

Article 4.7 **Wireless Communication Facilities**

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4.701 Purpose and Applicability

A. ***Purpose.*** The purpose of these regulations is to:

1. Establish uniform standards and procedures to manage the development, siting, installation, and operation of Wireless Communication Facilities (WCFs) in compliance with the Federal Telecommunications Act of 1996.
2. Provide for appropriate development of WCFs to provide services within the Town in a manner that will protect and promote public health and safety, and prevent visual blight, while supporting new technologies.
3. Provide for an efficient and capable wireless telecommunications network throughout the Town that promotes co-location and optimal facility locations to meet the current and future wireless telecommunications needs of the Town's residents, businesses, industry, and visitors.

B. ***Applicability.***

1. This Article 4.7 and the Design Standards Manual For Wireless Communication Facilities for Wireless Communication facilities in Chapter II shall govern the development activities of wireless facilities within the Town of Gilbert, including the installation, construction, expansion, alteration, modification and operation of wireless facilities, subject to the rules contained in Section 4.701B.2 regarding the use of Town-owned Right-of-Way in connection with small wireless facilities.
2. Small Wireless Facilities in Town-owned Rights-of-Way and public utility easements shall be governed by Chapter 10 Buildings and Construction Regulations of the Town of Gilbert Code.
3. This Article 4.7 shall not apply to those uses set forth in Article 4.8; Over-The-Air Reception Devices, Large Satellite Dishes, Satellite Earth Stations, and Amateur Radio Facilities.

4.702 Procedures

- A. **Application.** An application for a new WCF, or expansion or alteration of any existing WCF, shall be filed with the Town in accordance with the application procedures set forth in Table 4.703E, Section 5.402: Use Permit Procedures, and Section 5.602: Design Review Procedures and Responsibility. In addition to any other requirements specified, applications shall not be deemed complete without submission of the following:
1. **Project Narrative.** Applicant shall provide a short written narrative describing the proposed facility plans, including details relating to existing conditions at and adjacent to the desired location, and the reasoning behind the selected location. Describe efforts to co-locate.
 2. **Facility Plans.** Applicant shall provide a complete set of plans for the facility and associated equipment. Said plans shall be prepared and stamped by a professional engineer of applicant.
 3. **Photographic Simulation.** Applicant shall provide a photographic simulation with a minimum of two (2) views of the proposed facility taken from surrounding properties and streets. Applicant shall provide a map that clearly shows the locations used for the analysis and their distances from the proposed WCF.
 4. **Title Report.** Applicant shall provide a Title Report prepared within the last thirty (30) calendar days of submitting of the application showing property ownership and utility easements.
 5. **Radio Frequency (RF) Exposure Compliance.** Applicant shall provide a letter from a qualified professional that confirms facility compliance with FCC OET Bulletin 65, related to Radio Frequency (RF) Exposure. The letter shall verify that, at its maximum load, including cumulative effect of multiple facilities, the WCF meets or exceeds the FCC safety standards.
 6. **Owner Consent.** Applicant shall provide a signed and notarized owner consent to file application form (signed by each owner of the property), and applicants may be required to provide a Prop 207 Waiver signed by each owner of the property.
 7. **Fees.** Applicant shall pay application fees in accordance with the fee schedule adopted by the Town of Gilbert Town Council.
- B. **Minor Modifications.** As set forth in section 5.404.B: Modifications and notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of Law, proposed minor modifications to existing WCFs shall not require a use permit. Minor modifications to existing WCFs include, but are not limited to the following:

1. Upgrading the capacity of an existing facility by replacing antennas at the same mounting height on a pole;
2. Adding one or more antennas or other apparatus to an existing facility, which will not dramatically change the visual impact of the existing facility.
3. Increasing the height of an antenna slightly (1' – 2' maximum) such that it is visually insignificant at the height at which the antenna is mounted; or
4. Adding new equipment within an existing equipment cabinet or building that remains screened by the existing walls of the equipment cabinet or building.

