

**TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 163: USE CONDITIONS**

163.01 LISTING	3
163.02 AUTHORITY; CONDITIONS, PROCEDURES.....	3
163.03 BED AND BREAKFAST FACILITIES.....	4
163.04 CARNIVAL, CIRCUS, AMUSEMENT PARK OR SIMILAR TEMPORARY OPEN-AIR ENTERPRISE	4
163.05 CHILD CARE; NURSERY SCHOOL.....	4
163.06 DANCE HALLS	5
163.07 FACILITIES EMITTING ODORS AND FACILITIES HANDLING EXPLOSIVES	5
163.08 HOME OCCUPATIONS.....	5
163.09 MANUFACTURED AND MOBILE HOMES	6
163.10 OUTDOOR MUSIC ESTABLISHMENTS	6
163.11 SEXUALLY ORIENTED BUSINESS.....	7
163.12 TANDEM LOT DEVELOPMENT	7
163.13 WIRELESS COMMUNICATIONS FACILITIES.....	8
163.14 REVOCATION OR CHANGE OF CONDITIONAL USE	12
163.15 TRANSIT SYSTEM SHELTERS	12
163.16 CLEAN TECHNOLOGIES.....	13
163.17-163.99 RESERVED	13

Fayetteville Code of Ordinances

CHAPTER 163: USE CONDITIONS

163.01 Listing

The use conditions set forth in this chapter are the following:

Bed and breakfast facilities
Carnival, circus, amusement park or similar temporary open-air enterprise
Child care, nursery school
Dance halls
Facilities emitting odors and facilities handling explosives
Home occupations
Manufactured homes
Outdoor music establishments
Sexually oriented businesses
Tandem lot development
Wireless communications facilities

(Code 1965, App. A., Art. 7; Ord. No. 1747, 6-29-70; Code 1991, §160.075; Ord. No. 3887, §1, 4-18-95; Ord. No. 3892, §1, 5-16-95; Ord. No. 4100, §2 (Ex. A), 7-16-98; Ord. No. 4409, 8-6-02)

163.02 Authority; Conditions, Procedures

(A) *Applications.* The requirements contained herein shall apply to all conditional uses in addition to the specific requirements set forth in each individual conditional use.

(B) *Authority; conditions.* The Planning Commission shall:

- (1) Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter;
- (2) Decide such questions as are involved in determining whether a conditional use should be granted; and
- (3) Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
- (4) Deny a conditional use when not in harmony with the purpose and intent of this chapter.

(C) *Procedures.* A conditional use shall not be granted by the Planning Commission unless and until:

- (1) A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

(2) The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

(3) The Planning Commission shall make the following written findings before a conditional use shall be issued:

- (a) That it is empowered under the section of the chapter described in the application to grant the conditional use;
- (b) That the granting of the conditional use will not adversely affect the public interest; and,

(c) The Planning Commission shall certify:

(i) Compliance with the specific rules governing individual conditional uses; and

(ii) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

- a. Ingress to and egress from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
- b. Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;
- c. Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;
- d. Utilities, with reference to locations, availability, and compatibility;
- e. Screening and buffering with reference to type, dimensions, and character;

Fayetteville Code of Ordinances

- f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
 - g. Required setbacks and other open space; and
 - h. General compatibility with adjacent properties and other property in the district.
- (D) *Approval/reconsideration.* No application for a conditional use will be considered by the Planning Commission within 12 months from the date of final disapproval of a proposed conditional use unless there is evidence of changed conditions or new circumstances which justify reconsideration submitted to the Planning Commission.
- (E) *Expiration if discontinued.* All existing conditional uses that are discontinued for more than one (1) year shall be rendered null and void, and shall not be reestablished without Planning Commission approval of a new conditional use permit.

(Code No. 1965, App. A., Art. 9 (6); Ord. No. 17847, 6-29-70; Ord. No. 2322, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.195; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A); Ord. No. 4431, §2, 11-05-02)

163.03 Bed And Breakfast Facilities

Bed and breakfast facilities shall be a temporary conditional use in all zoning districts subject to the following conditions:

- (A) *Term.* A conditional use permit for a bed and breakfast facility shall be effective for one year. After approval of a conditional use permit by the Planning Commission, the applicant must obtain a certificate of occupancy from the Planning Division and Building Safety Division before the facility begins operation. If no complaints regarding those times required to be considered by the Planning Commission prior to the issuance of a conditional use permit as described in §163.02 are received by the Planning Division from neighborhood residents, the Planning Division may issue a renewal certificate of occupancy annually, subject to the inspection requirements of subsection (G) below. If such complaints are received, the owner or operator of the bed and breakfast facility must apply to the Planning Commission for a new conditional use.
- (B) *Lot size.* Where a new structure is constructed, the lot on which the bed and breakfast facility is located must comply with the minimum lot size

for the zoning district in which the property is located.

