

SHORT TITLE – TOWER REGULATION ORDINANCE

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AN ORDINANCE REGULATING TOWERS AND ADOPTING CONDITIONS FOR PERMITTED LOCATIONS AND PERMITTED USES.

WHEREAS, the City of Hobbs has received requests to locate and construct wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, pursuant to New Mexico Statutes, a municipality may, for the purpose of promoting health, safety, morals or the general welfare, regulate and restrict within its jurisdiction the location of certain commercial activities such as wireless communication towers, buildings, small wind energy towers and other structures; and

WHEREAS, the City of Hobbs finds that in order to protect and preserve the health, safety and welfare of the citizens, it is in the public interest to permit the location, placement and siting of wireless communications towers and antennas, and such other wind energy and other privately owned towers within the municipal boundaries; and

WHEREAS, it is the intent of the City of Hobbs to permit the location, placement and siting of wireless communications towers and antennas and such other wind energy and other privately owned towers within the municipal boundaries; and

WHEREAS, it is the intent of the City of Hobbs to protect and promote the public health, safety and welfare by regulating the location, placement and siting of wireless communications towers and antennas and such other wind energy and other privately owned towers.

NOW THEREFORE be it ordained by the City Commission of the City of Hobbs, New Mexico as follows:

SECTION 1. PURPOSE.

A. The purpose of this ordinance is to establish general guidelines for the location of wireless communication towers and antennas and other privately owned towers including small wind energy towers. The goals of this ordinance are as follows:

1. To guide the orderly growth and development of Hobbs in accordance with the City of Hobbs Comprehensive Plan in order to protect health, safety and general welfare of current and future inhabitants of the City of Hobbs, New Mexico, and, in particular, to protect their interests from adverse impacts of land use including to protect the City's residential areas from the haphazard, disorganized and indiscriminate location throughout the City of wireless communication towers, as defined in NMSA 3-21-1 et.seq.
2. Protect residential areas and land uses from potential adverse impacts of towers and antennas, and encourage the location of towers in non-residential areas;
3. Minimize the total number of towers throughout the community, and to strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
4. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
5. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, location, landscape screening, and innovative camouflaging techniques;
6. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
7. Avoid potential damage to adjacent properties from tower failure through ensuring proper engineering and careful location of tower structures. In furtherance of these goals, the City of Hobbs shall give due consideration to the

Hobbs Comprehensive Master Plan and attachments for Major Thoroughfare Plan and Urban Growth Plan, all other appropriate development policies and regulations of the City, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

8. Provide regulations which provide reasonable regulations for the location, construction and design of towers containing wind turbines and other related towers.

SECTION 2. DEFINITIONS.

As used in this article, the following words and terms shall have the meanings ascribed below, unless the context of their usage clearly indicates another meaning:

Alteration means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.

Amateur Radio Antenna means an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial antennas.

Antenna means a device or system of wires, poles, rods, dishes, discs or similar devices used for the transmission and/or receipt of electromagnetic waves.

Beautification Corridor means those Arterial and Collector Street Corridors as referred to herein and in the Hobbs Landscape Ordinance, as amended in the future, and further defined as **Arterial Streets with an Eight Hundred (800) feet width Beautification Corridor**, which include West County Road, Grimes Street, Turner Street north from Main to Bender, Dal Paso Street, Lovington Highway, Marland Boulevard, Broadway, Sanger Street east from Tasker, Bender Boulevard, Joe Harvey Boulevard, Navajo Drive, and Business Park Boulevard; and **Collector Streets with a Four Hundred (400) feet width Beautification Corridor**, which include Fowler Street north from Bender to City Limits, Jefferson Street north from Sanger north to City Limits, Harden Boulevard, Glorietta Drive east from Fowler to City Limits, Millen Drive, College Lane, Magnolia Street & Intersecting Streets, Calle Grande Street, Calle Sur Street, A Street, Jack Gomez Boulevard, Ranchland Drive, and Homestead Drive. Each Beautification Corridor is centered on the center of the street right-of-way.

Board means the Hobbs Planning Board.

Camouflage design or camouflage tower means the design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted antenna/array/equipment, building-mounted antenna/array/equipment that is designed and treated as an architectural element to blend with the existing building, designs that conceal the antenna/array/equipment, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

Commission means the Hobbs City Commission.

Department means the Planning Department of the City of Hobbs.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Grade means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and a line five feet from the building or structure.

Height of the building means the vertical distance above the grade of the building as measured to the highest point of the roof of a building.

Height of the tower means the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, including the antenna, if any.

Historic district means a district so designated by the State of New Mexico or City of Hobbs, or an area for which an application for designation has been initiated thereunder and has not been disapproved by city commission

Occupied Structure means a building or structure that is permanently occupied by human beings and designed and used primarily for commerce, industry, working, recreation or other indoor activities, but is not intended for residential occupancy.

