

## Chapter 17.53

### WIRELESS COMMUNICATION FACILITIES

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**17.53.010 Purpose.** The purpose of this Chapter is to provide a uniform and comprehensive set of standards for major wireless communication facilities. The regulations contained herein are designed to protect and promote public safety, community welfare and the visual quality of the County of Tuolumne as set forth in the goals, policies and programs of the Tuolumne County General Plan, while at the same time providing for the installation of new communication facilities in accordance with the Telecommunications Act of 1996. It is also the intent of this chapter to insure a balance between public concerns and private interests in establishing wireless communication and related facilities. (Ord. 2506 §13 (part), 2003)

**17.53.020 Exempt facilities.** The following facilities are exempt from the provisions of this chapter:

- A. Minor wireless communication facilities.
- B. Preexisting major wireless communication facilities; except that modifications to such facilities shall comply with the provisions of this chapter.
- C. Major wireless communication facilities added to an approved co-located or multiple user wireless communication facility.
- D. Major wireless communication facilities located within the interior of a structure or on the exterior of a structure, including but not limited to a building or water tank, which do not substantially change the appearance of the structure as determined by the Community Development Director. As used in this

subdivision, structure shall not include a wireless communication tower.

E. Major wireless communication facilities located on an electrical transmission tower or utility pole which do not substantially change the appearance of the structure as determined by the Community Development Director.

F. Major wireless communication facilities located on parcels under the jurisdiction of a public entity, including federal, state or local government agencies, public utilities, special service districts, other public agencies or on tribal lands.

G. Wireless communication facilities used by government agencies, public utilities or other public agencies where the height does not exceed one hundred feet (100').

H. Wireless communication facilities - community networks or neighborhood repeaters - where the principal use of the facility is to receive and transmit communication services to occupants other than those of the parcel on which the facility is located and that comply with the following criteria as determined by the Community Development Director:

1. The facility shall be located, designed and screened to blend with the existing natural or built surroundings and be compatible with neighboring development and the character of the community and shall include a consideration of height;

2. The facility shall comply with all applicable radio frequency emissions regulations of the Federal Communications Commission; and

3. A plan for a wireless communication facility - community network or neighborhood repeater - shall be submitted to the Community Development Department providing the following information to demonstrate that the facility complies with the criteria listed above:

a. A map showing the location of the proposed facility and all land uses adjacent to the site;

b. A map identifying the boundaries of the area that will be served by the proposed facility and all related facilities within the County that are part of the same network of coverage as the proposed facility;

c. Proof of legal access to the parcel on which the proposed facility is to be located;

d. The design of the facility and any accessory equipment, including a visual simulation with mock-ups or photo-montages, to demonstrate that it will blend with its surroundings;

e. The design of communication towers shall include "anti-climbing" features to reduce the potential for trespass and injury;

f. A plan identifying the source of power to the proposed facility.

l. A temporary mobile wireless communication facility on the site for which a Conditional Use Permit for a permanent wireless communication facility has been issued for a maximum of ninety (90) days subject to administrative approval by the Community Development Director. A ninety (90) day extension may be granted by the director upon written request of the applicant. Three ninety (90) day extensions may be granted for a sum total of not more than one year. The mobile facility shall not exceed the height approved for the permanent facility and shall not be located on the site until all required fire safety measures have been implemented as determined by the Fire Marshal. (Ord. 2736 § 3, 2006; Ord. 2506 §13 (part), 2003)

**17.53.030 Applicability.** The provisions of this chapter apply only to major communication facilities and modifications to preexisting major wireless communication facilities. (Ord. 2506 §13 (part), 2003)

**17.53.040 Conditional use.** Major wireless communication facilities are declared to be conditional uses and require the issuance of use permits in all zoning districts, except such facilities shall be prohibited in the M-U, R-3, R-2, R-1, RE-1, RE-2, RE-3, O, or O-1 zoning districts, or any zoning district when combined with the :H, :HDP, or :D combining districts, except as provided in Section 17.53.100. (Ord. 2736 § 4, 2006; Ord. 2506 §13 (part), 2003)

**17.53.050 Application for a use permit.**

A. An application for a use permit shall be filed with the director on a form prescribed by the director along with required information and fees as established in Title 3 of this code.