- (C) *Parking.* One off-street parking space per guest room shall be required; provided, the Planning Commission may allow the use of on-street parking to meet this requirement upon a determination by the Planning Commission that traffic safety will not be impaired. The parking of motor vehicles may be stacked in a driveway with the owner of the bed and breakfast facility being responsible for the handling of ingress and egress.
- (D) *Length of stay.* The maximum length of stay of any one guest at a bed and breakfast facility shall be 14 days.
- (E) *Meals.* The only meal which may be served at a bed and breakfast facility shall be breakfast. Only guests of the bed and breakfast facility may be served breakfast.
- (F) *Parties/receptions.* No parties or receptions shall be allowed at a bed and breakfast facility.
- (G) *Inspection.* Before a conditional use permit is issued for a bed and breakfast facility, the building must be inspected by the fire inspector and/or building inspector to assure compliance with the Arkansas State Fire Code and to assure that no significant safety hazard exists. No conditional use permit shall be issued for a bed and breakfast facility if the building does not pass the inspection.

(Code 1991, §160.095; Ord. No. 4100, §2 (Ex. A), 6-16-98)

163.04 Carnival, Circus, Amusement Park Or Similar Temporary Open-Air Enterprise

- (A) *Location of structure.* Any carnival, circus, amusement park, tent revival, or similar temporary open-air enterprise shall be so located that no facilities are nearer than 500 feet to any occupied dwelling. Adequate off-street parking, access controls, lighting and utility connections shall be provided.
- (B) *Temporary use permit.* All such enterprises shall obtain a temporary occupancy permit which shall be valid for not more than seven (7) days and shall not be granted for more than three (3) such periods for the same location within any 90 day period.

(Code 1965, App. A., Art. 7 (6); Ord. No. 1747, 6-29-70; Code 1991, §160.081; Ord. No. 4100, §2 (Ex. A), 6-16-98)

163.05 Child Care; Nursery School

TITLE XV. UNIFIED DEVELOPMENT CODE

All such establishments shall be located on lots which:

- (A) *Minimum lot area.* Contain a minimum lot area of 250 square feet per child.
- (B) *Minimum outdoor play space.* Provide a minimum outdoor play space of 80 square feet per child, calculated on the basis of the number of children occupying the outdoor play space at one time.
- (C) *Number of children.* In an R-1 zone, a child care facility may be approved as a conditional use of no more than 10 children, or the number of children approved by the state's licensing board, whichever is fewer.

(Code 1965, App. A., Art. 7 (7); Ord. No. 1747, 6-29-70; Ord. No. 2604, 2-19-80; Code 1991, §160.082; Ord. No. 4100, §2 (Ex. A), 6-16-98)

163.06 Dance Halls

Dance halls may be allowed as conditional uses where they are permitted subject to the following conditions:

- (A) *Site plan.* A site plan showing the property lines, structures on the property, driveways and parking spaces shall be filed with the Planning Division at least 15 days before the Planning Commission meeting at which the conditional use application will be considered.
- (B) *Inspection.* Before a conditional use permit is issued for a dance hall, the building must be inspected by the fire marshal and building inspector to assure compliance with the Arkansas State Fire Code and to assure that no significant safety hazards exist. No conditional use permit shall be issued for a dance hall facility if the building does not pass inspection.

(Code 1991, §160.096; Ord. No. 3780, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5028, 6-19-07; Ord. 5271, 9-1-09)

163.07 Facilities Emitting Odors And Facilities Handling Explosives

Facilities emitting odors and facilities handling explosives shall be a conditional use in the I-2, General Industrial District subject to the following conditions:

- (A) *Notice.* Notice shall be given as set forth in §157.04(B)(5).
- (B) *Inspection.* Before a conditional use permit is issued for a facility emitting odors or handling explosives, the building must be inspected by the

fire marshal and building inspector to assure compliance with the Arkansas State Fire Code and to assure that no significant safety hazards exist. No conditional use permit shall be issued for a facility emitting odors or a facility handling explosives if the building does not pass inspection.

