

TOWN OF PINETOP-LAKESIDE

RESOLUTION NO. 18-1453

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, DECLARING AS PUBLIC RECORD A CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "TOWN CODE CHAPTER 17.106, WIRELESS COMMUNICATION FACILITIES."

WHEREAS, that certain document entitled "**Town Code Chapter 17.106, Wireless Communication Facilities,**" attached hereto as Exhibit A, three (3) copies of which shall be filed in the Office of the Town Clerk pursuant to this Resolution, shall remain on file with the Town Clerk.

WHEREAS, A.R.S. § 9-802 permits the enactment and publication by reference of a code or public record, including statute, rule or regulation of the municipality, in the interest of economy, and

WHEREAS, the document entitled "**Town Code Chapter 17.106, Wireless Communication Facilities,**" is a lengthy ordinance to be adopted by Ordinance No. 18-412, and which would qualify for enactment by reference.

NOW, THEREFORE, BE IT RESOLVED, the Mayor and Town Council of the Town of Pinetop-Lakeside hereby declare that the document entitled "**Town Code Chapter 17.106, Wireless Communication Facilities,**" is hereby declared a Public Record for the purpose of adoption by reference pursuant to Ordinance No. 18-412, and order that three (3) copies of the document entitled "**Town Code Chapter 17.106, Wireless Communication Facilities,**" be permanently filed in the Office of the Town Clerk and available for public inspection.

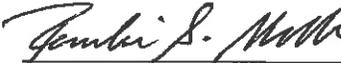
PASSED AND ADOPTED at a regular meeting by the Mayor and Town Council of the Town of Pinetop-Lakeside this 3rd day of May, 2018.

TOWN OF PINETOP-LAKESIDE



Stephanie Irwin
Mayor

ATTEST:



Remilie S. Miller, MMC
Town Clerk



APPROVED AS TO FORM:


William J. Sims, III
Town Attorney

EXHIBIT "A"

Chapter 17.106
Wireless Communication Facilities

17.106.010 Purpose

17.106.020 Permitting

17.106.030 General Requirements

17.106.040 Site Size and Setbacks

17.106.050 Height

17.106.060 Small Wireless Facility

17.106.070 Applications and Procedure

17.106.080 Removal of Wireless communication Facilities

17.106.010 Purpose

This section is intended to accommodate the communications needs of residents and businesses in the Town while protecting public health, safety, and welfare by:

- A. Minimizing adverse visual effects of wireless communication facilities through careful design, siting, landscape screening, height limitations, innovative camouflage techniques, and protection of viewshed corridors;
- B. Locating wireless communication facilities away from residential neighborhoods and historical sites whenever feasible.

17.106.020 Permitting

A. Uses Permitted in Right-of-Way.

- 1. All Small Wireless Facility (SWF) located in the Town's rights-of-way, must obtain an Administrative Small Wireless Facility Permit. Multiple SWF installations can be grouped on one permit.

B. Uses Requiring a Conditional Use Permit.

- 1. All new Wireless communication facilities and replacement antenna-supporting structures not located in the Town's right-of-way and intended for commercial and emergency services or public facility use shall obtain a conditional use permit in compliance with Chapter 17.80 Conditional Use Permits, prior to submittal for building permit approval and the initiation of construction.

17.106.030 General Requirements

- A. Wireless communication facilities shall be maintained in compliance with applicable building and technical codes, including the EIA/TIA 222-F Standards, as published by the Electronic Industries Association and amended from time to time. Structural integrity shall be ensured through the approval of the applicable building permit.

B. All wireless communication facilities must comply with the regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the State or Federal government with authority to regulate wireless communication facilities.

C. All wireless communication facilities shall have appropriate security, as determined by the Community Development Director, including solid fencing.

D. No artificial lighting of wireless communication facilities is permitted unless such artificial lighting is:

1. Required by the Federal Aviation Administration, the Federal Communications Commission, or another State or Federal agency of competent jurisdiction; or
2. Necessary for security.
3. Such lighting shall comply with the lighting regulations found in 17.104.140 Outdoor Light Control.

