

# **Chapter 28 Wireless Telecommunications Facilities**

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## **Section 10:28:1 Purpose:**

- A. To facilitate the provision of wireless telecommunication services to the residents and businesses of the Town of Apple Valley
- B. To minimize adverse visual effects of towers through careful design and siting standards;
- C. To encourage the location of towers in non-residential areas through performance standards and incentives;
- D. To avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and,
- E. To provide mechanisms for the mitigation of tower proliferation through tower sharing requirements for all new tower applicants and those existing towers that are physically capable of sharing.

## **Section 10:28:2 Authority:**

The Planning Commission of the Town of Apple Valley (hereinafter "Planning Commission") is vested with the authority to review, approve, conditionally approve, and disapprove applications for wireless communication facilities, including sketch, preliminary, and final plans.

### **Section 10:28:3 Jurisdiction**

A. These regulations apply to all wireless communications facilities, as defined in Section 30:9, located within the corporate limits of the Town of Apple Valley or outside the corporate limits as provided by law.

B. No wireless communication facility may be constructed without an approved and signed site plan from the Planning Commission.

### **Section 10:28:4 Enactment**

In order that wireless communications facilities may be constructed in accordance to these purposes and policies, these regulations are hereby adopted and made effective as of {date }.

### **Section 10:28:5 Interpretation, Conflict, and Separability**

1. **Interpretation.** In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the protection of public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

2. **Conflict.** These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from any other ordinance, rule or regulation, statute, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.

3. **Separability.** If any part or provision of these regulations or the application of these regulations to any service provider or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of these regulations or the application of them to other service providers or circumstances. The Town of Apple Valley hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid.

## **Section 10:28:6 Amendments:**

For the purpose of protecting the public health safety, and general welfare, the Planning Commission may from time to time propose amendments to these regulations which shall be approved or disapproved by the Town Council at a public meeting following public notice.

## **Section 10:28:7 Public Purpose**

Regulation of the Siting of wireless communication facilities is an exercise of valid police power delegated by the state of Utah and as stipulated in the Federal Telecommunications Act of 1996.

## **Section 10:28:8 Enforcement, Violations, and Penalties**

1. The enforcement of these regulations shall be the responsibility of the Town Engineer, Planning Commission, and Code Enforcement Officer.
2. Any person who violates these regulations shall be guilty of an infraction and upon conviction shall be subject to a fine of not more than \$750.00, each 30 day period or portion thereof, of noncompliance shall constitute a separate offense.

## **Section 10:28:9 Definitions**

### **Usage**

1. For the purpose of these regulations, certain abbreviations, terms, and words shall be used, interpreted, and defined as set forth in this Article.
2. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense and words used in the plural indicate the singular.

### **Words and Terms Defined**

1. **Act** - The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and such future amendments to such acts.
2. **Affiliate** - When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest; and when

used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

3. **Alternative Tower Structure** - Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also **Stealth Facility**).

4. **Analog Technology** - Replicates and amplifies voice messages as they are carried from the transmitting antenna to the receiving antenna.

5. **Antenna** - Any exterior apparatus designed for telephonic, radio, or television communications through sending and/or receiving of electromagnetic waves.

6. **Antenna Height** - The vertical distance measured from the base of the antenna support structure at finished grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest finished grades shall be used in calculating the antenna height.

7. **Antenna Support Structure** - Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

8. **Applicant** - A person who applies for a wireless facility Siting. An applicant can be the owner, of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, or architect.

9. **Broadcast** - To transmit information over the airwaves to two or more receiving devices simultaneously. Information can be transmitted over local television or radio stations, satellite systems or wireless data communications networks.

10. **Cell Site** - A tract or parcel of land that contains a cellular telecommunication antenna, its support structure, accessory building(s), and parking, and may include other uses associated with an ancillary to cellular communications transmission.

11. **Cellular Service** - A telecommunications service that permits customers to use wireless or mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular devices.