Park means any property of the state or political subdivision thereof that is designated for and restricted to use by the public for park purposes.

Planning department means the Planning Division of the City of Hobbs, New Mexico.

Public gathering area means those areas of the city where the general public gathers, such as public education or recreation areas and shopping areas.

Public utility means any person, company, corporation, cooperative corporation, partnership, or any combination thereof, that is subject to and has received a municipal franchise agreement and/or an approved assignment of a franchise agreement with the City of Hobbs; and/or the comprehensive regulatory system established by and defined by the New Mexico Public Regulation Commission.

The term "public utility" shall not include telegraph services, wireless communication services, television stations, radio stations, community antenna television services, general radio-telephone services, or radio-telephone services authorized under the Public Mobile Radio Services rules of the Federal Communications Commission or private water companies. Organizations with field operations using towers must comply with laws and rules pertaining to their particular operations.

Residence means any permanent building or structure containing habitable rooms for non-transient occupancy, designed and used primarily for living, sleeping, cooking and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not attached, including homes, town homes, patio-homes, duplexes, condominiums, mobile homes, manufactured housing and apartments. For purposes of calculating the ratio of multi-unit complex acreage to residential tracts, only that portion of the multi-unit complex acreage within the residential test area shall be considered. Hotels, motels, boarding houses, group homes, half way houses, nursing homes, hospitals, nursery schools, schools, and child care facilities are considered residences by this Ordinance.

Residential or Residential Lot means pertaining to the use of land for a residence as is defined in this section, or a lot which is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions; or an unrestricted lot upon which a residence exists.

Residential restrictions means one or more restrictive covenants limiting the use of the property to residential purposes that are contained or incorporated by reference in a properly recorded plat, deed or other instrument filed in the Lea County Clerk's records.

Residential area means the area around a proposed tower site that, within the residential test area, contains forty percent or more tracts wholly or partially therein that is subject to residential use or restrictions or is in use for residential purposes.

Residential test area means the circular area, as described herein, surrounding a proposed tower structure. The radius of the circle shall be at least two hundred (200) feet and not more than six hundred (600) feet, and the center of the circular area shall correspond to the center of the base of the proposed tower structure. The radius of the circular area shall conform to the following ratios:

- Two hundred (200) feet radius at a tower height of fifty (50) feet or less;
- Four Hundred (400) feet radius at a tower height in excess of fifty (50) feet but less than one hundred (100) feet,
- Five Hundred (500) feet radius at a tower height in excess of one hundred (100) feet but less than one hundred (150) feet; and
- Six hundred (600) feet radius at a tower height in excess of one hundred (150) feet.

Setback area means the circular area surrounding a proposed tower structure and which delineates the area between the site of the proposed tower and the nearest residential structure or residential restricted tract of land.

Small Wind Energy Tower (SWET) means a tower containing a wind turbine and associated control or conversion electronics, which has a rated capacity of not more

than one hundred (100) kilowatts (kW) and which is intended to primarily reduce the on-site consumption of utility power.

Subdivision means all land encompassed within one or more maps or plats of land within the city that is divided into two or more parts and are recorded in the deed, map or real property records of the county or counties in which the land covered by the map or plat is located.

Tower or tower structure means a fixed, freestanding or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. This definition includes, but is not limited to, any such structure supporting antennae that transmit or receive any portion of the electromagnetic spectrum of radio waves. The following are, by way of example but not limitation, towers or tower structures: guyed or freestanding monopole structures, lattice or open framed structures, antennae supports, water towers, and other similar self-supporting, trussed, or open framed structures. A tower also means any tower or structure constructed on private property to receive solar energy or for any other commercial or private purpose.

Tower Parcel or Tower Site means a contiguous parcel of property where a tower is located or proposed to be located.

SECTION 3. TOWER PERMIT REQUIRED.

A. Prior to filing an application for a City Building Permit, an application for a Tower Permit shall be submitted to the Planning Department and reviewed and considered for approval in accordance with the provisions of this article prior to the construction, placement or alteration of any tower or tower structure, as defined in this article and not specifically excluded herein, that is located within the boundaries of the municipality.

B. A Tower Permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension and any tower repaired, replaced or modified in order to comply with the requirements of any statute, regulation, order, or rule of the FCC, the FAA, or any other federal, state or governmental agency or authority.

C. Notwithstanding any other provision of this article, the owner of an antenna tower for which a tower permit and building permit was issued prior to July 1, 2010, and after January 1, 2009, may, without obtaining a new permit, upon written notice to the City Planner, replace the tower with a new tower if the new tower structure complies with the requirements of this Ordinance and: (i) is specifically designed to accommodate additional antenna arrays, (ii) is not more than twenty (20) feet higher than the tower structure being replaced, (iii) is not more than fifty (50) feet from the location of the tower structure being replaced and (iv) the center of the tower structure is no closer to the nearest residence than the center of the tower structure it replaces. A tower structure may be replaced only once under this subsection.

