

ORDINANCE 1040 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
ADDING CHAPTER 21.20B AND AMENDING TABLE 21.16.200 OF THE
MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES (ZONING ORDINANCE)
REGARDING WIRELESS COMMUNICATIONS FACILITIES

WHEREAS, various federal and state laws partially restrict the City of El Paso de Robles' ability to regulate telecommunications facilities; and

WHEREAS, despite these restrictions, the City has the ability to regulate all telecommunications facilities for reasons of health, safety and aesthetics; and

WHEREAS, the telecommunications industry is preparing for the next generation of 5G wireless communication facilities (WCF) that will utilize more numerous and disperse antenna systems; and.

WHEREAS, the City is already seeing a significant increase in application for "small cell" WCF's within the public right-of-way (PROW); and

WHEREAS, the City's existing wireless communication facilities zoning regulations are no longer adequate to regulate the next generation of WCF's; and

WHEREAS, the City desires to adopt telecommunications facility regulations to comply with applicable federal and state law while preserving local control to the extent possible; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Zoning Ordinance amendment on May 9, 2017, where it considered the staff report and public testimony and recommending the City Council approve the ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed Zoning Ordinance amendment on June 6, 2017, where it considered the staff report, Planning Commission recommendation and public testimony; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

Section 2. Environmental Determination. This application has been determined to be Statutorily Exempt from California Environmental Quality Act under section 15061.b.3. because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Municipal Code Addition. The Council hereby adopts the language attached hereto as Exhibit A and B and incorporated herein by reference to add chapter 21.20b and amend table 16.20.200 Paso Robles Municipal Code.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. . Effective Date. This Ordinance shall be in full force and effect 30 days after its passage and adoption as provided by Government Code section 36397.

Section 6. . Publication. The City Clerk shall certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause a summary to be published once within 15 days after its passage in a newspaper of general circulation, published and circulated in the City in accordance with Government Code section 36933.

INTRODUCED at a regular meeting of the City Council held on June 6, 2017, for first reading by the City Council of the City of El Paso de Robles, and adopted on the 20th day of June, 2017, by the following vote:

AYES: Gregory, Hamon, Reed, Martin
NOES:
ABSENT: Strong
ABSTAIN:


Steven W. Martin, Mayor

Attest:

Kristen L. Buxkemper, Deputy City Clerk

Exhibit A Table 21.16.200 amendment
Exhibit B Chapter 21.20B

EXHIBIT A

Amendment to TABLE 21.16.200 – Section D

Underline = add text
 Strike-through = delete text

ZONING DISTRICT																		
LAND USE	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS
D. Communications																		
1. Broadcasting studios.	C	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	N
2. <u>Wireless Communications Facility ("WCF") consistent with Section 21.20B</u> Transmission and receiving stations (not including ham operators, private microwave and radio dispatch).	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
3. <u>Wireless Communications Facility ("WCF") in Public Right-of-Way (PROW)</u> consistent with Section 21.20B	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
*In the R, OP and POS districts, a facility may be permitted with the approval of a CUP by the planning commission for a site located in a public or quasi-public property/building such as a church, school, golf course, community building.																		
NOTE: All facilities, regardless of the zone, shall be camouflaged (antennas and equipment are incorporated into a building/structure or built into the existing environment in a manner that results in the antennas/equipment not being noticeable as determined by the planning commission.	P	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*	E*

EXHIBIT B

WIRELESS COMMUNICATIONS FACILITIES

Chapter 21.20B

- 21.20B.010 Intent and Purpose.**
- 21.20B.020 Definitions.**
- 21.20B.030 Applicability and Exemptions.**
- 21.20B.040 Permitting Process.**
- 21.20B.050 Development and Design Standards for all WCFs.**
- 21.20B.060 WCFs in the PROW.**
- 21.20B.070 Application Factors Considered; Findings for Approval.**
- 21.20B.080 Modifications to WCFs.**
- 21.20B.090 Revocation for Violation.**
- 21.20B.100 Abandonment or Discontinuation of Use.**
- 21.20B.110 State or Federal Preemption.**
- 21.20B.120 Use of Outside Consultants.**

21.20B.010 Intent and Purpose.

The purpose of this Chapter is to provide placement, design, and screening criteria to regulate the establishment of wireless communication facilities to protect the public health, safety, general welfare, and quality of life in the City consistent with applicable federal and state requirements. Additionally, the standards in this Chapter make wireless communications reasonably available while preserving the visual aesthetics of the community through the promotion of stealthing techniques that architecturally integrate or camouflage WCFs with their surroundings.

21.20B.020 Definitions.