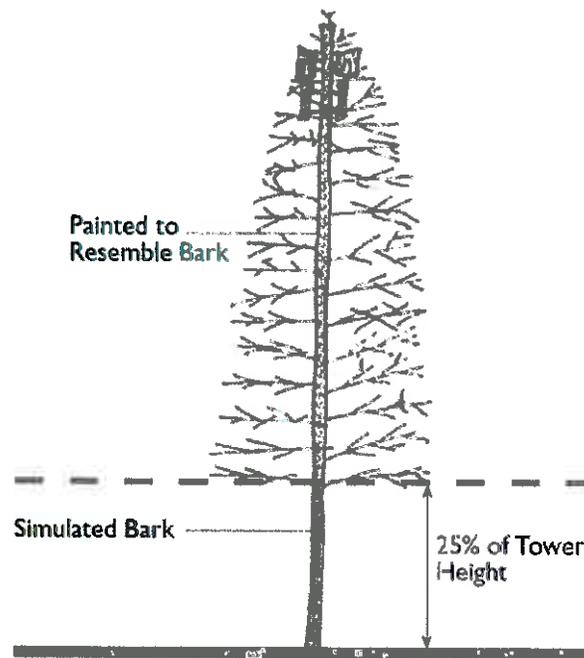
E. No advertising is permitted on wireless communication facilities.

F. Wireless communication facilities shall be sited and constructed to preserve the preexisting character of the surrounding buildings and vegetation.

1. All wireless communication facilities shall be painted a neutral non-reflective color, or be painted and/or textured to match adjoining structures or vegetation so as to reduce visual obtrusiveness, unless otherwise required by the Federal Aviation Administration or other competent State or Federal regulatory agency. Special attention shall be paid to camouflaging, to the maximum extent feasible, all portions of a wireless communication facility.
2. To the maximum extent feasible, wireless communication facilities shall be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.
3. An equipment shelter or cabinet that supports wireless communication facilities shall be concealed from public view or made compatible with the architecture of surrounding structures. Equipment shelters or cabinets shall be screened from public view by using landscaping or materials and colors consistent with the surrounding backdrop. The shelter or cabinet shall be regularly maintained.
4. Camouflaged sites may be required by the Community Development Director and will be subject to the following minimum standards:
 - a. Simulated pine branches must be located from a point that is 25 percent the height of the tower measured from finished grade to the top of the tower.

- b. A density of 2.3 simulated branches per one lineal foot of the tower is required. Branches shall be installed on the tower in a random organic pattern.
- c. The minimum length for the lower level simulated branches is 10 feet long. Simulated branches must taper toward the top of the tower to give the appearance of a natural conically shaped evergreen tree.
- d. The tower shall be painted to emulate a natural tree trunk, while the bottom 25 percent of the height of the trunk shall be covered with a simulated tree bark product.
- e. Antennas shall be fitted with a cover or otherwise camouflaged, and shall not extend beyond the tree branches located immediately adjacent to the antennas.

Figure 1: Standards for Camouflaged Sites



- g. Landscaping shall be used to mitigate the visual impact of wireless communication facilities and ancillary structures. Evergreen plant material of a minimum height of five feet shall be planted adjacent to the exterior of any wall or fence a minimum of every 10 feet on center. The Community Development Director or the Planning & Zoning Commission may waive or reduce these landscaping requirements if it is determined that the landscaping is unnecessary or it is impractical to provide necessary screening.
- h. The site of a wireless communication facility shall have sufficient room for maintenance vehicles and other equipment used for maintenance to maneuver on the property. Vehicles and other equipment not used in direct support of a

wireless communication facility shall not be stored or parked on the site of a wireless communication facility. Unmanned sites shall provide a gravel area for parking of maintenance vehicles.

17.106.040 Site Size and Setbacks

A. The site of a wireless communication facility shall be of a size and shape sufficient to provide adequate landscape screening as required in this code.

1. For rooftop antennas, a 1:1.2 setback ratio shall be maintained as a fall zone (for example, a 10-foot-tall antenna shall require a 12-foot setback from the edge of the building's roof).