C. ***Legal Non-Conforming WCFs.***

1. ***Maintenance Work.*** A WCF that was lawfully constructed under the provisions of the Land Development Code and Regulations of the Zoning District in effect at the time of construction shall not require a use permit for maintenance work. WCF maintenance means the realignment of antennas, replacement or repair of a part or portion of a WCF due to ordinary wear, tear or damage with like material, size, color, and design. Maintenance work does not include changing the number, color, size or design of the WCF or its components as set forth in Section 4.702 and Section 5.404.
2. ***Alteration.*** No alteration to a non-conforming WCF shall be made except where required or otherwise permitted by law to reduce or eliminate the non-conformity.

4.703 Use and Development Regulations

- A. ***Land Use Regulations.*** The land use regulations for each base zoning district in Division 2: Land Use Designations, establish the districts in which Wireless Communication Facilities are permitted.
- B. ***Regulations.*** Site development regulations are set forth in 4.703E. In addition, WCFs are subject to the development regulations set forth in Section 4.704: Additional Development Regulations and Chapter II: Design Standards Manual For Wireless Communication Facilities.
- C. ***Residential Zoning Districts.*** WCFs are permitted in single family and multi-family residential zoning districts when the property is owned by:
 1. The state, county, public school district, or community college district, if the primary use of such property is a governmental use;
 2. An electric utility company, if the property is used for an electric utility use; or

3. A Place of Worship use, if the primary use of such property is for worship or social use.

D. **Wireless Communication Facility Categories.** Each type of WCF has been organized into one of three categories, primarily based on the size and visual impact each type has to its surrounding property. Each category is subject to separate application and review processes as depicted in Table 4.703E.

1. **Category 1 WCFs.** Facilities in this category have minimal visual impact due to the small size, concealment efforts, and location on existing vertical elements. The process to review and approve Category 1 facilities is through an Administrative Design Review. Examples of Category 1 facilities include but are not limited to Microcells, new Small Wireless Facilities (SWFs) and WCFs on utility poles and recreational field light poles.
2. **Category 2 WCFs.** Facilities in this category have a more significant visual impact than those in Category 1 due to their larger size and new vertical elements. The process to review and approve Category 2 facilities is through an Administrative Use Permit. Examples of Category 2 facilities include but are not limited to new Small Stealth Structures, existing vertical elements.
3. **Category 3 WCFs.** Facilities in this category have the most significant visual impact on surrounding properties due to the increased heights permitted and fewer requirements for concealment. The process to review and approve Category 3 facilities is through a Conditional Use Permit. Examples of Category 3 facilities include but are not limited to Monopoles, Large Stealth Structures and Public Safety Communication Facilities.

4.703.E: Wireless Communication Facility Categories

Category	Maximum Height Permitted by Zoning District							
	Single Family Residential ⁽¹⁾	Multi-Family Residential ⁽¹⁾	Commercial	Office	Employment	Public Facility/ Institutional	Heritage Village Center	Gateway Zoning District
Facilities listed under each category are examples, but may not include all eligible facility types. The Zoning Administrator has the authority to determine which Category a proposed WCF shall be processed under (Section 1.109).								
Category 1: Administrative Design Review								
Microcell	No max. ⁽¹⁾	No max. ⁽¹⁾	No max.	No max.	No max.	No max.	No max.	No max.
Small Wireless Facility – Existing Vertical Element – <i>Other</i>	10' ⁽¹⁾⁽²⁾	10' ⁽¹⁾⁽²⁾	10' ⁽²⁾	10' ⁽²⁾	10' ⁽²⁾	10' ⁽²⁾	10' ⁽²⁾	10' ⁽²⁾
Small Wireless Facility - New	40' ⁽¹⁾	40' ⁽¹⁾	40'	40'	40'	40'	-	-
Existing Vertical Element – <i>Utility Pole or Recreational Field Light Pole</i>	15' ⁽¹⁾⁽²⁾	15' ⁽¹⁾⁽²⁾	15' ⁽²⁾	15' ⁽²⁾	15' ⁽²⁾	15' ⁽²⁾	15' ⁽²⁾	15' ⁽²⁾
Stealth Building Element	Height of Bldg. ⁽¹⁾	Height of Bldg. ⁽¹⁾	Height of Bldg.	Height of Bldg.	Height of Bldg.	Height of Bldg.	Height of Bldg.	Height of Bldg.