B. An application for a use permit shall be accompanied by the following information:

1. A map showing the location of the proposed facility and all land uses surrounding the site within one thousand feet (1,000') of the boundaries of the parcel on which the facility is proposed or on adjacent parcels, whichever is greater;

2. The design of the facility, including a cross-sectional area or silhouette of the facility;

3. A visual impact analysis drawn to scale, including a visual impact demonstration through mock-ups or photo-montages of the facility as viewed from each of the four cardinal points of the compass and as otherwise required by the director;

4. Maps identifying the boundaries of the area that will be served by the proposed facility;

5. A map identifying all related facilities within a five-mile radius of the project site that are part of the same network of coverage as the proposed facility;

6. An alternative site analysis that includes a minimum of two alternative sites accompanied by a table indicating why each of these other sites was rejected or found inferior to the proposed site. The analysis shall also address alternatives to reduce visual impacts, economic impacts, and other potential environmental impacts;

7. A title report;

8. Proof of legal access to the parcel on which the proposed facility is to be located;

9. Information addressing security considerations, including exterior lighting, fencing, gates, and access;

10. Maps identifying the location of existing major wireless communication facilities within a two (2) mile radius of the proposed facility;

11. A plan identifying the source of power to the proposed facility. If electrical service is proposed, the plan shall include the location of proposed overhead or underground distribution lines to extend service to the proposed facility.

12. A landscape plan providing for the retention of existing vegetation to the maximum extent practicable, illustrating the planting scheme, and specifying the maintenance program;

13. A tree protection plan for trees larger than six inches (6") at a height of four and one-

half feet (4 ½'), when such trees are present on the site;

14. If the applicant will not be providing wireless communication services itself, either a signed agreement with a provider of wireless communication services, or a letter of intent to use the proposed facilities from such a provider shall be submitted with the application or submittal of such information shall be made a condition of approval of the use permit to be submitted prior to issuance of a building permit;

15. A copy of the certification from the Federal Communications Commission specifying that the facility's radio frequency emissions will comply with the applicable regulations of the Federal Communications Commission;

16. The Federal Communications Commission's (FCC) National Environmental Policy Act (NEPA) Checklist for all applications for service providers who will be using the facility. Additional information required by the Federal Communications Commission to satisfy compliance with the National Environmental Policy Act (NEPA) when required by the FCC for issuance of a license to operate wireless communication facilities;

17. Other information as required by the director necessary to conduct environmental review in accordance with the California Environmental Quality Act (CEQA). The director may waive one or more of the items of information listed above if similar information is already on file with the Community Development Department.

C. The director is authorized at his/her discretion to execute a contract with an independent technical expert to review any technical materials submitted including, but not limited to those required under this section or in cases where the applicant is proposing a facility with a design or in a location that is necessary due to an unavoidable technological need or lack of feasible alternatives. The applicant shall pay all the costs of said review, including any administrative costs incurred by the County. Any proprietary information disclosed to the County or the expert hired shall remain confidential and shall not be disclosed to any third party. The director shall determine if a review by a technical expert is required within 30 days of the submittal of an application. Failure of the applicant to pay the costs of such review shall render the

application incomplete. (Ord. 2736 § 5; 2006; Ord. 2506 §13 (part), 2003)

**17.53.060 Procedures for processing use permit application.**

A. Processing of the use permit application shall be in accordance with chapter 17.68 except as provided in subdivision B and that within forty-five days of receipt of a complete application for the use permit, the Community Development Department shall schedule the application for a public hearing by the jurisdictional planning commission. The commission, within ninety days of receipt of the application from the Community Development Department, shall approve conditionally approve or deny the application.

B. Notice of any public hearing for a use permit for a major wireless communication facility shall be given in accordance with Section 17.68.130 except the notice to adjacent property owners shall be mailed to owners of all property within one thousand feet (1000') of the boundaries of the parcel on which the facility is proposed or to owners of adjacent parcels, whichever is greater. (Ord. 2506 §13 (part), 2003)

**17.53.070 Review and consideration of use permit application.** Any application for use permit for a major wireless communication facility shall be reviewed for compliance with the provisions herein. In considering the application, the decision making body shall not approve or conditionally approve an application which has not demonstrated that all of the provisions can be met. (Ord. 2506 §13 (part), 2003)

**17.53.080 Location.** Major wireless communication facilities shall be located so as to harmonize with the surrounding community as follows:

A. No facility shall be located on any parcel zoned M-U, R-3, R-2, R-1, RE-1, RE-2, RE-3, O or O-1, or zoned any primary district when combined with the :H, :HDP or :D combining districts except as provided in Section 17.53.100.