12. **Cellular Telecommunications** - A commercial Low Power Mobile Radio Service licensed by the Federal Communications Commission (FCC) to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

13. **Cellular Telecommunications Facility** - A cellular telecommunications facility consists of the equipment and structures involved in sending or receiving telecommunication or radio signals from mobile telephone and radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines. Or other mobile cellular devices.
14. **Co-location** - Locating wireless communications equipment from more than one provider on a single site.
15. **Common Carrier** - An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated prices.
16. **Communication Tower** - a guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.
17. **Communications Facility** - A land use facility supporting antennas and / or microwave dishes that sends and/or receives radio frequency signals. Communications facilities include antennas, structures or towers and accessory buildings.
18. **Communications Transmission System or Communications System** - A wired communication transmission system, open video system, or wireless communications transmission system regulated by these regulations.
19. **Comprehensive or Master Plan** - The adopted Comprehensive/Master Plan of the Town of Apple Valley.
20. **C.O.W's** - "Cells on Wheels", see **Temporary Wireless Communication Facility**.
21. **Digital Technology** - Technology that converts voice and data messages into digits that represent sound intensities at specific points of time and data content.
22. **Directional Antenna** - An antenna or array of antennas designed to concentrate a radio signal in a particular area.
23. **Dish Antenna** - A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.
24. **ESMR** - Enhanced Specialized Mobile Radio.
25. **FAA** - The Federal Aviation Administration.

26. **FCC** - The Federal Communications Commission.
27. **Frequency** - The number of cycles completed each second by a sound wave; measured in hertz (Hz).
28. **Governing Authority** - The Town council of Apple Valley.
29. **Grade** - The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the structure and the property line or, when the property line is more than 5 feet from the structure, between the structure and a line 5 feet from the structure.
30. **Guyed Tower** - A communication tower that is supported, in whole or in part, by guy wires and ground anchors.
31. **Lattice Tower** - A guyed or self-supporting three or four sided, open, steel frame structure used to support telecommunications equipment.
32. **License** - The rights and obligations extended by the Town of Apple Valley to an operator to own, construct, maintain, and operate its system within the boundaries of the town of Apple Valley for the sole purpose of providing services to persons or areas within or outside the town of Apple Valley.
33. **MHZ** - Megahertz, or 1,000,000 Hz.
34. **Micro-cell** - A low power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.
35. **Microwave** - Electromagnetic radiation with frequencies higher than 1,000 MHz; highly directional signal used to transmit radio frequencies from point-to-point at a relatively low power level.
36. **Microwave Antenna** - A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.
37. **Monopole Tower** - A communication tower consisting of a single pole, constructed without guy wires and ground anchors.
38. **Omni directional Antenna** - An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it was designed.
39. **Owner** - The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in Washington County. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the town a

copy of a deed or contract of sale showing date, instrument number , and page of recording.

**40. Personal Communications Services or PCS** - Digital wireless telephone technology such as portable phones, pagers, faxes, and computers. Such mobile technology promises to allow each consumer the same telephone number wherever he or she goes. Also known as Personal Communication Network (PCN).

**41. Preexisting Towers and Antennas** - Any tower or antenna on for which a permit has been issued prior to the effective date of these regulations and is exempt from the requirements of these regulations so long as the tower or antennas are not modified or changed.

**42. Public Property** - Any real property, easement, air-space, or other interest in real estate, including a street, owned by or controlled by the town of Apple Valley or any other governmental unit.

**43. Roof and/or Building Mount Facility** - A low power mobile radio service telecommunications facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or building face.

**44. Scenic View** - A scenic view is a view that may be framed, wide angle, or panoramic and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a far away object, such as a mountain, or a nearby object.

**45. Self-Support Tower** - A communication tower that is constructed without guy wires and ground anchors.

**46. Spectrum** - Relate to any transmissions or reception of electromagnetic waves.

**47. Stealth Facility** - Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, and antenna structures designed to look like light poles. (See also **Alternative Tower Structure**).