- (C) *LSD review.* All facilities emitting odors or handling explosives shall be subject to the large scale development review process.
- (D) *Reasonable satisfaction.* The Planning Commission shall be reasonably satisfied that the permitted use will not generate generally offensive or noxious odors, or create an unreasonable hazard to the public.

(Code 1991, §160.101; Ord. No. 3887, §2, 4-18-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord 5128, 4-15-08)

163.08 Home Occupations

In any dwelling unit in any zoning district where home occupations are permitted by right or conditional use, said home occupations shall not occupy more than 30% of the gross floor area of one floor of said dwelling unit, nor more than 300 square feet of the gross floor area, whichever is greater. For Building Regulations purposes, any non-residential use that exceeds 30% of the gross floor area of one floor of said dwelling unit or more than 300 square feet of the gross floor area of the structure shall meet all applicable building and Unified Development Code regulations and shall not be considered a home occupation. These limitations shall not apply to foster family care, or the providing of room or board as an accessory use only. Home occupations that require a conditional use permit shall be subject to the following regulations:

- (A) *Exterior alterations.* No exterior alterations of the structure may be made which are of a nonresidential nature.
- (B) *Sign/evidence of business.* No advertising, display, storage or other external evidence of business shall be permitted, except that for each dwelling unit with a permitted home occupation, one unanimated, non-illuminated home occupation sign which identifies the home occupation shall be permitted, if such sign is erected flat against a wall or door or is displayed in a window, and does not exceed three (3) square feet in area. Provided, no wall sign shall be permitted in an RSF District, except in the case of a home occupation, where it is required by the applicable licensing board, subject to proof of said requirement and the criteria above. No freestanding signs shall be permitted for home occupations in any zone.

Fayetteville Code of Ordinances

(C) *Employees.* No person may be employed other than a member of the immediate family residing on the premises.

(D) *Mechanical equipment.* No mechanical equipment may be used which creates a disturbance such as noise, dust, odor, or electrical disturbance.

(E) *Parking.* No parking spaces other than normal residential parking spaces shall be permitted.

(F) *Additional regulations.* Home occupations in an RSF District shall be subject to the following additional regulations:

(1) *Term.* No conditional use permit for a home occupation in any RSF District shall be issued for a period exceeding one year, but such a permit may be for a period shorter than one year. Upon expiration of a conditional use permit, the Zoning and Development Administrator shall have the authority to renew a conditional use permit for the same period as originally authorized, if the Zoning and Development Administrator has received no complaints or opposition from residents of the neighborhood in which the home occupation is located. The Zoning and Development Administrator may refer any proposed renewal of a conditional use permit to the Planning Commission for final decision.

(2) *Hours.* No home occupation shall be open to the public earlier than 7:30 a.m. or later than 5:30 p.m.; provided, the Planning Commission may vary the restrictions imposed hereby upon a determination that such a variance will not adversely affect the health, safety, peace, tranquility, or welfare of the neighborhood in which the home occupation is located.

(3) *Traffic.* No home occupation shall be allowed in an RSF District if the Planning Commission determines that the home occupation would generate such excessive traffic as would adversely affect the safety, peace, tranquility or welfare of the neighborhood.

(Code 1965, App. A., Art. 7 (10); Ord. No. 1747, 6-29-70; Ord. No. 2486, 11-21-78; Ord. No. 2605, 2-19-80; Code 1991, §160.085; Ord. No. 3716, §3, 6-15-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5029, 6-19-07; Ord. 5103, 1-15-08)

163.09 Manufactured And Mobile Homes

(A) *Manufactured home parks.* Manufactured home parks shall be subject to the provisions of Manufactured homes and Manufactured home

Parks, Chapter 175, and Development, Chapter 166 and shall require a conditional use permit in all RMF districts.

(1) *Accessory commercial uses.* In a manufactured home park there may be provided accessory commercial uses intended solely for the convenience of the residents of the development, provided that:

(a) All such units are operated within an enclosed structure;

(b) The gross floor area of such accessory uses shall not exceed 25 square feet for each manufactured home space in the park;

(c) No such structure shall be closer than 100 feet to any property in an R or R-O District outside the development;

(d) All accessory commercial uses shall be located in a manner that the use is surrounded by the manufactured home park and is not located on the outer boundaries of said park.