B. No facility shall be installed within the height restriction areas or planning referral areas of the Columbia or Pine Mountain Lake Airports or any helipad unless the airport or

helipad owner/operator indicates that it will not adversely affect the operation of the airport or helipad and the Airport Land Use Commission determines the location is consistent with the Airport Land Use Compatibility Plan.

C. No facility shall be installed at a location where special painting or lighting will be required by the Federal Aviation Administration (FAA) regulations.

D. No facility shall be installed on an exposed ridgeline or at a location readily visible from any scenic route as identified in Figure 4.2 of the Tuolumne County General Plan unless it blends with the surrounding existing natural or built environment and a finding is made that no other location is technologically feasible.

E. No facility shall be installed unless it blends with the surrounding existing natural and built environment or evidence is submitted to and accepted by the decision making body and a finding is made that locating it on a less visible site is infeasible. (Ord. 2736 § 6, 2006; Ord. 2506 §13 (part), 2003)

**17.53.090 Setbacks.** Major wireless communication facilities shall be set back at least one hundred ten percent (110%) of any communications tower height from all property lines, and two hundred feet (200') from any parcel zoned M-U, R-3, R-2, R-1, RE-1, RE-2, RE-3, O, or O-1, or zoned any district when combined with the :H, :HDP or :D combining district or from any publicly dedicated trail, public park or public outdoor recreation area. Guy wire anchors for wireless communication towers shall be set back at least twenty feet (20') from any property line. (Ord. 2736 § 7, 2006; Ord. 2506 §13 (part), 2003)

**17.53.100 Service gaps.** Notwithstanding the location and setback limitations of this chapter, a major wireless communication facility shall be granted a permit for a location in which it would otherwise be prohibited if the applicant establishes that the facility is necessary to comply will federal law or will fill an existing significant gap in the ability of remote users to access the applicant's communication service, that there is no alternative to the proposed location, and that the manner in which it proposes to fill the gap complies in all other respects with this chapter unless an applicant

has established that an inability to comply with any other provision would prevent the facility from being constructed at that location. As a condition of approval of a conditional use permit for a major wireless communication facility to fill a service gap, the Board of Supervisors may require the facility to be designed and used as a co-location or multiple-user facility. (Ord. 2736 § 8, 2006; Ord. 2506 §13 (part), 2003)

**17.53.110 Height determination.** The height of a wireless communication tower shall be measured from the ground surface below the center of the base of the tower to the top of the tower itself or to the tip of the highest antenna or piece of equipment attached hereto whichever is higher. In the case of structure-mounted towers, the height of the tower includes the height of the portion of the structure on which it is mounted. In the case of towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised. (Ord. 2506 §13 (part), 2003)

**17.53.120 Visual compatibility.**

A. Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts considering the technological requirements of the proposed communication service and the need to be compatible with neighboring residences and the character of the community.

1. The visual exterior surface of wireless communication support facilities, including but not limited to vaults, equipment rooms, utilities, and equipment enclosures, shall be constructed out of non-reflective and no-flammable materials.

2. Support facilities shall be not taller than fifteen (15) feet in height and shall be designated to look like a building or facility typically found in the area the facility is located.

3. Support facilities proposed on hillsides or hilltops or other visual areas, shall be sited below the ridgeline, or designed to minimize their profile, or place underground, depressed or located behind earth berms, or designed to resemble a natural feature of the surrounding landscape.

4. All buildings, poles, towers, antenna supports, antennas, and other components of each wireless communication site shall be initially

painted and thereafter repainted as necessary with a “flat” paint in a color that will minimize their visibility to the greatest extent feasible.

5. All major wireless communication towers shall be designed as stealth facilities or shall otherwise blend with the surrounding landscape unless evidence is submitted to and accepted by the decision making body and a finding is made that locating it on a less visible site is infeasible.

6. The design of communication towers shall include “anti-climbing” features to reduce the potential for trespass and injury.

B. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner prior to the final building inspection by the Division of Building and Safety. (Ord. 2506 §13 (part), 2003)

**17.53.130 Signs Prohibited.** The use of any portion of a communication facility for signs other than warning or equipment information signs is prohibited. (Ord. 2506 §13 (part), 2003)

**17.53.140 Lighting.** Exterior lighting of major wireless communication facilities shall be limited to manually-operated or manned remote-operated lights which shall be kept off except when personnel are actually present and shall not illuminate the site at any other time. (Ord. 2506 §13 (part), 2003)

**17.53.150 Structural requirements.** Major wireless communication facilities shall be engineered and constructed in accordance with the California Building Code. (Ord. 2506 §13 (part), 2003)

**17.53.160 Roads and parking.** To minimize ground disturbance, major communication facilities shall be served by the minimum roads needed to provide safe access and minimum parking areas needed to serve maintenance vehicles as follows:

A. Existing roads and parking areas shall be used, whenever possible, and be upgraded the minimum amount necessary to meet standards specified by the Fire Prevention Bureau and the Department of Public Works.

B. Any new roads built to serve the facility shall meet the width and structural

requirements of the Fire Prevention Bureau and the Department of Public Works.

C. Any new parking areas constructed shall have an all weather surface and shall be no larger than three hundred fifty (350) square feet unless otherwise required by the Fire Prevention Bureau of the Department of Public Works. (Ord. 2506 §13 (part), 2003)

**17.53.170 Vegetation protection and facility screening.**

Major wireless communication facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility as follows:

A. A landscape and maintenance plan shall be submitted with an application for a use permit indicating all existing vegetation, identifying landscaping that is to be retained on the site, any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas, the method of watering, and the program for maintaining landscaping in a healthy and attractive condition. The landscape plan shall be subject to review and approval in conjunction with the site plan. All existing trees larger than six inches (6") in diameter at four and one-half (4 ½') high shall be identified in the landscape plan with indication of species type, diameter of each tree identified, and whether it is to be retained or removed with development of the proposed facility.

B. Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power or communication line routes shall be protected from damage, both during the construction period and thereafter, as follows:

1. A protection plan for trees larger than six inches (6") in diameter at four and one-half feet (4 ½') shall be submitted along with an application for a use permit when such trees are present on the project site. This plan shall be prepared by a certified arborist or registered forester and give specific measures to protect trees during project construction;

2. Grading, cutting, filling, and the storage or parking of equipment or vehicles shall be prohibited in landscaped areas as shown on the landscape plan and within the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the director.

Trash, construction debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the director; and,

3. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.

C. All areas disturbed during project construction other than the access road or parking areas shall be replanted with vegetation compatible with the vegetation in the surrounding area to the satisfaction of the director.

D. All vegetation on the site shall be maintained in a healthy and attractive condition. If any vegetation dies, it shall be replaced within six months as follows:

1. Vegetation planted as implementation of the landscape plan shall be replaced with species of the same size and suitable variety.

2. Native vegetation that dies as a result of construction or operation of the communication facility may be replaced at the discretion of the director with similar species of a size acceptable to the director to ensure rapid return to the preexisting condition.

E. No vegetation shall be removed after completion of construction of the major communication facility that would increase the visibility of the facility itself or the access road and power or communication lines serving it except when required by the Fire Prevention Bureau to abate a fire hazard or authorized by the director to prevent blocking transmission capabilities. (Ord. 2506 §13 (part), 2003)

**17.53.180 Fire Prevention.**

Major communication facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. The following measures shall be implemented when determined necessary by the Fire Prevention Bureau:

A. At a minimum, one-hour fire resistant interior surfaces shall be used in the construction of all buildings.

B. Monitored automatic fire extinguishing systems approved by the Fire Prevention Bureau and rapid entry systems shall

be installed in all equipment and buildings and enclosures.

C. Vegetation clearance for fire hazard reduction may be required around all new structures and along access roads as determined by the Fire Prevention Bureau.

D. All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to the final inspection under the building permit.

E. Construction and operation of a major wireless communication facility shall be in accordance with the fire safety regulations specified in Title 15 of this code and the California Fire Code. (Ord. 2506 §13 (part), 2003)

**17.53.190 Noise.** Major communication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby public parks and trails. All of the following measures shall be implemented to minimize disruption:

A. Construction activities shall only take place on weekdays, Monday through Friday, between the hours of 7:00 a.m. and 7:00 p.m. and shall be prohibited on Saturday, Sunday and County holidays, unless otherwise approved by the director.

B. All generators shall be enclosed within buildings.

C. Noise attenuation measures shall be included to reduce noise levels to an exterior noise level consistent with the requirements of the Tuolumne County General Plan at each property line.