For the purposes of this Chapter, the following terms and phrases have the meaning ascribed to them in this subsection.

A. "Co-location" means the practice of sharing support structures and buildings on a single freestanding support structure or building. Co-location shall also include the location of WCFs with other utility facilities and structures including, but not limited to, water tanks, transmission towers, and light poles.

B. "FCC" means the Federal Communications Commission or any successor agency.

C. "Public Right-of Way" ("PROW") means an Alley or Street as defined in this Title.

D. "Wireless Communications Facility" ("WCF") means a facility that transmits and/or receives electromagnetic or radio frequency waves, including, but not limited to towers, antennas, monopoles, distributed antenna systems, wireless utility monitoring and control services, support or accessory structures and related equipment. Amateur radio operators are not included in this definition.

21.20B.030 Applicability and Exemptions.

The requirements of this Section apply to all WCFs, except as exempted. The following are exempt from the provisions of this Chapter:

A. Radio or Television Antenna: Any ground- or building-mounted antenna that receives radio or television signals for use only by owners or occupants of the property or development on which the antenna is located that does not exceed a height of ten (10) feet above the maximum allowable building height for the zone in which the antenna is located.

B. Satellite Dish Antenna: Ground- or building-mounted dish antenna that is one (1) meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals as defined by Section 207 of the Telecommunications Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the FCC.

C. Amateur Radio Antenna: Any antenna, including its support structure, used by an authorized amateur radio operator licensed by the FCC that does not exceed a height of fifteen (15) feet above the maximum allowable building height of the zone in which it is located. For the purpose of this section, amateur radio means the licensed non-commercial, non-professional, private use of designated radio bands for purposes of private recreation including the non-commercial exchange of messages and emergency communication. This includes HAM radio and citizens band antenna.

D. Government Antenna: Any antenna, dish, or similar equipment owned and/or operated by any government entity.

E. Wifi Routers: Any wireless facilities located within a structure and intended to provide wireless service only within the same structure, including wifi hotspots and access points.

F. Temporary Facility: Placement of a temporary WCF for a period of not more than thirty (30) days following federal, state or City declaration of an emergency or disaster or as part of a City permitted or sponsored special event.

21.20B.040 Permitting Process.

A. An application is required for all WCFs, including WCFs located in the PROW. The application shall be subject to the requirements of Sections 21.23.180-21.23.200 and to the administrative file close-out program in Section 21.23.430.

B. WCFs Outside the PROW. Applications for WCFs outside of the PROW are subject to the conditional use permit requirements specified in Table 21.16.200(C)(8) and 21.16.200(D)(2),(3) and must be accompanied by the applicable permit application.

C. Permits for WCFs in the PROW. A WCF permit is required for the installation, construction or development of any WCF in the PROW. WCFs in the PROW are subject to the development and design standards in Section 21.20B.050 of this Chapter as well as the requirements specified in Section 21.20B.060. The applicant shall provide scaled drawing signed by a licensed professional demonstrating that any encroachments in the PROW will not affect handicapped accessibility or traffic safety. Applicants shall also obtain all applicable encroachment and building approvals and permits. WCF permit applications shall be reviewed, approved, conditionally approved or denied by the zoning administrator in consultation with the city engineer. Prior to the zoning administrator's decision on a WCF permit application, public notice shall be mailed to every property owner and occupant within three hundred (300) feet of the proposed WCF site. Such notice shall be mailed no less than ten (10) business days prior to the scheduled zoning administrator's decision date and shall include information about the proposed project, the zoning administrator's pending decision, and information about when and how an appeal may be filed. The zoning administrator's decision may be appealed as set forth in Section 21.23A.090.

D. All WCF applications must include documentation of compliance with FCC regulations pertaining to radio frequency emissions, including cumulative emissions from any existing WCFs on the site and the proposed WCF, in a manner deemed appropriate by the zoning administrator.

21.20B.050 Development and Design Standards for all WCFs.

A. New Facilities.

All new WCFs must comply with the following development and design standards except when impractical or technologically infeasible. The burden shall be on the applicant to provide evidence as part of the application showing why and how complying with the standard would be impractical or technologically infeasible. Impracticality shall be determined based on the cost of complying with the development and design standards and the cost of noncompliance. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution.

B. Existing Conforming and Legal Nonconforming Facilities.

All existing WCFs that have all proper use permits, building permits, encroachment permits, and other entitlements approved by the City as of the effective date of this Chapter shall be allowed to continue as they presently exist and will be considered legal non-conforming or legal conforming facilities, as the case may be, unless otherwise required by law. All existing WCFs that do not qualify as legal non-conforming or legal conforming facilities pursuant to the foregoing sentence as of the effective date of this Chapter shall be subject to the requirements of this Chapter.