SECTION 4. EXEMPTIONS.

A. This article does not apply to the following structures:

1. Church bell towers and religious symbols associated with a place of worship;
2. Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility for rendering its service, such as tower structures used primarily for the transmission of electrical power by a public utility or the conveyance of communications over a telephone wire-line system operated by a public utility;
3. Tower structures constructed or placed on land or other structures owned, leased, held or dedicated for use by the state or federal government or any political subdivision thereof, which land or other structures are used by the governmental entity primarily for rendering fire, police or other public protection services or utility services, whether or not the tower structure is used jointly by the governmental entity and any other public or private person or entity for other and additional public or private purposes; and
4. Temporary tower structures used in conjunction with construction such as cranes, and all temporary oil and gas drilling rigs for new or existing wells.
5. Tower structures less than one hundred fifty (150) feet in height located at least six hundred (600) feet from the nearest residence on industrial property that is securely fenced and used exclusively for the private communication use of the industry owning the land and operating the business, such as for an oil and gas operating company. The tower must have a minimum setback from all property lines of two hundred (200) feet. All oil and gas industrial facilities such as material storage silos are exempted.

B. Exemption Certificate. An exemption certificate must be issued for all towers in excess of thirty (30) feet that are exempted from this Ordinance. The Planning Department must be contacted, with specific information to be provided in order to receive the certificate. There is no fee for an exemption certificate.

SECTION 5. LOCATION OF TOWERS.

A. A tower permit shall not be approved for the construction of a tower on a lot, tract or parcel of land where the construction of a tower is prohibited, expressed or implied, by duly recorded deed restrictions or covenants running with the land.

B. In a residential area, a tower permit shall not be approved for the construction or alteration of a tower structure.

C. A tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower structure is located a distance at least equal to the applicable setback area established by subsection (5f) below.

D. In an historic district, and in an area within five hundred (500) feet of an historic district, a tower permit shall not be approved for the construction or alteration of a tower structure.

E. A tower permit shall not be issued for the construction or alteration of a tower structure in a public gathering area or within 100 feet of such an area. A tower permit shall not be issued for the construction or alteration of a tower structure in a park or on a tract surrounded by a park, or within 100 feet of a park boundary.

F. A tower permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of a tower to all property boundaries is at least 110% of the height of the tower or tower structure, whichever is greater. The foregoing measurement shall be made to the nearest point on each property line within the setback area. For all tower parcels, the tower must be designed so that it cannot fall on any contiguous property.

G. If a survey is provided by the applicant for residential lots, the measurement shall instead be made as follows:

1. If a residence has been constructed on the lot, the measurement shall be from the tower structure to the nearest outside wall of the residential structure on each lot; or
2. If a residence has not been constructed on the lot, the measurement shall be from the tower structure to the center of the residential lot minus 25 feet.

H. A tower permit shall not be approved for the construction or alteration of a tower structure within 2,000 feet of any other previously approved or permitted tower structure, other than a tower structure for which a permit would not be required under this article. For purposes of this requirement, a tower is considered to be "approved" when a tower permit or a City building permit has been issued pursuant to this article and the tower structure has been constructed or any building permit issued thereunder remains in effect. The Planning Department shall develop rules and procedures for establishing precedent to the extent of conflict between two or more tower structures.

I. Property uses and distances referred to in this section shall be determined as of the date and time that the completed tower permit application is filed.

J. Availability of Suitable Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other structures or alternative technology. Substantial evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
7. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

SECTION 6. TOWER STRUCTURE.

- A. Each antenna tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the placement of a minimum of two antenna arrays. This requirement shall not apply to a camouflage tower.
- B. Towers and antennas shall meet the following requirements:
 1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color

that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

4. If any tower is located within a Beautification Corridor as defined herein, the tower shall be required to be designed and constructed with camouflage design or as a camouflage tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted or building mounted antenna/array/equipment, or designed and treated as an architectural element to blend with the existing building, designs that conceal the antenna, array and equipment, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

C. Each tower structure for which a permit is approved and issued shall be designed, engineered and constructed to include appropriate lightning conductors and grounding connection to minimize the dangers from lightning, as approved by the New Mexico State Electrical Inspector.

SECTION 7. FENCING REQUIREMENTS.

A. Security Fence.

1. The base of a tower shall be completely enclosed by a fence, wall, or barrier which limits climbing access to the tower and any supporting systems, lines, wires, buildings or other structures.

2. The fence, wall or barrier required by subsection (a) shall not be less than eight feet in height with no openings, holes or gaps larger than four inches measured in any direction. Gates and doors opening directly into the area enclosed by a fence, wall or barrier, as required by this section, shall be equipped with a lock to keep the doors or gates securely closed and locked at all times. Tower sites located within industrial yard areas with existing secure fencing of the entire yard may construct secure fencing six feet in height.