17.106.050 Height

A. Height of a tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building mounted towers, the height of the tower includes the height of the portion of the building on which it is mounted.

1. A wireless communication facility located on a preferred site, as defined in subsection (B)(1) of this section, shall not exceed a height of 100 feet.
2. A wireless communication facility located on a neutral site, as defined in subsection (B)(2) of this section, shall not exceed a height of 75 feet.
 - (a) Five feet above the average maximum height of the foliage within 200 feet of the wireless communication facility, but in no case greater than 95 feet.
3. A wireless communication facility located on a disfavored site, as defined in subsection (B)(3) of this section, shall not exceed a height that is the greater of:
 - (a) Sixty feet; or
 - (b) Five feet above the average maximum height of the foliage within 200 feet of the wireless communication facility, but in no case greater than 80 feet.

B. Preferred, Neutral and Disfavored Sites.

1. Preferred Sites.

- a. **Community Structures.** Any police or fire station, library, community center, civic center, courthouse, utility structure, water tower, light pole, church steeple or other similar structure is a preferred site.

- b. Collocation. Any existing lawful wireless communication facility shall be a preferred site. Any existing building where the antenna can be mounted directly to the side of the building or parapet is a preferred site.
 - c. Industrial Zones and Public Land. Any site zoned C2 is a preferred site.
 - d. Power Line Corridors. An existing tower structure that supports high voltage power lines in a power line corridor is a preferred site.
2. Neutral Sites. Any site zoned C-1, PUD or RLOW is a neutral site; provided, that such site is not a site described in subsection (B)(3) of this section.
3. Disfavored Sites.
- a. Residential Neighborhoods. Any site in a zone not specified in subsection (B)(1) or (B)(2) of this section is a disfavored site, unless such site has a General Plan designation or current governmental use of industrial or commercial, which may reclassify the site as preferred or neutral, respectively.

17.106.060 Small Wireless Facility

A. A Small Wireless Facility (SWF) as defined by A.R.S 9-592 that is established by the installation of an antenna on a support structure other than a tower such as, a building, sign, light pole, utility pole, water tower, church steeple, or other freestanding structure.

B. Where the small wireless communication facility is installed on the roof-top of a building and either (i) the antenna can be seen from street view or (ii) the building is adjacent to property that contains existing residences, is zoned for residential use, or is designated residential in an adopted area plan, then the following restrictions shall apply:

- 1. Only one (1) type of antenna (i.e., panel, whip or dish) shall be installed on any single side of a building.
- 2. The height of an antenna above the roof-top shall be restricted as follows:
 - a. Six (6) feet measured to the top of a panel antenna above the roof proper of the existing building at the point of attachment.
 - b. Fifteen (15) feet measured to the tip of a whip antenna above the roof proper of the existing building at the point of attachment.
 - c. Six (6) feet measured to the top of a parabolic dish above the roof proper of the existing building at the point of attachment.
- 3. The total number of roof-top antennas shall be as follows:

- a. No more than four (4) panel antennas.
- b. No more than three (3) whip antennas.
- c. No more than one (1) parabolic antennas.

C. Where the small wireless communication facility is installed on a structure other than the roof-top of a building (such as, another portion of a building, or on a sign, light pole, utility pole, water tower, or other freestanding structure) and is within the Town's right-of-way and (i) can be seen from street view or (ii) the structure is adjacent to property that contains existing residences, is zoned for residential use, or is designated residential in an adopted area plan, then the antenna shall be architecturally compatible, visually unobtrusive, and designed to be an integral part of the support structure.

D. Replacement of an existing pole within the Town's right-of-way with a tower support for a small wireless communication facility. For any commercial or residential zoning district, where a wireless communication facility is established by the replacement of a pole, (such as, any light pole, utility pole, ballfield light pole) that has been erected and in continuous use for its originally intended purpose for at least two (2) years with a monopole that, in addition to providing the support structure for an antenna, also serves the function otherwise provided by the replaced pole, then the facility is permitted by right provided that the height of the facility, including tower, antenna and attachments, is not more than twenty-five (25) feet greater than the height of the original pole structure that was replaced, and does not exceed seventy (70) feet in total height, as measured from grade of the site.

