

ARTICLE 6. WIRELESS TELECOMMUNICATIONS FACILITIES

SECTION 1.	Title
SECTION 2.	Authority
SECTION 3.	Purpose
SECTION 4.	Applicability
SECTION 5.	Review and Approval Authority
SECTION 6.	Approval Process
SECTION 7.	Standards of Review
SECTION 8.	Amendment to an Approved Application
SECTION 9.	Appeals
SECTION 10.	Administration and Enforcement
SECTION 11.	Penalties
SECTION 12.	Conflicts and Severability
SECTION 13.	Definitions
SECTION 14.	Effective Date

§ 9.6.1 TITLE

This Article shall be known and cited as the “Wireless Telecommunications Facilities Siting Ordinance” of the Village of Los Ranchos de Albuquerque, New Mexico, (hereinafter referred to as the “Ordinance”).

§ 9.6.2 AUTHORITY

This Article is adopted pursuant to the enabling provisions of the Constitution of the state of New Mexico and N.M.S.A. (1978).

§ 9.6.3 PURPOSE

The purpose of this Article is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

- (A)** Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- (B)** Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- (C)** Allow competition in telecommunication service;
- (D)** Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of the Village of Los Ranchos;
- (E)** Permit and manage reasonable access to the public rights of way of the Village of Los Ranchos for telecommunications purposes on a competitively neutral basis;
- (F)** Ensure that all telecommunications carriers providing facilities or services within the Village of Los Ranchos comply with the ordinances of the Village of Los Ranchos;
- (G)** Ensure the Village of Los Ranchos can continue to fairly and responsibly protect the public health, safety and welfare;
- (H)** Encourage the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;



(I) Enable the Village of Los Ranchos to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;

(J) Further the goals and policies of the Master Plan, while promoting orderly development of the town with minimal impacts on existing uses; and

(K) Protect the scenic and visual character of the community.

§ 9.6.4 APPLICABILITY

This local land use regulation applies to all construction and expansion of wireless telecommunications facilities.

(A) **EXEMPTIONS.** The following are exempt from the provisions of this Article:

(1) **Emergency Wireless Telecommunications Facility.** Temporary wireless communication facilities for emergency communications by public officials.

(2) **Amateur (ham) radio stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

(3) **Parabolic antenna.** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

(4) **Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

(5) **Temporary wireless telecommunications facility.** Telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.

(6) **Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling.

§ 9.6.5 REVIEW AND APPROVAL AUTHORITY

(A) **APPROVAL REQUIRED.** No person shall construct or expand a wireless telecommunications facility without approval of the Planning Director or the Planning Commission as follows:

(1) **Expansion of an Existing Facility and Collocation.** Approval by the Village is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility; the size of any structure; accessory use of an existing wireless telecommunications facility; or collocation on an existing wireless telecommunications facility.

(2) **New Construction.** Approval of the Planning Commission is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increase the height of the facility.

(B) **APPROVAL AUTHORITY.** In accordance with §9.6.5(A) above, the Planning Commission shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Article.



§ 9.6.6 APPROVAL PROCESS

(A) PRE-APPLICATION CONFERENCE. All persons seeking approval of the Village under this Article shall meet with the Planning Director before an application is submitted.

(B) APPLICATION. All persons seeking approval of the Village under this Article shall submit an application as provided below. The Village shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

(C) APPLICATION FOR APPROVAL. Applications for permit approval by the Village must include the following materials and information:

- (1)** Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
- (2)** A copy of the FCC license for the facility.
- (3)** Identification of districts, sites, buildings, structures or objects, significant in history, architecture, archaeology, engineering or culture, as well as places, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); CFR 60 and 800).
- (4)** Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.
- (5)** A detailed camouflage for both the site and the structure.
- (6)** For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:
 - (a)** Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - (b)** Negotiate in good faith for shared use by third parties;
 - (c)** Allow shared use if an applicant agrees in writing to pay reasonable charges for collocation;
 - (d)** Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is 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, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (7)** A site plan prepared and certified by a professional engineer registered in New Mexico indicating location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and including all applicable technical and structural codes.
- (8)** A scenic assessment, consisting of the following:
 - (a)** Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 - (b)** A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site



features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and any proposed lighting method;

(c) Photo simulations of the proposed facility taken from perspectives determined by the Planning Director, or his/her designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and the date the photograph was taken. The photos must show the color of the facility and method of screening;

(d) Any other information deemed necessary by the Planning Director at his/her discretion.

