landscaped along the perimeter by drought tolerant plants or shrubbery or plants native to the South Texas region.

G. Additional uses permitted on lot.

WCFs may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which it is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of six feet (6').

H. Required off-street parking.

One parking space is required.

I. Radio Frequency Emissions

The Federal Telecommunications Act of 1996 (FTA) gives the Federal Communication Commission (FCC) sole jurisdiction of the field of regulation of Radio Frequency (RF) emissions and WCFs which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.

J. Height Exceptions for Airport Overlay Zones

No variance requests will be accepted or approved for height exceptions within the Airport Overlay Zones as established in Section 15.092 (B) 2 and 15.092 (B) 3. This is based on an elevation contour map in the vicinity of the Valley International Airport as established in 15.092 (C).

Section 10.05 Approval Procedures

A. Permitted Outright

1. Where a facility is permitted outright as described in Section 10.04, only a building permit is required which shall be passed through the Planning Department to be checked for compliance.
2. Application Requirements. Any person, firm, corporation, or an other entity desiring to build a telecommunication facility within the corporate city limits of the City of Harlingen must obtain a building permit, pay appropriate fees and submit a signed application that includes all materials and information detailed herein.
 - a. Name of applicant
 - b. Address of applicant

- c. Vicinity map to illustrate location of proposed site
- d. Description of support structure and antenna height
- e. Photos and/or drawings of all equipment, structures and antennas
- f. Names and addresses of telecommunication providers or users of the proposed WCF or antenna
- g. Applicant's master WCF plan for the City of Harlingen and surrounding area, if necessary.
- h. Detailed account of co-location efforts
- i. If a new WCF is allowed, the owner must certify in writing a willingness to allow co-location at the new site.
- j. Any other information as necessary for the Chief Building Official to make a determination for permit issuance.

B. Administrative Review

- 1. Review of WCFs under this Section will be conducted by the Planning and Development Department upon application to the Chief Building Official for a building permit for the WCF.
- 2. Review Criteria - The Planning and Development Department shall apply the Development Standards, provided that the applicable Development Standards requirements may be reduced or waived by the administrator so long as the approval of the WCF meets the purpose and goals of this ordinance in Section 10.01.
- 3. Timing of Decision. The Planning and Development Department shall render a decision on a complete building permit application within thirty (30) days after receipt, except that an extension may be agreed to by the applicant.

C. Appeals.

- 1. If a tower is not allowed outright and/or administrative approval is not allowable, or is denied, the applicant may appeal said denial in accordance with the provisions of the zoning ordinance in Section 18 to the Zoning Board of Adjustments.

Section 10.06 Shared Facilities and Collocation Policy

FCC Licensed Wireless Communication providers are encouraged to construct and site their WCFs with a view towards sharing facilities with other utilities, to Collocation with other existing WCFs and to accommodating the future collocation of other future WCFS, where technically, practically, and economically feasible. The City reserves the right to notify other registered Wireless Communication providers of new WCF applications to promote collocation.

Section 10.07 Removal of Abandoned WCFs

Any WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such WCF shall remove same within ninety (90) days of notice to the Chief Building Official that the WCF is abandoned. If such WCF is not removed within said ninety (90) days, the Chief Building Official may remove or cause to be removed such WCF at the owner's expense. If there are two or more users of a single WCF, then this provision shall not become effective unless all users cease using the WCF.

Section 10.08 Nonconforming WCFs

WCFs in existence on the date of the adoption of the ordinance, which do not comply with the requirements of this ordinance (non-conforming WCFS) are subject to the following provisions.

- A. Nonconforming WCFs may continue in use for the purpose now used, but may not be expanded without complying with this ordinance, except as further provided in this Section 10.09.
- B. Nonconforming WCFs which are hereafter damaged or destroyed no more than 50% or greater due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit therefore, but without otherwise complying with this ordinance.
- C. The owner of any nonconforming WCF may replace, repair, rebuild and/or expand such WCF in order to improve the structural integrity of the facility, to allow the facility to accommodate collocated antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this ordinance, so long as such facilities are not increased in height by more than twenty (20) feet and/or setbacks are not decreased by more than 10%.

Section 10.09 Modifications to Existing Facilities or Pre-Existing Facilities Which Meet the Requirements of this Ordinance

- A. Minor modifications to WCFs permitted under this ordinance shall be approved under an Administrative Review.

Minor modifications are as follows: the addition of no more than two Antenna Arrays to any existing WCF, so long as the addition of the Antenna Arrays add no more than 20 ft. in height to the WCF; an increase in height of the Support Structure which is no greater than 10%, and a decrease in setbacks by no more than 10%. Collocations of up to one Antenna Array shall be considered a minor modification.

B. Major modifications

Major modifications to WCFs permitted under this ordinance shall be subject to all terms of the section. Major modifications are any modifications that exceed the definition of minor modifications.