3. The requirements of this section do not apply to:

a) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower, or

b) Existing tower sites having existing adequate security fences at least six feet in height.

B. Screening fence.

1. The base of a tower, including all mechanical equipment and accessory structures, shall be screened from view of residential lots by an opaque

screening fence designed to meet minimum standards of the City Screening, Buffering and Lighting Policy and built to provide privacy with a minimum height of eight feet.

2. The screening fence may contain gates or doors allowing access to the tower and accessory structures for maintenance purposes, which shall be kept completely closed except for maintenance purposes and shall be located a minimum of 18 feet from the public right-of-way.

3. The screening fence requirement of this section does not apply to:

a) Any tower constructed or placed a distance of more than three hundred feet from all residential lots, or any tower within an industrial yard; or

b) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower, or

c) Any tower located more than fifty (50) feet from a public street right-of-way, unless within a Beautification Corridor.

C. When both sections above regarding a Security Fence and a Screening Fence are applicable, a single fence conforming to all applicable requirements of both sections may be provided.

SECTION 8. LANDSCAPING.

A tower site is not required to have landscaping unless the tower site is located within fifty (50) feet of any City street, unless within a Beautification Corridor. Towers located on public alleys are exempt unless the location is within fifty (50) feet of a public street, unless within a Beautification Corridor. If required, the landscaping shall comply with City landscaping standards as determined by the Planning Department.

SECTION 9. SIGNS AND LIGHTING.

A. No signs shall be allowed on an antenna or tower. Lettering, signs, symbols, images or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent roadway shall not be placed on or affixed to any part of a tower, antenna array or antenna, other than as required by FCC regulations regarding tower registration or other applicable law.

B. A tower or tower structure shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required by law or regulation, a design that reasonably complies with the City Screening, Buffering and Lighting Policy and minimizes disturbance to any adjacent residence(s) or public building shall be utilized.

SECTION 10. APPLICATION PROCEDURES FOR A TOWER PERMIT.

A. An application for a Tower Permit shall be submitted to the Planning Department in the time and manner prescribed by the City Planner. The applicant shall, with the filing of the completed Tower Permit application, submit payment of the appropriate Tower Permit fees established by the City Commission that are calculated to reasonably cover the expenses of administering the provisions of this article.

B. The application shall not be considered complete unless accompanied by any and all drawings, building plans, if available, descriptive data, information on the height, structure, and appearance of the tower, filing fees, ownership and/or lease information, site map showing legal boundary, tower location and street access, all applicable restrictive covenants and other pertinent data that may be required by the City Planner. Each application for a Tower Permit or for a waiver shall include a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within the residential test area of the proposed tower site. The application must be signed by both the tower owner or applicant and the real property owner.

C. In the event that any of the required documentation, data, reports or drawings contains any false or erroneous information known to the applicant, then any permit issued pursuant to that false or erroneous information shall be void with the same force and effect as if it had never been issued.

D. An application for a Tower Permit shall not be approved for a tower that is not in conformance with the regulations prescribed in this article unless a written application for a variance has been submitted to and approved by the City.

E. The City Planner shall issue a Tower Permit for location, placement or siting of a tower only if it meets the requirements of this article.

F. On or before the fortieth (40th) calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or preliminary approval of the Tower Permit. Any notice of disapproval of a Tower Permit application must include a written report explaining in detail the reasons for disapproval. Any preliminary approval shall be subject to the protest provisions of this section, and, if no protest is timely filed thereunder, shall become a final approval on the business day next following the close of the protest period. The issuance of a written notice to the applicant shall be complete upon the deposit of the properly addressed notice in the United States mail, first class postage paid.

SECTION 11. TOWER PERMIT ISSUANCE AND INDEMNIFICATION.

In accepting a Tower Permit, Permittee is required to agree to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual Commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind

and nature, including but not limited to court costs and attorney's fees, arising or alleged to have arisen out of Permittee's performance in construction and operation of the Tower, Permittee's negligent actions, provision of services or failure to render services, or any violation of this Ordinance by Permittee of the approved Tower Permit.

SECTION 12. NOTIFICATION PROCEDURES.

A. The notice requirements of this section apply only to applications for tower permits for the construction, placement or alteration of towers subject to the requirements of this article and for variances from the requirements of this article.

B. When an application for variance is not filed as part of the original application for a tower permit, the notice requirements of this section apply separately to the variance application.

C. The Applicant shall post and maintain adequate notice sign(s) on the subject tower site and on street accesses leading to the tower site for a minimum of thirty (30) calendar days beginning no later than the sixth calendar day following the date of the filing of the required completed application with the department. Sign(s) shall be posted no more than fifteen (15) feet from the public right-of-way that is used as access to the tower site. The sign shall face each public right-of-way bordering the tower site and the lettering on the sign shall be legible from the public right of way. Each sign shall be a minimum of four by four feet in size, with lettering that complies with specifications promulgated by the Planning Department. The sign locations shall be approved by the Planning Department prior to erecting the signs.