(9) A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

(10) Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

(a) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant engineering requirements,

(b) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

(c) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

1. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

2. The applicant proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing towers on the existing facility would cause interference with the applicant's proposed antenna.

3. Existing or approved facilities do not have space on which necessary equipment can be placed so as to function effectively.

(d) Evidence that the applicant has made diligent and good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access;

(11) Identification of districts, sites, buildings, structures or objects, significant in history, architecture, archaeology, engineering or culture, including those listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

(12) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:



(a) respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

(b) Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

(c) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation;

(d) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

(13) A form of surety or bond approved by the Village in an amount sufficient to pay for the costs of removing the facility if it is abandoned.

(14) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

(D) SUBMISSION WAIVER. The Planning Commission, as appropriate, may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Commission finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Article.

(E) FEES.

(1) Application Fee. An application for approval shall include payment of an application fee in an amount to be established by resolution and reviewed annually. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of the date of filing, less all expenses incurred by Village of Los Ranchos to review the application.

(F) NOTICE OF COMPLETE APPLICATION. Upon receipt of an application, the Planning Director shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the Planning Director shall review the application and determine if the application meets the submission requirements. The Planning Director shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Director shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning office.

If the application is incomplete, the Planning Director shall notify the applicant in writing, specifying the additional materials required to complete the application.

If the application is deemed to be complete and requires Planning Commission review, the Planning Director shall notify all abutters to the site as shown on the Assessor's records, by



first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, note the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Commission meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

(G) PUBLIC HEARING. For applications for Planning Commission approval, a public hearing shall be scheduled within 30 days after notice of the complete application.

(H) APPROVAL. Within ninety (90) days of receiving a complete application for approval under §9.6.5(A)(2) (“New Construction”), the Planning Commission shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

§ 9.6.7 STANDARDS OF REVIEW

To obtain approval from the Planning Commission, an application must comply with the requirements in this Section.

(A) Planning Commission Approval Standards. An application for approval by the Planning Commission must meet the following standards:

(1) Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that no other facility can reasonably accommodate the applicant’s proposed facility. Collocation of the facility shall be the goal of the siting plan whenever reasonably feasible. No wireless telecommunications facility may be located within 2000 feet of an existing wireless facility unless co-located.

(2) Location. New wireless telecommunications facilities may be permitted only in the V-C or C-1 zones, or on Municipal property.

(3) Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

(a) The proposed location complies with applicable municipal policies and ordinances.

(b) The proposed facility will not interfere with the intended purpose of the property.

(c) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interest in the property.

(4) Design for Collocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Commission may waive or modify this standard in the event collocation is not feasible. The applicant must show to the Commission’s satisfaction why collocation on an existing facility is not feasible.

(5) Height. A new wireless telecommunications facility must be no more than sixty (60) feet in height.



(6) Setbacks. A new or expanded wireless telecommunications facility must comply with the setback requirements for the zoning district in which it is located, or be setback one hundred five per cent (105%) of its height from all property lines, whichever is greater. No new wireless communications facility may be erected within one hundred (100) feet of a residential property line. The setbacks may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

(a) This setback may be reduced by the Planning Commission upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.

(b) An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

(7) Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties. All telecommunications facilities shall have one or more rows of evergreen trees, shrubs, earth-tone stuccoed walls, or berms capable of screening the base of the tower and all accessory equipment from view from adjacent properties. A break of not more than 15 feet in the visual barrier may be allowed for maintenance access. Existing plants and natural land forms on the site shall be preserved to the maximum extent practicable.

(8) Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structures by trespassers.

(9) Lighting. Lighting of the facility is not permitted except to the extent deemed necessary by the Commission for safety purposes.

(10) Color and materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

(11) Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.”

(12) Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Village, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

(a) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Commission shall consider the following factors:

- 1.** The extent to which the proposed wireless telecommunications facility is visible above tree line from the viewpoint(s) of the designated scenic resource;



2. The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
3. The extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
4. The amount of vegetative screening;
5. The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
6. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.

(13) Historical & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site, or structure, which is currently listed on, or eligible for listing on the National Register of Historic Places.

(14) Camouflage. All telecommunications facilities must be camouflaged to the greatest extent reasonably possible and in a manner approved by the Planning Commission.