- 1. Where the tower supports the co-location of two (2) or more service providers, the maximum height of the facility shall not exceed eighty-five (85) feet in total height.
- 2. Notwithstanding any other requirement in this paragraph (5), where the replacement is of a ballfield light pole:
 - a. The tower shall be of substantially the same diameter as the pole being replaced;
 - b. The total height of the facility shall not exceed seventy (70) feet or the same height as the pole being replaced, whichever is greater; and
 - c. No more than two (2) ballfield light poles serving a single ballfield may be used as wireless communication facilities.

E. Small Wireless Communication Facility's located in the Town's right-of-way shall be subject to an annual fee of fifty (50.00) dollars per small wireless communication facility.

17.106.070 Applications and Procedure

A. An application for a conditional use permit for a wireless communication facility shall be submitted on a form prescribed by the Town. The application shall include the information and materials specified in the checklist for applications for a wireless communication facility, additional submittal requirements are also listed below.

1. Engineering Report. Each application shall include a report from a structural engineer licensed in the State of Arizona documenting the following:
 - a. Wireless communication facility height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design;
 - b. Total anticipated capacity of the wireless communication facility, including, in the case of a tower, the number and types of antennas that can be accommodated;
 - c. Evidence of structural integrity; and
 - d. Structural failure characteristics of the wireless communication facility and demonstration that site and setbacks are adequate to contain debris.
2. Each application shall include a five-year facilities plan and site inventory addressing the following:
 - a. A description of the type of technology (cellular, PCS, radio, television, etc.) that will be provided using the Wireless Communication 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;
 - b. A list of all of the applicant's existing wireless communication facility sites within the Town, and a map showing location of these sites and service boundaries of other facilities operated by the applicant/provider in the area.

B. Whenever an applicant proposes to construct a wireless communication facility on a site that is not a preferred site, as defined in section 17.106.505 (B)(1), the applicant shall provide the following additional information:

1. A map showing the area in which the proposed wireless communication 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. The applicant must explain why existing towers and other supporting structures cannot accommodate the proposed wireless communication 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;
4. 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
5. The applicant must prepare a site review plan.

C. The Community Development Director is authorized to employ on behalf of the Town 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 Town. Any proprietary information disclosed to the Town or the expert hired shall remain confidential and shall not be disclosed to any third party.

D. Applications for a conditional use permit for a wireless communication facility shall be subject to the general procedural requirements found in Chapter 17.80 Conditional Use Permits. Any decision to deny an application for a conditional use permit for a wireless communication facility, including on appeal to the Council, shall be in writing and shall be supported by substantial evidence in the written record.

1. The Planning & Zoning Commission shall not issue a conditional use permit for a wireless communication facility, until:
 - a. The applicant has submitted an application in the form set forth in subsection (F)(1) of this section;
 - b. The Planning & Zoning Commission has determined that the requirements set forth in subsection (C) of this section have been met.
 - c. In addition, the following findings shall be required, where applicable:
2. Applications for a conditional use permit for a wireless communication facility on a site other than a preferred site, as defined in 17.106.050 (B)(1) of this section, shall not be granted unless the applicant has shown that it made its best efforts to locate the wireless communication facility on a preferred site and that it is not technically or legally feasible or aesthetically desirable to locate the wireless communication facility on a preferred site.
3. Applications for a conditional use permit for a tower shall not be granted unless the applicant has shown that:

- a. Existing towers cannot accommodate the proposed wireless communication facility;
 - 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
 - c. Construction of the tower will not disrupt existing utilities.
4. Applications for a conditional use permit for a wireless communication facility on a disfavored site shall not be granted unless the applicant has shown that:
 - a. It has made its best efforts to locate the wireless communication 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 wireless communication 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\(c\)\(7\)\(B\)\(i\)](#).
5. The Planning & Zoning Commission may require the applicant to submit additional information or provide further justification if the Commission believes it is necessary or appropriate.
6. The Community Development Director may waive the requirements for a conditional use permit for wireless communication facilities that meet all the criteria of this code, if the new facility or equipment is co-located on or adjoining an existing wireless communication facility.

