

1181.07 - CONDITIONAL USE REVIEW.

- (a) *Applications.* Applications for conditional use review for towers or antennas shall be reviewed by the Planning Commission, as required by § 1181.05, subject to the procedures and requirements of Part Eleven of this Code of Ordinances, except as modified in this section.
- (b) *Pre-application review.*
  - (1) *Purpose and applicability.*
    - A. A pre-application review may be scheduled prior to filing a formal application for conditional use review. The pre-application review is not part of the formal application review process or the required review period. The purpose of the pre-application review is to provide non-binding feedback to applicants to assist in expediting the conditional review process. Any materials submitted to the City for the purposes of the pre-application review shall become part of the public record.
    - B. Pre-application reviews do not result in a development decision or permit, and shall not obligate the City or the applicant to take any action on the proposal.
  - (2) *Pre-application review procedure.*
    - A. A request for a pre-application review shall be made in accordance with the provisions of this division (B). As an exception to the application requirements listed in § 1181.05(d)(1), potential applicants may submit conceptual information based on the amount of information known about the project at the time a request for pre-application review is made. The request shall include, at a minimum, two 24x36 hard copies and one digital of the following information:
      - 1. A general description of the proposal including a description of conformance to this chapter;
      - 2. A site plan generally demonstrating the nature of the proposed wireless communications facility and associated site improvements;
      - 3. Conceptual facility elevations; and
      - 4. Any other materials for which the potential applicant would like to receive feedback.
    - B. The City shall notify the applicant in writing at least five days prior to the pre-application review.
- (c) *Public Hearings.* Before approving or denying the application before it, the Planning Commission shall hold at least one public hearing on such application, notice of which shall be published on the City website and posted at City Hall on the notice board outside of Council Chambers and will include place, time, date and nature of such applied for. ~~in a newspaper of general circulation in the City Notice shall be published and posted at least seven days during the calendar week~~ prior to the public hearing. Written notice of said hearing shall also be mailed by ordinary mail to the street addresses of contiguous and adjacent property owners of the property for which said hearing is being held. The failure of delivery of such notice shall not invalidate any such application. The names and addresses of all property owners entitled to notice of the public hearing shall be furnished by the applicant. Where the subject of such public hearing involves 50 or more of the property owners of the City, then written notice to owners of the hearing, as provided in the preceding paragraph, shall not be required.
- (d) *Conditional use review considerations.* In addition to any standards for consideration of applications for conditional use review pursuant to Part Eleven of this Code of Ordinances, the Planning Commission shall consider the following factors in determining whether the application should be approved:
  - (1) Compliance with the requirements of this chapter;
  - (2) Height of the proposed tower or facility and its proximity to adjacent structures;

- (3) Nature of the potential for adverse effects on uses on adjacent and nearby properties;
  - (4) Relationship of surrounding topography to the view from nearby properties;
  - (5) Surrounding tree coverage and foliage and the ability to screen the facilities from the view of nearby properties;
  - (6) Design of the tower or facility, with particular regard to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - (7) Proposed ingress and egress for maintenance, safety, and prohibition of nuisances;
  - (8) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, with regard to the following:
    - A. New towers shall be approved only when other preferable alternatives are not available. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing tower, structure, or alternative technology is available to fill the communication requirements. The applicant must prove by substantial evidence that a bona fide need exists for the new Tower and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further submit evidence that it has made all reasonable efforts to procure antenna space on existing facilities but was denied or the cost of co-location exceeds the cost of a new facility by at least 50 percent. No new tower may be permitted unless such tower is capable of accommodating at least one additional wireless service facility.
    - B. An applicant shall submit required information for review by the Planning Commission related to the availability of suitable existing towers, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower, structure, or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
      1. No existing towers or other suitable structures are located within the specific geographic limits meeting the applicant's engineering requirements.
      2. Existing towers or structures either do not have sufficient height to meet the applicant's engineering requirements, or have insufficient structural strength to support the applicant's proposed antenna and related equipment.
      3. The applicant's proposed antenna would cause frequency interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
      4. The fees, costs, or contractual provisions required by the owner in order to share or to adapt for sharing an existing tower or structure, are unreasonable. Costs that would exceed new tower development by 50 percent is an example of what may be presumed to be unreasonable.
      5. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
      6. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a DAS or CMN using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable, but may be considered as a factor in the decision.
      7. The applicant provides documentation that other tower owners were contacted in writing demonstrating the above considerations.
- (e) The Director may hire an independent, qualified consultant to evaluate any technical aspects of the proposed design and location at the Applicant's sole cost.

Prior to commencing regular operation of the Tower or Equipment Shelter, all Tower and Equipment Shelter owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the Tower and Equipment Shelter. Every five years thereafter, Applicant shall at applicant's expense, prepare and submit to the City an updated radio frequency compliance report and certification certifying its equipment complies with all applicable FCC standards as of the five year anniversary date.

- (f) In granting a conditional use, the Planning Commission may impose conditions to the extent necessary to minimize any adverse effect of the proposed tower or antenna support structure on adjoining properties or to meet the review considerations of this section.
- (g) The findings and decision of the Planning Commission shall be based on and supported by substantial evidence contained in a written record and record of action which shall be forwarded to the applicant subject to § 1181.05(d)(8). An Applicant may appeal any decision of the Planning Commission to the Board of Zoning and Building Appeals. The decision of the Board of Zoning and Building Appeals shall be final.
- (h) The applicant shall sign an instrument, maintained by the City, agreeing to encourage and promote the joint use of telecommunications towers within the City and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation of offered for such use.
- (i) Prior to commencing regular operation of the Tower or Equipment Shelter, all Tower and Equipment Shelter owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the Tower and Equipment Shelter. Every five years thereafter, Applicant shall at applicant's expense, prepare and submit to the City an updated radio frequency compliance report and certification certifying its equipment complies with all applicable FCC standards as of the five year anniversary date.

(Ord. No. [0068-2016](#), § 1(Exh. A), 8-15-16)