

ORDINANCE #2008-5

AN ORDINANCE AMENDING LAND USE CODE REGARDING COMMUNICATION FACILITIES

WHEREAS, the Town of Poncha Springs Land Use Code includes language that addresses communications facilities that does not adequately address freestanding and cellular antenna towers and related facilities; and

WHEREAS, the Federal Telecommunications Act of 1996 provides for local review and regulation of cellular telephone towers and related facilities; and

WHEREAS, the Town of Poncha Springs has an interest in review and regulation of freestanding and cellular telephone towers and facilities in order to adequately protect public health, safety and welfare; and

WHEREAS, the Town of Poncha Springs supports availability of wireless communications to the town residents and at the same time has an interest in ensuring that cellular telecommunications facilities are properly located in a manner that minimizes visual impacts, provides for shared use of communications facilities (co-location) to minimize unnecessary proliferation of these facilities; and.

WHEREAS, the Poncha Springs Planning Commission has reviewed this Ordinance and recommends that the Board of Trustees approve the same; and

NOW THEREFORE, BE IT ORDAINED BY THE PONCHA SPRINGS, COLORADO BOARD OF TRUSTEES:

1. Section 2.5.9 is hereby amended as follows:

2.5.9 STRUCTURE-MOUNTED COMMUNICATIONS FACILITIES

(a) ~~All proposed communications facilities shall be reviewed pursuant to the following procedures:~~

(i) ~~Building- or structure-mounted communications facilities (including roof-mounted facilities) shall be reviewed by the Town for compliance with the requirements of the Land Use Code; no additional land user permit shall be required.~~

(ii) ~~Freestanding communications facilities must receive approval as special review uses.~~

(b) ~~Multiple providers. No more than one freestanding communications facility may be constructed or maintained~~

~~upon a property in single ownership; provided, however, that additional communications facilities may be approved at the same location by special use review, provided all other requirements of the Code are met.~~

~~(e)~~(b) Building- or structure-mounted communications facilities shall be subject to the following requirements:

- (1) Such facilities shall be architecturally compatible with and colored to match the building or structure to which they are attached.
- (2) The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet.
- (3) Building or structure mounted antennas shall extend no more than ten (10) feet above the highest point of the building or structure to which they are attached.
- (4) Roof-mounted antennas shall extend no more than ten (10) feet above the parapet of any flat roof or ridge of a sloped roof to which they are attached.
- (5) Roof-mounted panel antennas shall extend no more than seven (7) feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted.
- (6) Roof-mounted accessory structures shall extend no more than seven (7) feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.

~~(d) Freestanding communications facilities shall be visually screened from adjacent residential development and public rights-of-way as follows:~~

- ~~(1) All accessory buildings and equipment cabinets shall be totally screened from view from adjacent property lines.~~
- ~~(2) Screening, landscaping and/or exterior building finishes and colors shall be compatible with the existing character of the~~

~~site and adjacent properties and shall be determined as part of the special use permit review process.~~

- ~~(c)~~(c) No communications facility shall exceed the height limit applicable to the underlying zone district in which such facility is located.
- ~~(d)~~(d) The construction and use of a communications facility shall not cause **radio frequency** interference ~~to other adjacent communications facilities~~. The Town shall be held harmless if interference occurs.
- ~~(e)~~(e) Communications facilities which are abandoned by disconnection of power service, equipment removal or loss of lease for greater than six (6) months shall be removed by the communications facility owner **or property owner**. Should the owner fail to remove the facilities, the Town may do so at its option, and the costs thereof shall be in charge against the owner. (Ord. #2001-13)

Bold = added text

~~Strikethrough~~ = deleted text

2. Section 2.5.10 is hereby added as follows:

2.5.9 FREESTANDING COMMUNICATIONS FACILITIES

It is the intent of these regulations to provide for review and regulation of freestanding and cellular telecommunication facilities, providing for adequate cellular and wireless telecommunications and at the same time protecting the general health, safety, welfare and adverse visual impacts in the community. These regulations also support effective use of all communication towers and associated facilities by encouraging co-location, preventing unnecessary proliferation of freestanding and cellular telecommunications towers and reducing adverse visual impacts by carefully evaluating facility locations, utilizing existing towers or similar sites for freestanding and cellular communication devices.