(15) No wireless communication facility shall display any sign or advertising.

(B) STANDARD CONDITIONS OF APPROVAL. The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Commission. Where necessary to ensure that an approved project meets the criteria of this Article, the Planning Commission can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

(1) The owner of the wireless communication facility and his or her successors and assigns agree to:

(a) respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

(b) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

(c) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation.

(d) require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is 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, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

(2) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.



(3) Any wireless communication facility not in use for 180 days shall be considered to be abandoned. Abandoned facilities must be removed at the expense of the applicant or his successor within 90 days following abandonment. The site shall be returned to its previous state and where appropriate re-vegetated to blend in with the surrounding area.

§ 9.6.8 AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the Planning Commission.

§ 9.6.9 APPEALS

Any person aggrieved by a decision of the Planning Commission under this Article may appeal the decision to the Board of Trustees. Written notice of an appeal must be filed with the Board of Trustees within thirty (30) days of the decision by the Planning Commission. The notice of appeal shall clearly state the reasons for the appeal.

§ 9.6.10 ADMINISTRATION AND ENFORCEMENT

The Planning Director shall enforce this Article. If the Planning Director finds that any provision of this Article has been violated, the Planning Director shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Planning Director shall order correction of the violation and may take any other legal action to ensure compliance with this Article.

§ 9.6.11 PENALTIES

Any person who owns or controls any building or property that violates this Article shall be fined in accordance with Village 2013 Codified Ordinances. Each day such violation continues after notification by the Planning Director shall constitute a separate offense.

§ 9.6.12 CONFLICTS AND SEVERABILITY

(A) CONFLICTS WITH OTHER ORDINANCES. Whenever a provision of this Article conflicts with or is inconsistent with another provision of this Article or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

(B) SEVERABILITY. This invalidity of any part of this Article shall not invalidate any other part of this Article.

§ 9.6.13 DEFINITIONS

The terms used in this Article shall have the following meanings:

ANTENNA means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

ANTENNA HEIGHT means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.



CAMOUFLAGE means to disguise the function of a wireless communication site. Examples include building facilities to resemble clock towers, trees, steeples, flagpoles, etc.

COLLOCATION means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

EXPANSION means the addition of antennas, towers or other devices to an existing structure.

HEIGHT means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished point of the building or structure. The highest point shall include farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

HISTORIC OR ARCHAEOLOGICAL RESOURCES means resources that are:

(a) Listed individually in the National Register of Historic Places or eligible for listing on the National Register;

(b) Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

(c) Individually listed on a local inventory of historic places in communities with historic preservation programs, or;

(d) Areas identified by the Village of Los Ranchos as having significant value as a historic or archaeological resource and any areas identified in the municipality's comprehensive plan.

HISTORIC DISTRICT means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development or identified in the municipality's comprehensive plan. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

HISTORIC LANDMARK means any improvement, building or structure of particular historic or architectural significance to the Village relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history.

LINE OF SIGHT means the direct view of the object from the designated scenic resource.

PARABOLIC ANTENNA (also known as satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

PRINCIPAL USE means the use other than one which is wholly incidental or accessory to another use on the same premises.

PUBLIC RECREATIONAL FACILITY means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan designed to serve the recreational needs of municipal property owners.

DESIGNATED SCENIC RESOURCE means that specific location, view, or corridor, as identified as a scenic resource in the municipality, that consists of:



(a) A three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or

(b) Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

TARGETED MARKET COVERAGE AREA means the area which is targeted to be served by this proposed telecommunications facility.

UNREASONABLE ADVERSE IMPACT means that the proposed project would produce an end result which is:

(a) Excessively out-of-character with the designated scenic resources affected, including existing buildings, structures and features with the designated scenic resource; and

(b) Would significantly diminish the scenic value of the designated scenic resource.

VIEWPOINT means that location which is identified whether in the municipally adopted comprehensive plan or by a Federal or State agency, or which serves as the basis for the location and determination of a particular designated scenic resource.

WIRELESS TELECOMMUNICATIONS FACILITY OR FACILITY means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

§ 9.6.14 EFFECTIVE DATE

This Article becomes effective five days after publication of final adoption.

Ordinance and State Law References regarding Chapter 9, Article 6:

Ordinance #162, December 13, 2000

Ordinance #181, September 10, 2003 amending ORD #162.