Modifications of existing conforming WCFs and existing legal nonconforming WCFs shall be subject to Section 21.20B.080 regarding modifications. Major modifications to existing WCFs shall comply with the requirements of this Chapter.

C. Requirements for All WCFs.

1. Where practical, WCFs shall be integrated into existing or newly developed facilities that are functional for other purposes.

2. WCFs shall incorporate stealth design so as to minimize aesthetic impacts on surrounding land uses. Stealth design means that the WCF is designed to closely blend into the surrounding environment and to be minimally visible. Antennas and related equipment are either not

readily visible beyond the property on which it is located, or, if visible, appear to be part of the existing landscape or environment rather than the WCF.

3. Related equipment shall be co-located within an existing equipment enclosure or undergrounded to the extent technologically feasible. If co-location or undergrounding are not feasible, the equipment shall be designed to match the architecture of adjacent buildings and/or be screened from public view by walls, fences, parapets, landscaping, and similar treatments.

4. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for the proper functioning and physical support of the WCF and future co-location of additional WCFs.

5. No WCF or any portion thereof may be located within a required setback area except with the zoning administrator's approval.

6. WCFs should adhere to the existing height limitations of the zone in which they are located.

7. WCFs shall comply with the City's noise ordinance. WCFs operating in excess of the maximum sound levels permitted by the City's noise ordinance shall be enclosed to achieve compliance with the noise ordinance. Backup generators or similar equipment that operates only during power outages or other emergencies are exempt from this requirement. Testing of such backup generators or similar equipment may only occur during standard daytime hours.

8. No WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions and/or electromagnetic radiation in excess of FCC standards and any other applicable regulations. All WCFs must comply with all standards and regulations of the FCC, and any other agency of the State or Federal government agency with the authority to regulate WCFs.

D. Additional Requirements for Freestanding WCFs.

1. An applicant for a freestanding WCF shall demonstrate as part of the application that a proposed WCF cannot be placed on an existing building, utility pole, streetlight, or co-located.

2. Freestanding WCFs shall be compatible with the architecture, color, texture, and/or materials of nearby buildings and the surrounding area and landscaping.

3. Freestanding WCFs shall be located in areas where existing topography, vegetation, buildings or other structures provide the greatest amount of screening so as to minimize aesthetic impacts on surrounding land uses.

4. Freestanding WCFs shall be designed to allow for co-location of additional antennas.

5. Freestanding WCFs may not utilize guy wires or other diagonal or horizontal support structures.

6. Exterior lighting of freestanding WCFs is prohibited unless required by the Federal Aviation Administration (FAA) or other government agency.

21.20B.060 WCFs in the PROW.

A. No PROW permit may be issued unless the applicant is authorized to place WCFs within the PROW by franchise, certificate of convenience and necessity, City license or otherwise. Any City license may be granted in City's sole discretion as property owner, and not as land use regulator.

B. WCFs shall have subdued colors and non-reflective materials which blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

C. The height of any new WCF pole or structure shall not exceed ten (10) vertical feet of the maximum height allowed in the nearest adjacent zoning district.

D. In residential areas, WCFs shall not be located within three hundred (300) feet of another wireless telecommunications facility; this does not include co-location of sites.

E. All WCFs and Equipment shall be built in compliance with the Americans with Disabilities Act (ADA) and traffic safety standards, including but not limited to surface access in and around facilities.

F. Utility and Light Poles.

1. Antennas in the PROW shall be collocated or installed on existing utility or light poles, except when impractical or technologically infeasible. No new poles may be installed except as replacements for existing poles, or when the applicant provides evidence as part of the application showing why and how complying with the foregoing standard would be impractical or technologically infeasible.

2. If a City streetlight or other city-owned structure is used, compensation shall be paid to the City as the owner.

3. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95.

4. The maximum height of any antenna or antenna radome shall not exceed six (6) feet above the height of an existing light pole.

5. Revocation for Non-Use. WCF permits be revoked if not used within six months from the date of approval. The six-month period may be extended for additional time upon written request to and written approval of the zoning administrator.

G. Equipment Location.

1. Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right-of-way, or create safety hazards to pedestrians and/or motorists as determined by the City Engineer.

2. Ground-mounted equipment shall be undergrounded to the extent technologically feasible. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, either within the equipment contained in the pole or through the use of landscaping, walls, or other decorative features, to the satisfaction of the zoning administrator or his/her designee.

3. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

H. City Changes to the PROW.

The permittee shall modify, remove, or relocate its WCF, or portion thereof, without cost or expense to the City, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance, or operation of any other City underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency. Said modification, removal, or relocation of a WCF shall be completed within a reasonable relocation time frame as determined by the zoning administrator. In the event a WCF is not modified, removed, or relocated within said period of time, City may cause the same to be done at the sole expense of applicant. Further, in the event of an emergency, the City may modify, remove, or relocate WCFs without prior notice to applicant provided applicant is notified within a reasonable period thereafter.

21.20B.070 Application Factors Considered; Findings for Approval.

In considering whether to grant a conditional use permit or WCF permit, as may be required under Section 21.20B.060, the decision maker shall consider the following factors:

A. Compliance with the design and development standards in this Chapter and with the applicable zoning standards where the WCF is proposed to be located;

B. Height and setbacks;

C. Proximity to residential uses;

D. The nature of uses on adjacent and nearby properties;

E. Surrounding topography and landscaping;

F. Quality and compatibility of stealth design and screening;

G. Impacts on public views and the visual quality of the surrounding areas; and

H. Availability of other facilities or buildings for collocation.

- I Impacts to the future use and aesthetics of the PROW and streetscape character.
- J. Impacts to historic structures, historic districts, parks and the Downtown historic core.

21.20B.080 Modifications to WCFs.

A. Minor Modifications. A new use or WCF permit (as applicable) is not required for modifications to an existing WCF that:

- 1. Decrease or do not increase capacity, including alterations such as replacing the existing antenna with a smaller antenna, installing quieter equipment, or decreasing the number of antennas;
- 2. Where the a proposed WCF will be placed on a previously approved WCF and is consistent with requirements for the existing WCF installation permit; and
- 3. Any co-location that meets the requirements of Government Code section 65850.6.

An application with a proposed modification that falls within one of the categories above shall be considered a minor modification that may be approved administratively by the zoning administrator.

B. Section 6409 Modification. A new use permit or WCF permit, as applicable, is not required for a modification of an existing wireless tower or base station that does not substantially change the dimension of such tower or base station within the meaning of to P.L. 112-96, Section 6409 and any FCC regulations or orders interpreting this section. An application for a modification pursuant to this subsection shall expressly request treatment under this subsection and shall identify, with supporting documentation, how the modification qualifies under this subsection. The zoning administrator shall review and approve such modification to the extent required by federal law.

C. Modifications that do not qualify as minor modifications under this Section shall be considered a major modification. Major modifications shall be treated the same as requests for a new WCF.

21.20B.090 Revocation for Violation.

Any permit granted in accordance with the terms of this Chapter for a WCF may be revoked if any of the conditions or terms of such permit or variance are violated or if any law or ordinance is violated in connection therewith.

21.20B.100 Abandonment or Discontinuation of Use.

A. Within thirty (30) days of discontinuation of use, the WCF operator shall notify the zoning administrator in writing that use of the WCF has been discontinued. A WCF must be completely removed, and the site returned to its pre-WCF condition within one hundred eighty (180) days of discontinuation of use.

B. Non-operation, disuse (including, but not limited to, cessation of wireless services) or disrepair for one hundred eighty (180) days or more shall constitute abandonment under this Chapter or any predecessors to this Chapter.

C. A WCF that is not removed with one hundred eighty (180) days of abandonment or discontinued use will be considered a nuisance and, in addition to any other available remedy, will be subject to abatement under Chapter 9.06.

D. The City may require a performance bond or other sufficient security in an amount rationally related to the cost of removing the WCF and all related facilities and equipment on the site, as determined by the zoning administrator. However, the city may not require the owner or operator to post a cash deposit or establish a cash escrow account as security under this subsection. In setting the amount of the bond or security, the community development zoning administrator shall take into consideration the estimate of removal costs.

21.20B.110 State or Federal Preemption.

Notwithstanding any other provision of this Chapter to the contrary, if any provision(s) of this Chapter would give rise to a claim by an applicant that a proposed action by the City would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 USC 332(c)(7), or otherwise are preempted or prohibited by state or federal law, evidence of such effect

may be grounds for a variance from the requirements of this Chapter or an appeal of any decision denying an application for a WCF.

21.20B.120 Use of Outside Consultants.

From time to time the City may need the services of a qualified outside consultant to supplement staff to review and make appropriate recommendations including, but not limited to, compliance with radio frequency emissions standards and/or identification of alternative solutions where there is a possibility that a proposed facility could result in a significant impact to the surrounding area. The use of outside consultants shall be at the applicant's expense. The cost of these services shall be in addition to all other applicable fees associated with the project, and shall be contracted for and administered by the City.