(a) Definitions

Alternative Antenna Tower. Man-made trees, clock towers, bell towers, steeples, light poles and similar alternative design mounting structures that accommodate, camouflage, minimize or conceal the presence of antennas or antenna towers that are constructed primarily for the purpose of accommodating antennas or antenna towers or are reconstructed for the purpose of accommodating antennas or antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have antennas attached to or located within them, without any reconstruction of the original structure. For the

purposes of these regulations, an alternative antenna tower is considered an antenna tower.

Antenna Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas. This includes guyed towers, lattice towers, monopoles, alternative antenna tower structures and towers taller than 10 feet constructed on top of another building, along with any separate building on the lot used to house any supporting electronic equipment.

Antenna. Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips, at frequencies on the electromagnetic spectrum as the FCC from time to time may designate, used for telecommunication services and/or personal communications services but not including such structures or devices when used for the broadcast of television, of AM or FM radio stations, or for citizens band or amateur radio use.

Co-Location. Locating one or more antennas for more than one provider on a single antenna tower or alternative antenna tower structure on a single lot.

Height, Antenna Tower. The distance measured from the anchored base of a tower, at grade, to the highest point of the structure inclusive of any antennas placed on the top of the tower.

Lattice Antenna Tower. A self-supporting tower with multiple legs and cross bracing of structural steel.

Monopole Antenna Tower. A slender un-guyed self-supporting tower that does not include any lattice cross bracing structure on which wireless antennas can be placed.

Telecommunications Facility. The lot, tract, or parcel of land that contains the telecommunications antenna, its support structure, any accessory buildings, and associated parking and may include other uses associated with and ancillary to telecommunications transmission, including sales and service.

(b) Interpretation and Applicability

This section of the Land Use Code shall be interpreted to be consistent with the provisions of the Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996. All new communication antennas and communication towers in the Town of Poncha Springs installed after the effective date of this ordinance shall be subject to these regulations and all other applicable building and construction codes.

(c) Existing Facilities

All telecommunication towers legally existing as of April 14, 2008, shall be allowed to continue to be used as they presently exist. Routine maintenance (including modifications to accommodate the co-location of an additional user or users) shall be permitted on such existing towers. All such facilities shall be known as legal pre-existing facilities. Legal pre-existing facilities may not be enlarged in diameter, increased in height or otherwise modified in a manner that would increase their degree of nonconformity without being brought into conformance with these regulations.

(d) Location

Telecommunications facilities may be located in the DIO, DIR and ESCI zone districts in the Town of Poncha Springs and shall be subject to the requirements of special review uses specified in the Poncha Springs Land Use Code. Siting and installation of telecommunications facilities shall preserve or enhance the existing character of the topography and vegetation of a site. Existing vegetation, if any, and natural features should be preserved and/or improved to provide screening for the facility. If the existing topography of the site does not adequately screen equipment from view, alternative antenna towers, fencing and landscaping may be required. Any security fencing should be of a design that blends into the character of the existing environment to minimize the visual impact of the site. Antenna towers shall not be located any closer than 50 feet from the nearest residential lot line. Distances shall be measured from the center of the base of the communication tower to the lot line.

(e) Design Standards

(1) *Structural Design.* Antenna towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard to adjoining properties. Such towers shall be constructed to meet or exceed all applicable code requirements including, but not limited to, ANSI/EIA/TIA 222-F and all applicable building codes.

(2) *Color.* Antenna towers and associated facilities shall utilize colors that minimize visibility of the tower, antenna, equipment, and equipment shelters and that blend with surrounding vegetation or natural colors, or make use of alternative towers. All surfaces shall be non-specular and shall utilize protective coatings have a high degree of longevity to minimize the need for recoating.