4.703.E: Wireless Communication Facility Categories

Category	Maximum Height Permitted by Zoning District							
Category 2: Administrative Use Permit								
Stealth Structure (Small)	40' ⁽¹⁾	40' ⁽¹⁾	40'	40'	40'	40'	40'	40'
Existing Vertical Element – <i>Light pole</i> or Existing Vertical Element - <i>Other</i>	10' ^{(1) (2)}	10' ^{(1) (2)}	-	-	-	10' ⁽²⁾	-	-
Building Mounted Public Safety Antenna	-	-	-	-	-	10' ⁽²⁾	-	-
Public Safety Communications Facility	-	-	-	-	-	75'	-	-
Category 3: Conditional Use Permit								
Monopole	-	-	75'	75'	75'	75'	-	-
Stealth Structure (Large)	-	-	75'	75'	75'	75'	-	-
Public Safety Communications Facilities	-	-	-	-	-	250'	-	-

(1) Wireless Communication Facilities may only be permitted in residential zoning districts, as subject to Section 4.703C above.

(2) Measured above existing height.

4.704 Additional Development Regulations

A. **Height.** The permitted maximum heights for WCFs are set forth in Table 4.703E. Unless otherwise provided in Article 4.7, the height of WCFs shall be measured from finished grade to the highest point of the structure, including antenna and attachments. For facility types that are not specifically listed in Table 4.703E, the Zoning Administrator or Director shall determine the maximum height based on other similar facilities within the same category.

B. **Setbacks, WCF Support Structure.** The following setbacks shall apply to the support structure upon which a WCF is mounted.

1. **Measurement.** Setbacks shall be measured from the center point of the support structure to the boundary of the entire property prior to the WCF application even though the WCF may be sited on one or more smaller individual parcels within a larger lot or parcel.
2. **Required Setback Distances.** All new support structures shall be located a distance equal to or greater than the building setback for the district in which it is located, unless adjacent to any lot or parcel designated for residential use in the General Plan.
3. **Required Setback Distances From Residential.** All new support structures shall be set back from any lot or parcel designated for residential use in the General Plan to the maximum extent feasible and a distance equal to the greater of:
 - a. 75 feet; or

- b. 110 percent of the height of the WCF, including attached antennas.

C. *Setbacks, Ground Equipment.*

1. *Setback of the Base Zoning District.* Except as otherwise provided Section 4.704D, ground equipment associated with WCFs, including but not limited to equipment cabinets and buildings, shall comply with the required building setbacks of the Base Zoning District within which the WCF is located.
2. *Setback Measurement.* Setbacks shall be measured from the closest perimeter wall of the equipment cabinet or building within which the ground equipment is mounted, to the boundary of the entire property. Setbacks shall be measured prior to the WCF application even though the proposed WCF may be sited on one or more smaller individual parcels within a larger lot or parcel. Setbacks shall not be measured from a wall surrounding the ground equipment, but rather from the actual ground equipment.

D. *Setback Exemptions.* The following are exempt from the setback requirements in Section 4.704C:

1. WCF antennas mounted on an existing vertical element;
2. WCF antennas incorporated as a stealth building element; and
3. Ground equipment located on an Electric Utility Substation site.

E. *Ground Equipment.*

1. *Screening.*
 - a. *Equipment Cabinets and Associated Equipment.* The equipment cabinet and associated equipment, including air conditioning units and emergency generators, shall be located within the cabinet within which the antenna is placed, or shall be fully screened from view by a decorative solid fence equal to or exceeding the heights of the equipment cabinet.
 - b. *Equipment Buildings.* An equipment building shall be screened with an 8 foot decorative solid separation fence.
 - c. *Waiver or Modification of Screening Requirement.* The screening requirement may be waived or modified if the Zoning Administrator determines that the equipment cabinet or building will only be visible from permanently unoccupied areas or is already screened from public view.