1. The sign shall contain at a minimum the items of information including the proposed site of a tower; proposed maximum height above grade of the proposed tower; applicant information, contact information where additional information concerning this project may be obtained, and the date of the Public Hearing of the Planning Board to consider the Variance.

2. If, in the opinion of the City Planner, compliance with the requirements of this section is insufficient to provide adequate notification of the pending tower permit application, the City Planner may require the applicant to post additional signs or larger signs to be erected at locations as he/she deems advisable.

D. Written notice of the filing of each application for a tower permit or an application for a variance, as provided for herein, shall be given to all property owners within the boundaries of the residential area or setback area, as applicable, as indicated by the most recently approved tax rolls. Notice to all owners of record shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the Planning Department and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential test area or setback area, as applicable.

E. Written notice shall be published at least once in a local newspaper of general circulation by the department not later than the seventh calendar day following the date of filing of the required completed application. The notice shall be published in the section of the newspaper in which other legal notices are commonly published, and shall be headed with the following words: "NOTICE OF PROPOSED TOWER CONSTRUCTION." The notice shall state the height of the tower and location of the proposed tower site, describe the intended use of the tower, the date of intended permit approval or the date of the Planning Board Hearing, if applicable, and advise that additional information may be obtained by writing or calling the Planning Department.

F. The "written notice" required above shall include at a minimum the following information on the proposed site of a tower; proposed maximum height above grade of the proposed tower; applicant information, contact information where additional information concerning this project may be obtained, and the date of the Public Hearing of the Planning Board to consider the Variance.

G. The applicant shall be responsible for paying all costs associated with the giving of notice under this article.

H. For Notification of Variance and Appeal Hearings for Small Wind Energy Towers.

1. Written notice of the filing of each application for a SWET Tower Permit shall be given to all property owners within two hundred (200) feet of the proposed tower. Notice to all owners of record shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be mailed by the Planning Department and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential area or setback area, as applicable.

2. The applicant shall submit a completed signature sheet showing the names and signatures of all owners of record within two hundred (200) feet of the property line. If an applicant cannot acquire all of the necessary signatures, then the applicant must provide evidence of certified mail notification to out of town property owners.

SECTION 13. VARIANCE REQUESTS AND PROCEDURES.

A. Variance.

1. Variances are authorized deviations from the property development standards in this Ordinance. A variance may be appropriate when strict enforcement would represent a unique, undue and unnecessary hardship on a particular property.

2. A complete application for a variance shall be submitted by a property owner, or an agent acting on behalf of the property owner, to the Planning Department, on a form prescribed by the City, along with a nonrefundable fee, which may be established from time to time by the City Commission. Under no circumstances shall a variance be proposed or considered that would authorize a use of property for a tower that is not otherwise permitted in accordance with this Ordinance. The property owner must sign the variance request.

B. Planning Department Action on Minor Variations.

The Planning Department shall have the authority to find that a variance application involves a minor variation, which shall include any proposed variation from a property development standard in this Ordinance that would be a deviation of a minor nature from such adopted standard. In any such case, the Planning Department may grant an administrative approval that does not require any further review or action by the Planning Board. Any such approval must meet the conditions for considering variances herein. If the Planning Department determines that an application does not meet these conditions and does not merit approval, then the matter may be referred to the Planning Board for review and action if requested by the applicant. The record of Planning Department review and approval of minor variations shall be available for public inspection, upon reasonable request, during normal business hours. In no case shall the Planning Department consider a variance for reducing setback distances in these Ordinances or any substantive variance from the Ordinance.

C. Planning Board Public Hearings on Variances.

For all variance applications not deemed minor by the Planning Department, the Planning Board, after due notice, shall hold a public hearing on an application for a variance. At the public hearing, the Planning Board shall consider the application, the report of the Planning Department, the relevant supporting materials and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall vote to approve, approve with conditions, table or disapprove the application for a variance.

D. Conditions for Considering Variances.

To approve an application for a variance, the Planning Board shall make an affirmative finding that each of the following criteria, without exception, is met:

1. Such variance will not alter the essential character of the neighborhood in which the property or structure is located or the property for which the variance is sought.
2. Granting the variance will not adversely affect the health, safety or welfare of the public.

3. Special circumstances must exist that are peculiar to the land and the special circumstances are not self-imposed or the result of the actions of the applicant.
4. Literal interpretation and strict enforcement of the terms and provisions of this Ordinance would cause an unnecessary and undue hardship.
5. The variance, if granted, will not be contrary to the public interest as implemented in this article.
6. Consistent with the city's police power authority over towers, the variance, if granted, will not be detrimental to the public health, safety, or welfare;
7. The variance, if granted, will not result in a violation of any other applicable ordinance, regulation or statute enforceable by the city.
8. The variance, if granted, will not result in the violation of any applicable deed restriction or zoning regulation or the location of a tower in a park.
9. Granting the variance is the minimum action that will make possible reasonable use of the land or structure and which would carry out the spirit of this Ordinance and would result in substantial justice.