(2) *Dwelling units.* No single-family, two-family, or multi-family dwelling unit may be erected or placed upon any lot within a manufactured home park unless said lot and dwelling meets all requirements of the zoning regulations for such a dwelling in the zoning district where the manufactured home park is located.

(B) *Location of manufactured and mobile homes.*

(1) *Manufactured home parks/exceptions.* Manufactured homes are permitted in manufactured home parks and in the R-A, Residential – Agricultural zoning district.

(2) *Mobile homes.* Mobile homes are permitted in manufactured home parks.

(Code 1965, App. A., Art. 7 (12); Ord. No. 1747, 6-29-70; Ord. No. 1869, 6-19-72; Ord. No. 2320, 4-5-77; Code 1991, §160.086; Ord. No. 4100, §2 (Ex. A), 6-16-98)

163.10 Outdoor Music Establishments

Outdoor music establishments operating during May or June of 2002 may continue to operate at the same location without this conditional use even if the ownership or name of the outdoor music establishment changes in the future as long as the establishment does not terminate its outdoor music for 12 consecutive months or longer. All other outdoor music establishments may be allowed as conditional uses where they are permitted subject to the following additional conditions:

TITLE XV. UNIFIED DEVELOPMENT CODE

- (A) *Site plan.* A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse affects upon nearby residences and businesses.
- (B) *Planning Commission review.* In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.
- (C) *Fayetteville noise ordinance violation.* If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.
- (D) *Fayetteville entertainment district.* The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such establishments are reasonably compatible with adjoining neighborhoods.

(Ord. No. 4409, §2, 8-6-02; Ord. 5271, 9-1-09)

163.11 Sexually Oriented Business

- (A) *Classification.* Sexually oriented businesses are classified as follows:
 - (1) Adult arcade;
 - (2) Adult bookstores and adult video stores;
 - (3) Adult cabarets;
 - (4) Adult motion picture theaters; and
 - (5) Adult theaters.
- (B) *Conditional use.* Sexually oriented businesses shall not be allowed in any zoning district except C-2 where they may be allowed as conditional uses subject to the following:
 - (1) No sexually oriented business may be operated within 500 feet of:
 - (a) A church;

- (b) A public or private elementary, secondary, or post-secondary school, pre-school or child care facility;
 - (c) A public park.
- (2) No sexually oriented business may be operated:
 - (a) Within 200 feet of a boundary of a residential zone or any residential use;
 - (b) Within 400 feet of a residential zone or any residential use as measured by automobile travel distance from the exit of a sexually oriented business property to the property line or the residential zone or use;
 - (3) No sexually oriented business may be operated within 1,000 feet of another sexually oriented business or within 200 feet of any room, building, premises, place or establishment that sells or dispenses alcohol or beer.
 - (4) For the purpose of this subsection (1), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.

(Code 1991, §118.02; Ord. No. 4024; §3, 3-18-97; Ord. No. 4100, §2 (Ex. A), 6-16-98)

163.12 Tandem Lot Development

- (A) *Where allowed.* Tandem lot development shall be permitted for a single-family dwelling and customary accessory structure and/or dwelling unit only and shall be a conditional use in all districts where single-family dwellings are permitted. The development of one tandem lot behind another tandem lot shall be prohibited.
- (B) *Findings.* Before any conditional use for tandem lot development shall be granted, the Planning Commission shall make the following findings:
 - (1) Tandem lot development will not be inconsistent with the size and development pattern in comparison with other lots in the neighborhood and the underlying zoning district.

Fayetteville Code of Ordinances

- (2) The configuration of the property, existing surrounding development, and/or terrain of the area in which the tandem lot is proposed is such that subdivision of said area into a standard block in accordance with Development, Chapter 166 is not feasible.