2. *Height.*

- a. Equipment cabinets shall not exceed 8 feet in height.
- b. Equipment buildings shall not exceed 15 feet in height.

3. *Area.*

- a. The area of an equipment cabinet or building that is used by a single provider shall not exceed 300 square feet.
- b. The area of an equipment cabinet or building that is used by multiple providers shall not exceed 600 square feet.

4. *Public Safety Communications Facility Exception.* The equipment cabinet or building of Public Safety Communications Facility may exceed the height and area limitations in 4.704E.2 and 4.704E.3, but only if approved as part of a Conditional Use Permit. The equipment cabinet or building of Public Safety Communications Facility shall comply with the screening requirements in Section 4.704E.1.

F. *Fencing.*

- 1. *Design.* Fencing shall be architecturally compatible with buildings and fencing on the property or of adjacent properties and shall be solid to fully screen the equipment it is surrounding.
- 2. *Height.* Fencing shall not exceed 8 feet in height.
- 3. *Prohibitions.*
 - a. The use of barbed wire or razor wire is prohibited except as permitted in Gilbert Municipal Code Sec. 42.110: Fences, Barbed Wire and Electric.
 - b. The use of chain link, woven wire or similar fence material is prohibited, except at temporary construction sites.

G. *Lighting.*

- 1. Artificial lighting of a WCF (including its components) is prohibited, unless required by the Federal Aviation Administration. A motion-sensor light may be used for security purposes only.
- 2. WCFs on light poles and recreational field light poles shall comply with Section 4.103: Light Standards.

H. WCF Support Structures - Additional Regulations.

1. *Monopole.* Any new monopole shall be constructed to allow for co-location of at least one (1) additional WCF antenna of similar type. If constructed to less than the maximum height permitted, the monopole shall also have the capability of having an additional vertical section added.
2. *Light Pole and Recreational Field Light Pole.* When a WCF light pole or recreational field light pole replaces one of a series of light poles, its dimensions and appearance shall replicate those of the existing light poles to the maximum extent feasible as determined by the Zoning Administrator.
3. *Non-Conforming Support Structures.* A support structure that was lawfully constructed under the provisions of the code or regulations of the district in effect at the time of construction. No alteration to a non-conforming support structure shall occur unless required by law or unless the alteration will result in reduction or elimination of the non-conformity, or unless the alteration conforms to the following provisions:
 - a. Additions. The Town may allow additional antennas pursuant to a Conditional Use Permit. In addition to the findings required for approval in Section 5.403: Required Findings and Section 4.705: Required Findings, the following findings shall establish the rationale for the granting of relief under this section 4.704H.3.A:
 - (1) The existing use of the property is conforming;
 - (2) The additional antenna conforms with the requirements of this article; and
 - (3) Any relief granted shall be the minimum required to implement the purposes of this article.
4. *Stealth Building Element.* No part of a Stealth Building Element shall extend above the highest point of a building, at the location in which it is mounted.

I. Portable Monopoles.

1. *Temporary Replacement Monopoles.* A portable monopole may be permitted during the construction modification, or replacement of an approved WCF. Placement of the portable monopole requires the approval of the Director of Planning.
2. *Special Event Monopoles.* A portable monopole may be permitted during a Special Event, but only if approved as part of a Special Event Permit pursuant to Chapter 15 of the Town Code.

3. *Height.* The Height of a portable monopole shall not exceed 65 feet in height in all Zoning Districts, with the exception of a portable monopole in an Employment and Public Facility/Institutional Zoning districts where a maximum height of no more than 75 feet is permitted.

J. ***Co-Location on Monopoles.*** The operator of a monopole shall allow the co-location of at least one additional WCF on the same monopole or site where feasible. Applicants and operators shall share technical information to enable evaluation of the feasibility of co-location. Permission shall be required for all operators and owners of this monopole in which co-location is proposed.