E. The Planning Board may impose such conditions on a variance as are necessary to accomplish the purposes of this Ordinance, to prevent or minimize adverse impacts upon the public and neighborhoods and to ensure compatibility. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

F. If a variance is requested from the requirements of this ordinance regarding minimum distances between towers, for an antenna tower less than two thousand (2,000) feet from the nearest tower, the variance shall not be granted unless, in addition to finding that each of the conditions expressed above are satisfied, the Planning Board, after public hearing, finds that no approved tower or tower structure can accommodate the applicant's proposed antenna because the applicant has demonstrated any of the following:

1. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower will not meet the applicant's engineering requirements;
2. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not of sufficient height to meet the applicant's specific engineering requirements;

3. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower does not have sufficient structural strength and cannot reasonably be reinforced to provide sufficient structural strength;
4. The antenna array of the approved tower or tower structure located within two thousand (2,000) feet of the proposed tower would cause electromagnetic interference with the antenna array of the proposed tower, or the antenna on the proposed tower or tower structure to be located within than two thousand (2,000) feet of the approved tower would cause interference with the antenna array of the approved tower;
5. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not adaptable to accommodate additional antenna arrays or the costs required to share or adapt the approved tower or tower structure are unreasonable;
6. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not available for co-location because the owner of the approved tower or tower structure or the owner of the tract on which the approved tower or tower structure is located refuses to agree to reasonable terms necessary to accommodate the requirements for the proposed antenna; and/or
7. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not suitable for the specific requirements for the proposed antenna due to other factors as demonstrated by the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business.

SECTION 14. BUILDING PERMIT REQUIREMENT AND PLAN REVIEW.

- A. Following approval of a Tower Permit from the Planning Department, the applicant shall then apply to the City Building Official for a City Building Permit in accordance with the City of Hobbs Building Code. A Tower Permit obtained pursuant to the provisions of this article shall become invalid after the passage of ninety (90) days from the date of final approval of the tower permit unless any required building permit for the construction or alteration of the tower has been obtained before the expiration of that 90-day period.
- B. The construction, placement or alteration of a tower is subject to any plan review, permitting requirement or hearing process applicable to commercial construction in general which is required either by ordinance or by the rules of the Planning Department or Planning Board; provided that the regulation or rules are consistent with the provisions of this article.
- C. All City of Hobbs Building Permits issued for the construction of a Tower prior to January 1, 2009, where the construction of a Tower has not been started on or before

the effective date of this Ordinance, are hereby cancelled and are deemed null and void.

SECTION 15. MAINTENANCE AND INSPECTION.

A. All buildings, structures, supporting structures, wires, fences or ground areas used in connection with a tower shall be maintained in a safe condition and in good working order. All equipment or machinery required by the Building Code, the Fire Code or any other applicable regulation or ordinance for a building or structure or supporting structure or device shall be maintained in good working order. The owner or operator of a tower shall be responsible for the maintenance of the tower, supporting structures, buildings, fences and ground areas.

B. By applying for a tower permit under this article, the applicant specifically grants permission to the city, its duly authorized agents, officials and employees, to enter upon the property for which a permit or variance is sought, after first providing reasonable notice, for the purpose of making all inspections required or authorized to be made under this article, the Fire Code, the Building Code, this Code or any other applicable regulation, rule or ordinance.

SECTION 16. ABANDONMENT AND REMOVAL OF TOWERS.

A. Any privately owned tower that is out of service and not operated for a continuous period of twelve (12) months shall be determined to be abandoned by the City. The City Planner may issue a Notice of Abandonment to the tower owner that is determined to be abandoned. The Owner shall have the right to respond within 30 days from the date of the Notice of Abandonment. If sufficient information is received by the City from the Owner to demonstrate that the tower has not been abandoned, the City Planner shall cancel the Notice of Abandonment.

B. If the tower is determined to be abandoned, the tower owner shall remove same within ninety (90) days of receipt of notice from the City notifying the owner of the abandonment. If the antenna or tower is not removed within the 90 day period, the City may remove the tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the antenna or tower. The City Attorney is hereby authorized to pursue all necessary legal remedies to implement the provisions of this subsection.

SECTION 17. TOWER PARCEL REQUIREMENTS.

A. Each Tower Parcel shall be a legally created tract of land, such as a separate subdivided property or a permanent easement. All permanent easements must be recorded as a separate land area with the Lea County Clerk. The Permanent Easement or Summary Subdivision must be approved in final form and recorded and attached with the approved Tower Permit.

B. Each Tower Parcel shall have legal access in the form of direct access to a public right-of-way or permanent easement, as determined by the Planning

Department. Conditions for additional access requirements may be required for approval of a Tower Permit.