(3) *Height.* Antenna tower height should be no taller than is necessary for the efficient operation of the facility. An antenna tower may be constructed to a maximum height of 200 feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than 10

feet constructed on the top of another building or structure, with the height being the overall height of the building/structure and tower together.

(4) *Illumination.* Antenna towers shall not be illuminated, except in accordance with applicable state or federal regulations. Telecommunications facilities including accessory buildings and equipment shall not incorporate dusk to dawn lighting. The facilities may utilize manual switch or motion activated exterior illumination for repair and maintenance purposes. Such illumination shall only be utilized when repair and maintenance operations are being conducted and shall incorporate full cut-off downcast light fixtures aimed downward.

(5) *Occupancy.* The site shall be un-staffed. Personnel may periodically visit the site for maintenance, equipment modification or repairs. An area shall be provided on the site sufficient to accommodate parking of a service vehicle. Roadways to the facility and parking areas shall be constructed of an all weather surface.

(6) *Antenna tower construction.* Monopole antenna towers shall be permitted in the DIO, DIR and ESCI zoning districts, in accordance with the special review use process. Lattice antenna towers shall only be permitted where it can be demonstrated that they minimize visual impacts compared to monopole design. Guyed towers shall not be permitted in any zone district.

(7) *Fencing and screening.* Woven wire or chain-link (80% open) or solid fences made from pressure-treated wood or other attractive long lasting low maintenance materials (less than 50% open) shall be used to enclose the site. Such fences shall not be more than six (6) feet in height and shall not utilize barbed wire, concertina wire or similar materials. Screening of the base facilities shall be provided. Evergreen trees with a minimum height of 6 feet planted in a staggered pattern at a maximum distance of 15 feet center to center. Use of native species and xeriscape vegetation is strongly encouraged to minimize water consumption and maximize plant survivability. All landscaping shall be irrigated until it is well established and can survive on ambient precipitation. Landscaping trees and vegetation materials that do not survive shall be replaced within 60 days.

(8) *Revegetation and weed management.* All disturbed areas at a telecommunications facility shall be revegetated with native grasses and/or plant materials and shall be maintained in a predominately weed free condition.

(9) *Signage and advertising.* Telecommunications facilities shall not incorporate signs except those displaying emergency information, owner contact information, warning or safety instructions or signs that are required by federal, state or local agencies. Such signs shall not exceed 6 square feet in area. There shall be no advertising at telecommunications facilities or on cellular antenna towers.

(f) Co-Location

The Town of Poncha Springs strongly encourages shared use of telecommunications facilities in order to minimize the unnecessary proliferation of antenna towers and base facilities. Applicants for new telecommunications facilities shall demonstrate efforts made to co-locate on existing towers or structures. Any approvals granted for new telecommunications facilities shall include provisions providing for co-location for multiple carriers in the facility design including a written statement from the applicant indicating a willingness to provide for and support co-location. All new antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers. Applicants requesting new telecommunications facilities shall demonstrate a willingness to allow other users to co-locate on the facility. The Town of Poncha Springs may deny an application to construct a new telecommunications facility tower based upon an applicant's unwillingness to allow co-location or a lack of evidence demonstrating the applicants attempt to co-locate facilities on existing sites.

Reasons for not co-locating on a site would include, but not be limited to, the following:

1. No existing towers or facilities are located within a half-mile radius of the site.
2. Existing towers or facilities are not of sufficient height to meet the applicants engineering requirements as documented in submitted engineering reports.
3. The applicant has provided sufficient documentation that existing towers or facilities do not have sufficient structural strength to support the applicants proposed antenna and related equipment.
4. The applicant has documented that planned equipment would cause radio frequency interference with other existing or planned equipment on the tower or facility, or the existing or planned equipment would cause interference with the applicant's planned equipment that cannot be reasonably prevented.
5. Unwillingness of the owner of the existing tower or facility to entertain a reasonable co-location proposal.
6. Existing towers or facilities do not provide an acceptable location for a requisite coverage for the applicant's telecommunications facility network.