D. Exterior testing of equipment and maintenance activities shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.. This restriction shall not apply to emergency situations or to an impending failure of the communication system. (Ord. 2506 §13 (part), 2003)

**17.53.200 Radio frequency emissions regulations.** Major wireless communication facilities shall be sited, constructed and operated so they comply with the radio frequency emission regulations of the Federal Communications Commission. A major wireless

communication facility shall not emit radio frequency emissions to exceed those permitted by the Federal Communications Commission regulations. (Ord. 2506 §13 (part), 2003)

**17.53.210 Co-located and multiple-user facilities.**

A. An analysis shall be prepared by or on behalf of the applicant, which identifies all reasonable, technologically feasible, alternative locations or facilities which would provide the proposed communication service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the County. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. When existing facilities are within one mile of the site for a proposed application, an analysis shall be provided for the feasibility of either co-location or multiple use with those existing facilities. The County may require independent verification of this analysis at the applicant's expense.

B. All co-located and multiple-user wireless communication facilities shall be designed to promote and enable facility and site sharing, including but not limited to, parking areas, access roads, utilities and equipment buildings, to minimize overall visual impact to the community.

C. Any new facility shall make available unutilized space for co-location of other telecommunication facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the Community Development Department. Co-location is not required in cases where the addition of the new services or facilities would cause quality of service impairment to the existing facility or if it became

necessary for the host to go off-line for a significant period of time.

D. Approval for the establishment of facilities on a site or parcel already improved with an existing microwave band or other public service use or facility which is anticipated to create interference as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities.

E. Co-located and multiple-user facilities shall comply with the Federal Communications Commission (FCC) regulations. (Ord. 2506 §13 (part), 2003)

**17.53.220 Abandonment of facility.** A major wireless communication facility which has not been used for a period of eighteen months shall be deemed abandoned and shall be removed in accordance with the agreement to maintain and remove the facility referenced in section 17.53.230. (Ord. 2506 §13 (part), 2003)

**17.53.230. Agreement and security to maintain and remove facility.** An agreement to maintain the major wireless communication facility or to remove it upon abandonment of the facility or if it becomes structurally obsolete shall be signed by the owner of the property on which the facility is proposed and be submitted along with payment of the security provided for in section 17.53.240 or submittal of a security in the form of a letter of credit, certificate of deposit or other security as approved by the director to guarantee maintenance and removal of the major wireless communication facility to the director prior to issuance of a building permit for the communication facility. The amount of the security shall be based upon an engineer's estimate submitted by the property owner for the cost of maintaining the facility over the life of the facility and the cost to remove the facility. In no case shall the amount of the security be less than \$5,000. The agreement shall bind the property owner and the property owners successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this chapter and any conditions of approval of the use permit. It shall further bind them to pay all

costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the County for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform. It shall also specifically authorize the County or its agents to enter into the agreement on behalf of the County. If payment is not made, and the required service is not performed, a lien will be rendered by the County on the real property for the actual cost to the County to abate the situation resulting from the failure of performance of the terms of the agreement, less the deposit made to the facility fund. (Ord. 2506 §13 (part), 2003)

**17.53.240 Wireless Communication facility fund.** To secure compliance with the agreement to maintain and remove the facility, referenced in Section 17.53.230, and to provide a source of funds to abate any violation of this chapter by any major wireless communication facility owner, the property owner shall deposit \$5,000 into a common wireless communication facility enforcement and removal trust fund, which is hereby created in the County Treasury. Said deposit shall be paid prior to issuance of a building permit for the communication facility. Monies deposited into the fund may be used by the County or its agents to undertake enforcement actions, maintenance work, or facility removals with respect to any major wireless communication facility in the County as an incentive for the removal of unused facilities, upon removal and cleanup of the site to the satisfaction of the director, \$2,500 will be refunded to the property owner from the wireless communication facility fund. (Ord. 2506 §13 (part), 2003)

**17.53.250 Indemnification.** The property owner, and the successor in interest, shall defend, indemnify, and hold harmless the County of Tuolumne, its officers, agents, and employees from any and all claims, actions, proceedings, or liability of any nature whatsoever (including attorneys fees and costs awards) arising out of, or in connection with the county's issuance of an entitlement to establish or modify a wireless communication facility. This indemnification obligation shall extend to any effort to attack, set aside, void, or otherwise reverse or modify

the issuance or modification of an entitlement under this chapter including claims that the county acted negligently. (Ord. 2667 § 14, 2005; Ord. 2506 § 13, (part), 2003).