C. Deed restriction affidavit.

1. Every applicant for a tower permit or a variance shall furnish to the Planning Department an affidavit setting forth that the applicant is familiar with the title to the real property to which the requested permit appertains and that the intended use will not violate any applicable deed restrictions. The affidavit shall be accompanied with a certified copy of the instruments containing the deed restrictions, the instrument of revocation or termination, the declaratory judgment or any other recorded document containing restrictions that affect the use of the property.

2. A tower permit shall not be issued until the requested affidavit and supporting documentation has been produced. Any permit issued on the basis of erroneous documentation known to the applicant or an affidavit which contains false information known to the applicant is void with the same force and effect as if it had never been issued and without the necessity of any action by the city or any other person or agency. A tower permit shall not be issued for the construction or alteration of a tower if the use or the intended use will be in violation of the recorded deed restrictions.

D. Every applicant for a tower permit or a variance shall furnish to the Planning Department documentation that the applicant owns the Tower Parcel or has the property owner's permission to apply for a permit. If the applicant does not own the property, both the applicant and the property owner are required to sign the permit request and Tower Permit, if approved.

SECTION 18. SMALL WIND ENERGY TOWERS (SWET).

A. Permitted Locations.

1. Tower Permits for Small Wind Energy Towers (SWET) or Towers Containing Wind Turbines shall not be approved for any lot, tract or parcel of land where the construction of such a tower is prohibited, expressed or implied, by duly recorded deed restrictions or covenants running with the land.

2. A SWET permit shall not be approved for the construction of a tower unless the proposed tower is located at least fifty (50) feet from any street, not including dedicated alleys, unless within a Beautification Corridor. Such permits shall not be approved in an historic district, and within five hundred (500) feet of an historic district boundary.

3. A SWET permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of the supporting tower and the nearest property boundary is at least equal to or greater than one hundred and ten percent (110%) of the total height of the

tower and all components. The tower's total height and the calculated radius shall be verified and supported by a plat from a registered New Mexico surveyor.

B. SWET Tower Structure.

1. Each SWET tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the manufactures particular turbine system, and be certified by a New Mexico structural engineer.

2. Only monopole towers are allowed within the municipal boundaries.

3. Towers shall either maintain a galvanized steel finish or, be painted a neutral color so as to reduce visual obtrusiveness, supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the tower structure and related equipment as visually unobtrusive as possible.

C. Noise Levels Permitted (Allowable decibel levels).

With the exception of short term intervals, during utility outages and/or severe wind storms, noise levels from a tower containing a small wind energy system shall not exceed 55 dBA, measured at the property line.

D. Application, Notification and Approval Procedures.

1. An application for a SWET tower permit shall be submitted to the Planning Department in the time and manner prescribed by the City Planner. The applicant shall, with the filing of the completed application, submit payment of the appropriate permit fees established by the City Commission that are calculated to reasonably cover the expenses of administering the provisions of this article.

2. The application shall not be considered complete unless accompanied by any and all drawings, building plans, if available, restrictive covenants, descriptive data, filing fees, ownership and/or lease information, site map showing legal boundary and street access, and other pertinent data that may be required by the City Planner. Each application for a small wind energy tower permit shall include a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within one hundred fifty (150) feet of the proposed tower system.

3. On or before the fortieth (40th) calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or preliminary approval of the SWES permit. Any notice of disapproval of a SWES permit application must include a written report explaining in detail the reasons for disapproval.

4. The City Planner shall issue a SWET Tower Permit for location of a small wind energy system tower only if the proposal meets all the requirements of this article. Considerations for approval of a SWET Permit include neighborhood complaints or protests. On or before the fortieth (40th) calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or approval of the SWET permit. Any notice of disapproval of a SWES permit application must include a written report explaining in detail the reasons for disapproval. If a SWET permit is denied, the Applicant may consider an appeal pursuant to this Ordinance.

SECTION 19. AMATEUR RADIO ANTENNAS AND TOWERS.

A. Amateur radio antenna towers constructed prior to the effective date of this section are exempted from subsequent changes in these regulations by the City and may be repaired as required.

B. The City will reasonably accommodate amateur radio service communications by allowing antenna structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications. However, the City reserves the right to regulate amateur radio antennas pursuant to this Ordinance, by requiring amateur radio antennas or support structures to meet screening, setback and placement, construction and health and safety standards. The City has determined that the regulation herein constitutes the minimum practicable regulation to accomplish the City's purposes in adopting this Ordinance.

SECTION 20. CUMULATIVE EFFECT.

This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern. Without limitation, the issuance of a permit under this article shall not excuse compliance with the Building Code, including permits required thereunder.

SECTION 21. TRANSITIONAL PROVISION.