4.705 Required Findings

A. ***Administrative Design Review.*** In addition to the findings required in Section 5.603, the Director shall approve, approve with modifications and/or conditions, or deny a Design Review application after making the additional findings or approval as follows;

1. The proposed WCF conforms with the requirements of this article;
2. The applicant has demonstrated the inability to co-locate the proposed WCF on an existing vertical element; and
3. The visibility of the WCF is reduced to the extent feasible by decreasing the WCF height, increasing the WCF setback, locating the WCF in proximity to other structures, using antenna designs that minimize horizontal projects, and constructing the WCF with colors and materials that de-emphasize the WCF's visibility.

B. ***Administrative and Conditional Use Permits.*** In addition to the findings required in Section 5.403, the Planning Commission, or the Zoning Administrator, in the case of Administrative Use Permits, shall approve, approve with modifications and/or conditions, or deny a use permit after making the additional findings of fact as follows:

1. The proposed WCF conforms with the requirements of this Article.
2. The applicant has demonstrated the inability to co-located the proposed WCF on an existing vertical element; and
3. The visibility of the WCF is reduced to the extent feasible by decreasing its height, increasing its setback, by locating the WCF in proximity to other structures, by using antenna designs that minimize horizontal projections, and by constructing the WCF with colors and materials that de-emphasize the WCF's visibility.

4.706 Miscellaneous Provisions

- A. **WCFs on Utility Property.** The costs of improvements to utility facilities, poles, and property to accommodate a WCF shall not be charged against any municipal aesthetics program funding granted to the Town.
- B. **Independent Technical Study.** Should the Zoning Administrator or the Director of Development Services require additional technical information that cannot be obtained from the applicant, the Town may require the applicant to pay the cost of an independent technical study.
- C. **Revocation.** To the extent permitted by law, failure to comply with co-location requirements as provided for in this Article is grounds for revocation of an existing use permit pursuant to Section 5.404C: Revocation.
- D. **Abandonment; Non-Use.** WCFs that are not in use for six (6) or more months shall be removed by the Wireless Communications Service Provider or the property owner no later than ninety (90) calendar days from the last date of use unless otherwise agreed to in writing by the Zoning Administrator.
- E. **Security of WCFs.** All WCFs and associated equipment shall be installed and secured in a manner to prevent unauthorized access. All WCFs and associated equipment shall also be constructed and shielded so that they cannot be climbed onto or run into. Access to transmitters and telecommunications control points shall be limited to persons authorized to operate or service the WCF only.
- F. **Signage.** No sign or advertising of any kind shall be permitted on any WCF, equipment cabinet or building antenna or support structures unless required by law or pursuant to a sign permit.
- G. **Transfer of Rights.** A Use Permit under this article shall not be assigned, transferred or conveyed without prior written notice to the Town. The written notice shall describe the assignee's name, address, contact person, and of the effective date of such assignment.
- H. **Reservation of Authority to Inspect Wireless Telecommunications Facilities.**
 - 1. The Town reserves the right to inspect the permitted site to verify compliance with all applicable technical, safety, fire, building, code requirements, and all other applicable requirements.
 - 2. The Town shall pay for the costs associated with such an inspection, except that the permit holder shall reimburse the Town for the actual cost of the inspection where violations of this Article are found to exist and for those circumstances occasioned by said permit holder's, lessee's or licensee's refusal to provide necessary information, refusal to provide necessary access to facilities, or refusal to otherwise cooperate with the Town with respect to an inspection.

3. Payment of such costs shall be paid to Town no later than thirty (30) calendar days from the date of the Town's invoice or other demand for reimbursement. In the event of an appeal in accordance with the procedures set forth in Section 5.405, said reimbursement payment must still be paid to Town shall set aside the amount, pending the final decision on appeal.

I. ***Conflict With Other Laws or Ordinances.*** Where this Article differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal Government, the more restrictive or protective of the Town and the public shall apply.

J. ***Severability.***

1. If any word, phrase, definition, sentence, part, section, subsection, or other portion of this Article or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, definition, sentence, part, section, subsection, or other portion of this Article, or the proscribed application thereof, shall be severable, and the remaining provisions of this Article and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
2. Any use permit issued under this Article shall be comprehensive and not severable. If part of a use permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority, or is overturned by a competent authority, the use permit may be declared void in total upon determination by the Town.