**48. System** - The communications transmission system operated by a service provider in the municipality.

**49. Telecommunications** - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

50. **Temporary Wireless Communication Facility** - Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction or for a special event or conference where a majority of people attending are wireless users.

51. **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, cellular telephone towers, alternative tower structures, and the like.

52. **Wireless Communication Facility** - An all encompassing definition; Any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or any other spectrum-based transmissions/receptions.

53. **Whip Antenna** - An antenna that transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape and are less than 6 inches in diameter and measure up to 18 inches in height. Also called omni-directional, stick or pipe antennas.

54. **View Corridor** - A view corridor is a three dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360 degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

## **Section 10:28:10 Wireless Communication Facility Application Procedure & Approval Process**

### **A. General Procedure**

1. The submission of applications for wireless communication facilities shall follow the same procedure as detailed in Apple Valley Town's Zoning Ordinance / conditional use permit process.

### **B. Additional Procedures**

In addition to the information required elsewhere in Town of Apple Valley's Zoning Ordinance, Subdivision Regulations, Master Plan or other Applicable Ordinances or Regulations, development applications for wireless communication facilities shall include the following supplemental information:

1. A report from a qualified and licensed professional engineer which:
  - A. Describes the tower height and design including a cross section and elevation,
  - B. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
  - C. Describes the tower's capacity, including the number and type of antennas that it can accommodate;
  - D. Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
  - E. Includes an engineer's stamp and registration number; and,
  - F. Includes other information necessary to evaluate the request.
2. For all commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
3. Before the issuance of a building permit, the following supplemental information shall be submitted:
  - a. A copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) shall be submitted to the planning commission.
  - b. Proof of compliance with applicable Federal Communications Commission regulations; and,
  - c. A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with the town's structural and electrical standards.

### **C. Site Plan Requirements**

In addition to the Site Plan requirements found elsewhere in the Town of Apple Valley's Zoning Ordinance, Subdivision Regulations, Master Plan or Other Applicable Ordinances or Regulations, site plans for wireless communication facilities shall include the following supplemental information:

1. Location and approximate size and height of all buildings and structures within 500 feet adjacent to the proposed wireless communication facility.
2. Site plan of entire development, indicating all improvements including landscaping and screening.
3. Elevations showing all facades, indicating exterior materials and color of the tower(s) on the proposed site.
4. Plans shall be drawn at the scale of 1 inch equals 50 feet.

#### **D. General Approval Standards**

Generally, approval of a wireless communication facility can be achieved if the following items are met:

1. The location of any proposed tower is compatible with the town of Apple Valley's Master Plan and Zoning Ordinance
2. All efforts to locate on an existing tower have not been successful or are legally / physically possible.
3. The submitted site plan complies with the performance criteria set fourth in these regulations.
4. The proposed facility/tower will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
5. The lowest six (6) feet of the facility/tower is visually screened by trees, large shrubs, solid walls, or fences and/or nearby buildings.
6. The height and mass of the facility/tower does not exceed that which is essential for its intended use and public safety.
7. The owner of the wireless communication facility has agreed to permit other persons/cellular providers to attach cellular antenna or other communications apparatus which do not interfere with the primary purpose of the facility.
8. There exists no other existing facility/tower that can reasonably serve the needs of the owner of the proposed new facility/tower.
9. The proposed facility/tower is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.

10. The color of the proposed facility/tower will be of a light tone or color (except where required otherwise by the FAA) as to minimize the visual impact and the tower will have a security fence around the tower base or the lot where the tower is located.

11. The facility/tower is in compliance with any other applicable local, state, or federal regulations.

## **Section 10:28:11 Wireless Communications Facility Performance Standards**

### **10:28:11.1 Co-Location Requirements:**

All commercial wireless telecommunication towers erected, constructed, or located within the town of Apple Valley shall comply with the following requirements:

**1.** A proposal for a new commercial wireless telecommunication service tower shall not be approved unless the Town Council finds that the telecommunication equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one mile search radius (one half mile search radius for towers under 120 feet in height, one quarter mile search radius for towers under 80 feet in height) of the proposed tower due to one or more of the following reasons:

- a. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
- b. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
- c. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
- d. Other un-foreseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

**2.** Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

### **10:28:11.2 Tower and Antenna Design Requirements**

Proposed or modified towers and antennas shall meet the following design requirements:

1. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
2. Commercial wireless telecommunication service towers shall be of a monopole design unless the Town Council determines that an alternative design would better blend in to the surrounding environment.