The provisions of this article shall apply only to towers constructed, placed, or altered after the effective date of this article or amendments thereto, as applicable, except for the fencing requirements of Section 7 of this Ordinance which shall be applicable to all towers subject to this article.

SECTION 22. APPEALS.

A. Appeal of Staff Decision. An appeal to the Planning Board of the staff's decision may be made if filed by the applicant in writing not more than fifteen (15) days after the date the applicant is officially notified of the staff decision. The applicant's appeal shall state all reasons for dissatisfaction with the action of the staff. The Planning Board may, by majority vote, approve, conditionally approve, or deny the site

plan approval. The recommendation of the Planning Board is final unless the applicant requests in writing, within fifteen (15) days of the Planning Board action, a final review by the City Commission.

B. Appeal of Planning Board Actions - If a decision of the Planning Board recommends denial by the City, the applicant or any aggrieved party may appeal this decision to the City Commission. Such appeals must be filed within fifteen (15) days following the date of the Planning Board action.

C. City Commission Review. The staff will schedule a hearing on the appeal before the City Commission, forward the staff recommendation and the action of the Planning Board to the Commission, and notify the applicant of the hearing date. The City Commission may, by majority vote, approve, conditionally approve, or deny the site plan. The action of the City Commission is final.

D. Appeals can be made by any aggrieved party.

1. Any property owner, association or group within the residential area or setback area, as applicable, who has reasonable grounds to believe that approval of an application for a tower permit, the granting of a variance, or the proposed construction will violate any applicable restriction, rule, regulation or ordinance may request a hearing before the commission to protest and present evidence establishing their allegations. The hearing request must state the specific grounds relied upon and be presented to the Planning Department no later than fifteen calendar days following the date of an action made by the City for a tower permit or variance, as applicable. Copies of all supporting documents, instruments, or other materials that are to be presented to the City shall accompany the hearing request and shall be available for inspection and photocopying.

2. An applicant for a tower permit that has been denied by the Planning Department has fifteen calendar days following the issuance of a notice of disapproval to file a written notice of appeal in the manner prescribed by the Planning Department. The City Planner shall waive this requirement upon a finding of good cause.

SECTION 23. ENFORCEMENT AND IMPLEMENTATION.

A. The City of Hobbs will enforce this Ordinance and may institute any appropriate action or proceedings to:

1. Prevent such unlawful Tower construction, location, erection, conversion, maintenance or use;
2. Restrain, correct or abate the violation;
3. Prevent the use of such tower, structure or land; or
4. Prevent any illegal act, conduct, business or use in or about such premises.

B. Revocation of Certificate of Occupancy if Violations Occur. The City Planner is empowered to revoke any Tower Permit if repeated violations of this Ordinance occur.

C. Annexation Variance. Following the effective date of any annexation of new territory into the City limits of Hobbs, a variance and abatement of the provisions of this Ordinance is granted to any existing tower located in the annexation area for a period of five (5) years following the effective date of annexation. This variance applies to only to new annexations after the effective date of this Ordinance.

D. Any person who violates any provision of this chapter shall be found guilty of a misdemeanor, and upon conviction in the Municipal Court of the City of Hobbs shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than five hundred dollars (\$500.00) for a first or subsequent offense and by imprisonment for not more than ninety (90) days, or both, for a second or subsequent offense.

E. All authority granted to the City Attorney and the City Planner and their designees under this article shall be exercised uniformly on behalf of and against all citizens and property of the city. Prior to the issuance of a citation under this article, the City Planner shall furnish notice to the last known address of the tower owner of the alleged violation and shall afford the owner a reasonable opportunity to cure the violation, consistent with the risks posed by the violation and the efforts that would be required to cure it.

F. City attorney authorized to file suit to abate violation. The City Attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this article. All authority granted to the City Attorney under this article shall be exercised uniformly on behalf of and against all citizens and property in the city. This authorization shall be cumulative and in addition to any other civil or criminal penalty provisions. The City, acting through the City Attorney or any other attorney representing the city, may file an action in a court of competent jurisdiction to recover damages from the owner or the agent of the owner of a tower or tower structure in an amount adequate for the city to undertake any activity necessary to bring about compliance with this article.

SECTION 24. FEES.

Tower Permit application fees are as follows:

A. Tower Permit for Wireless Communication Towers and all other towers over fifty (50) feet in height: Five Hundred Dollars (\$500.00) plus actual costs of legal notice, notice signs, publication and notification letter mailing.

B. Tower Permit for Small Wind Energy Towers and all other towers under fifty (50) feet in height: One Hundred Dollars (\$100.00) plus actual cost of legal notice, notice signs, publication and certified mailing.

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C. Appeals: Two Hundred Fifty Dollars (\$250.00) plus actual cost of legal notice, notice signs, publication and certified mailing.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2010.

CITY OF HOBBS, NEW MEXICO

By _____
GARY DON REAGAN, MAYOR

ATTEST:

By _____
JAN FLETCHER, CITY CLERK