17.106.080 Removal of Wireless communication Facilities

- A. All wireless communication facilities shall be maintained in compliance with the standards contained in applicable building and technical codes, including the EIA/TIA 222-F Standards, as published by the Electronic Industries Association and amended from time to time, so as to ensure the structural integrity of such facilities.
- B. If upon inspection by the Community Development Director any such wireless communication facility is determined not to comply with the code standards referenced in this code or that constitute a danger to persons or property, then upon notice being provided to the owner of the wireless communication facility and the owner of the site of the wireless communication facility, such owners shall have 30 days to bring the Wireless Communication

Facility into compliance. The following measures will be followed if the Wireless Communication facility remains noncompliant based on this subsection:

1. If such wireless communication facility is not brought into compliance within 30 days, the Town may provide notice to the owners requiring the wireless communication facility to be removed and the site restored to its natural condition.
2. If such wireless communication facility is not removed within 30 days of receipt of such notice and the site restored to its natural condition, the Town may remove such wireless communication facility and place a lien upon the property for the costs of removal and restoration.
3. Delays by the Town in taking action shall not in any way waive the Town's right to take action.
4. The Town may pursue all legal remedies available to it to ensure that Wireless Communication Facilities not in compliance with code standards or which constitute a danger to persons or property are brought into compliance or removed.
5. The time periods for repair, removal and restoration set forth in subsection (B)(1) of this section may be shortened if the Community Development Director determines that a Wireless Communication Facility poses an immediate danger to persons or property.

C. Abandoned Wireless Communication Facilities.

1. Any wireless communication facility that is not operated for a continuous period of six months shall be considered abandoned, whether or not the owner or operator intends to make use of it or any part of it. The following persons have a duty to remove an abandoned wireless communication facility and restore the site to its natural condition:
 - a. The owner of the abandoned wireless communication facility.
 - b. The former operator of the abandoned wireless communication facility.
 - c. The owner of the site upon which the abandoned wireless communication facility is located.
 - d. Any lessee or sub-lessee of the site.
 - e. Any wireless communication service provider that, by ceasing to utilize the wireless communication facility, caused the wireless communication facility to be abandoned.
 - f. Any person to whom there has been transferred or assigned any license issued by the Federal Communications Commission under which the communications facility was operated.

- g. Any successor of any of the foregoing persons by asset sale or merger.
- h. Any parent, subsidiary, or affiliate of any of the foregoing persons.
- i. Any managing partner of any of the foregoing that is a limited partnership.
- j. Any general partner of any of the foregoing that is a general partnership.

2. If such wireless communication facility is not removed and the site is not restored to its natural condition within 60 days of receipt of notice from the Town notifying the owner of such abandonment, the Town may remove such wireless communication facility and restore such site to its natural condition and place a lien upon the property for the costs of removal.

3. A new conditional use permit must be granted before an abandoned wireless communication facility is brought back into use, and the applicant must meet all of the conditions of this section as if the abandoned wireless communication facility were a new wireless communication facility.

D. Coordination with Federal Law.

1. A conditional use permit may be granted despite noncompliance with the provisions of this section whenever denial of 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).

2. In evaluating an application for a conditional use permit, no consideration shall be given to the environmental effects of radio frequency emissions to the extent that such emissions are in compliance with the regulations of the Federal Communications Commission, as provided in 47 U.S.C. § 332(c)(7)(B)(iv).

3. If any portion of this section is found invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision of this section, and such holding shall not affect the validity of the remaining portions of this section.

E. The following shall be exempt from this section:

1. Any tower and antenna under 60 feet in total height above the ground that is owned and operated by an amateur radio operator licensed by the Federal Communications Commission; and

2. Any receive-only consumer device designed for over-the-air reception of television broadcast signals, multi-channel multi-point distribution service, or direct broadcast satellite service.