(C) *Requirements.* Development of a tandem lot shall be subject to the following requirements:

- (1) The tandem lot shall have access to a public street by way of a private drive with a minimum width and specification, such as a vehicular turnaround, as determined by emergency response providers in accordance with applicable local, state, and federal codes. The tandem lot owner shall be responsible for maintaining said private drive so that emergency vehicles have safe access to the dwelling located on the lot. Parking of vehicles in the designated private drive for emergency vehicle access shall not be permitted. The tandem lot owner shall have title to, or a perpetual private easement in, the private drive. If the private drive intersects a paved street, the private drive shall be paved for a minimum distance of 18 feet from said right-of-way in accordance with the driveway design standards in Fayetteville Unified Development Code Chapter 172.
- (2) The distance between the private drive of a tandem lot and any adjacent driveway shall not be less than the minimum distance between curb cuts in Fayetteville Unified Development Code Chapter 166 Street Design and Access Management Standards.
- (3) The tandem lot, excluding the private drive, shall conform to the minimum lot width and lot area requirements of the zoning district in which it is located, unless a variance is otherwise granted by the Fayetteville Board of Adjustment.
- (4) Solid waste service for the tandem lot shall be provided by customers placing standard residential garbage carts, recycling bins, and yard waste at a designated collection point on trash day in accordance with City of Fayetteville Code of Ordinances Chapter 50.20 (B). The designated collection point shall be identified at the time the tandem lot is created, in coordination with the City Solid Waste Division. Garbage carts and recycling bins shall not be placed at the collection point more than 12 hours before or after regular trash pickup in accordance with Chapter 50.20 (B)

- (5) *Setback.* Each tandem lot shall have a minimum building setback requirement of 15 feet from all property lines unless a variance is granted by the Fayetteville Board of Adjustment.

(Ord. 5313, 4-20-10)

163.13 Wireless Communications Facilities

(A) The following general requirements shall apply to all new wireless communications facilities.

- (1) *Noise requirements.* Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generator used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.
- (2) *Compliance with federal regulations.* Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the Zoning and Development Administrator.
- (3) *Lighting and signage.*
- (a) Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.
- (b) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

(B) *New towers.* New wireless communications towers shall meet the following requirements:

- (1) *Type of towers allowed.* New towers shall be limited to monopole type structures or alternative tower structures.
- (2) *Tower or antenna height limitations.* Towers or alternative tower structures are permitted to a maximum height of 150 feet.

TITLE XV. UNIFIED DEVELOPMENT CODE

- (3) *Fall zone.* The minimum distance from the base of any tower to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a sign writing to the construction of said tower. This setback is considered a "fall zone." In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.
- (4) *Camouflaging or stealth technology for new towers.* If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees.
- (5) *Color of towers.* To the extent that any antenna extending above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.
- (6) *Information required to process new tower requests.*
- Provide a map of the geographic area that your project will serve;
 - Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application;
 - Provide a map that shows other potential stand alone locations for your facility that have been explored;
 - Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;
 - Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks, and proximity of single-family residences;
- (f) Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:
- A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;
 - Contact with all other wireless communications facilities;
 - Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location; and
 - Letter from tower owner stating why co-location is not feasible.
- (g) Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.
- (7) *Required (after condition) balloon test and crane test photographs.* The proposed tower shall be photographed from four locations taken 90° apart and 300 feet from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the city at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the Zoning and Development Administrator.
- (8) *Sight line representation.* A sight line representation shall be drawn from four points 90° apart and 100 feet from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals

Fayetteville Code of Ordinances

40 feet. The profiles shall show all intervening trees and buildings.

(9) *Structural integrity and inspections of towers.*

(a) The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.

(b) If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 30 days, the city may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).

(c) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the city. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

(10) *Security fencing and anti-climbing device.*

Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing," "High Voltage," or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provisions in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

(11) *Vegetative screening requirements.*

Wireless communications facilities shall be surrounded by buffers of dense tree growth

and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

(12) *Setbacks from property lines.* Wireless communication facilities shall meet current setbacks as required by zoning.

(C) *Co-location.*

The Zoning and Development Administrator, following an administrative review without the requirement of an issuance of conditional use permit, may approve the following antenna installation.

(1) *Locating on existing structures.* Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities/facilities, water tower, or other free-standing nonresidential structure), provided that the addition of the antenna does not add more than 20 feet of height to the original structure.

(2) *Locating on existing tower not previously approved through §163.14 of the U.D.C.* Existing towers that do not have cell antennas or arrays may not add such capability without securing a conditional use. Antennas may be replaced by similar antennas at the same height and for the same basic usage as the antennas being replaced.