(g) Abandonment and Dismantling

Any antenna tower or telecommunications facility that is removed from service for a period of forty-five (45) days shall be deemed abandoned. The owner of such facilities shall provide the Town of Poncha Springs with a copy of the notice

to the FCC of the intent to cease operations within 30 days of delivery of the notice to the FCC. At that point in time, any antenna tower and/or telecommunications facility is considered to be abandoned within the meaning of this Section, the structure shall be disassembled and removed from the property upon which it is located within one hundred eighty (180) days from the submittal of the FCC notice to the Town and/or the date that the Town deems the facility to be abandoned whichever is sooner. If the antenna tower and/or telecommunications facility is to be reused, the owner shall notify the Town in writing and shall have no more than twelve (12) months from the submittal of the FCC notice to the Town in which to commence the new operation of the antenna tower or telecommunications facility to be reused. Failure to commence new operation of the antenna tower or telecommunications facility within twelve (12) months, the antenna tower or telecommunications facilities shall be presumed to be abandoned. The owner of such facilities, or the property owner, shall remove the antenna tower and/or associated telecommunications facilities within sixty (60) days of a notice of abandonment from the Town of Poncha Springs. If the owner fails to remove the antenna tower or telecommunications facilities within the timeframe identified in this section, the Town of Poncha Springs may cause the demolition and/or removal of all telecommunications facilities and/or towers from the site and recover its costs of demolition and removal from the facility and/or property owner. The Town, at the time of application for telecommunications facilities, may require posting of a bond adequate to cover the cost or removal of the antenna tower and/or telecommunications facilities.

(h) Submittal and Review Requirements

In addition to the requirements specified in section 2.6.2 of the Poncha Springs Land Use Code for special review uses, the applicant shall submit the following information.

- (1) A scaled site plan showing property lines, location of the proposed telecommunications facility, setback distances, access, parking areas, all structures within 300 feet of the proposed site, utilities, and other information pertinent to the proposed facility.
- (2) Photographs of the proposed site and surrounding areas with the antenna tower accurately scaled and superimposed on the photographs with views from north, south, east and west.
- (3) Scaled elevations of the base facilities drawn at a scale of no less than 1/4" equals 1 foot.
- (4) A detailed landscaping and weed management plan including plant types, trees size, proposed seed mix and spread rate, irrigation system and method of continued weed management on the site.

(5) Project narrative indicating frequency of visits by operations personnel, description of facility, documentation of investigation of co-location on the other existing facilities, timeframe for completion of telecommunications facility installation, names/addresses of operations personnel for contact purposes and other relevant information. A statement indicating a willingness to accept co-location of other facilities from other wireless operators.

(6) A lighting plan indicating fixture type, bulb wattage, location and photometrics for all exterior light fixtures.

(7) An adequate bond, or other security, for removal of the facility in the event of abandonment.

(8) Evidence of compliance with FCC and FAA regulations as applicable.

(9) Documentation showing the location of other telecommunication facilities in the area and evidence of the need for the proposed facility including applicable engineering analysis.

(10) Certification that the construction and use of an antenna and communications facility shall not cause radio frequency interference. The Town shall be held harmless if interference occurs.

3. Section 2.3 "Permitted Uses" is hereby amended to add Cellular Towers and Associated Facilities as a special review use in the ESCI, DIO, and DIR zone districts.

PASSED AND APPROVED THIS 14th DAY OF APRIL 2008, BY THE BOARD OF TRUSTEES OF THE TOWN OF PONCHA SPRINGS, COLORADO.

/s/ _____
Mark F. Thonhoff, Mayor

Attest:

/s/ _____
Diana K. Heeney
Clerk/Treasurer