### **10:28:11.3 Tower Heights**

The maximum tower heights permitted in the town of Apple Valley are calculated by applying the following:

1. If the tower is designed to accommodate only one service provider, the maximum height shall be 60 feet from grade.
2. If the tower is designed to accommodate two service providers, the maximum height shall be 80 feet from grade.
3. If the tower is designed to accommodate more than two service providers, the maximum height shall be 100 feet from grade.

### **10:28:11.4 Accessory Utility Buildings**

All utility buildings and structures accessory to a tower shall be architecturally designed to blend with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

### **10:28:11.5 Tower Lighting**

Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower.

### **10:28:11.6 Antennas Mounted on Structures, Roofs, Walls, and Existing Towers**

The placement of wireless telecommunication antennas on roofs, walls, and existing towers may be approved by the Town Council provided the antennas meet the requirements of these regulations, after submittal of:

1. A final site and building plan as specified by Section 30:10 of these regulations, and;
2. A report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

#### **10:28:11.7 Temporary Wireless Communication Facilities**

Any facility designed for temporary use as defined in Section 30:9 is subject to the following:

1. Use of a temporary facility is allowed only if the owner has received a temporary use permit from the Apple Valley Town Council.
2. Temporary wireless facilities are permitted for use of no longer than 30 days and while constructing permanent facilities and no longer than 5 days for use during a special event.
3. The maximum height of a temporary wireless facility is 50 feet from grade.
4. Temporary facilities are subject to all applicable portions of these regulations, excluding Sections 30:10B and 30:10C.

#### **10:28:11.8 Interference with Public Safety Telecommunications**

No new or existing telecommunication service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the town of Apple Valley at least ten calendar days in advance of such changes and allow the town to monitor interference levels during the testing process.

#### **10:28:11.9 Abandoned or Unused Towers or Portions of Towers**

Abandoned or unused towers or portions of towers shall be removed as follows:

1. The owner of a wireless facility shall file annually a declaration with the Town's Planning Commission, and Code Enforcement Officer, as to the continuing operation of every facility installed subject to these regulations. Failure to do so shall be determined to mean that the facility is no longer in use and considered abandoned, thus subject to the following:

2. All abandoned or unused towers and associated facilities shall be removed within 180 days of the cessation of operations at the site unless a time extension is approved by the Town's, Planning Commission, or Code Enforcement Officer, A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 180 days of the cessation of operations at a site, the tower and associated facilities may be removed by the town and the costs of removal assessed against the property.

3. Unused portions of towers above a manufactured connection shall be removed within 180 days of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new wireless facility permit.

### **10:28:11.10 Signs and Advertising**

The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

### **Section 10:28:12 Zoning Specific Wireless Communication Facility Performance Standards**

1. Commercial wireless communications facilities are a permitted use in all areas but the following zones.

A. Historic/Special Districts

B. Open Space Conservation

2. Non-commercial wireless facilities (amateur radio antennas) are subject to Section: 30:13 Non-Commercial Wireless Facility Standards.

### **10:28:13 Non-Commercial Wireless Facility (Amateur Radio Antenna) Standards**

1. Towers supporting amateur radio antennas and conforming to all applicable provisions of these regulations shall be allowed only in the rear yard of residentially zoned parcels.

2. In accordance with the Federal Communications Commission's preemptive ruling PRB1, towers erected for the primary purpose of supporting amateur radio antennas may exceed 30 feet in height provided that a determination is made by the Town Engineer, Planning Commission, and Code Enforcement Officer, that the proposed tower height is technically necessary to successfully engage in amateur radio communications.