(3) *Locating on existing towers previously approved through §163.14.* Additional antennas may be placed upon any tower already approved through §163.14 of the U.D.C. so long as such additional antenna would not violate any requirements of the conditional use permit or other provisions of §163.14.

(4) *For the purpose of co-location,* the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

(D) *Other requirements.*

(1) *Wireless communications facilities placed on top of buildings.* When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing

TITLE XV. UNIFIED DEVELOPMENT CODE

architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

- (2) *Wireless communications facilities placed on sides of buildings.* Antennas which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

(E) *Exemptions.*

- (1) *Personal use.* Towers for personal use which, including the height of all antenna arrays, do not extend more than 80 feet from the ground and shall meet the current setbacks as required by zoning.

- (2) *Temporary structures.* Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s" or "Cellular on Wheels."

- (3) *Existing towers.* All existing towers may be replaced with the same type and height of tower structure as currently exists. All replacement towers shall comply with §163.14(A) and (B) regarding color of towers, structural integrity and inspections of towers, security fencing and anti-climbing device, and vegetative screening requirements. All existing guyed towers shall also be subject to the following conditions:

- (a) A demolition permit shall be issued prior to a building permit being issued for the replacement tower;
- (b) The demolition permit shall expire within 90 days and shall require the existing tower to be demolished within 90 days from issuance of the building permit for the replacement tower;
- (c) The new tower shall be constructed as close as technically feasible to the existing tower;
- (d) The replacement structure may be increased in width to a maximum of 36 inches. Existing guyed towers over 36 inches shall not be increased in width with a replacement tower.

- (4) *Emergency and utility towers and antennas.* Towers and antennas under 35 feet in height used for **9-1-1** services and utility monitoring (gas, water, sewer, traffic lights, etc.).

- (5) Emergency services pole antennas and microwave dish antennas.

- (a) Mayoral determination. If sufficient information concerning gaps in vital emergency services radio coverage or microwave relay capability and the lack of any reasonable alternative is presented to the Mayor who concludes an exemption to the 150 foot height limitation or to a requirement that antennas must be within a permitted cell tower should be made to ensure public safety, the Mayor may grant the following exemptions.

- (b) Emergency services antenna. The Mayor may authorize the placement or extension of an emergency services pole antenna affixed to the top of a permitted cell phone tower as long as the top of this antenna does not exceed 155 feet above the ground, nor has a diameter larger than four inches.

- (c) Emergency services microwave dish antenna. The Mayor may authorize the placement of an emergency services microwave dish antenna on the outside of a permitted cell phone tower as long as this dish antenna does not have a diameter more than four feet.

- (F) *Municipal profits from towers.* The City of Fayetteville should actively market its own property and existing structures as suitable co-location sites. As noted above, the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair market value of the location. In cases where the company no longer needs the tower, the city may require it to be removed. Applicants can provide co-location space for city-owned antenna.

- (G) *Abandoned antennas and towers.* At such time that a licensed carrier abandons or discontinues operation of a wireless communication facility, such carrier will notify the city of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such

discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- (1) Removal of antenna, equipment shelters and security barriers from the subject property;
- (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
- (3) Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

(H) *Notification of change of ownership/operator.* Upon assignment or transfer of a conditional use permit, or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within 30 days to the Zoning and Development Administrator.

(Ord. No. 4178, §4, 8-31-99; Ord. No. 4285, 1-2-01; Ord. 4856, 4-18-06; Ord. 5423, 7-19-11)

163.14 Revocation Or Change Of Conditional Use

- (A) Upon receipt by the Planning Department of a written complaint by a Fayetteville resident that a holder of a conditional use has substantially violated or is violating any term or condition of the conditional use, the Planning Department shall investigate this complaint to determine if it is substantiated.
- (B) If the Planning and Zoning Administrator determines that the complaint is substantiated, official notification by letter outlining the violation shall be sent to the holder of the conditional use requiring immediate compliance with all conditions and terms of approval of the conditional use and noting the substantiated complaint.
- (C) If the Zoning and Development Administrator determines that the holder has violated the terms of the conditional use and failed to promptly and voluntarily correct its failures, the Zoning and Development Administrator shall refer the existing conditional use to the Planning Commission for its review. After a hearing for all interested persons, the Planning Commission may amend or add conditions to the conditional use, may revoke a conditional use for substantial violations of the existing terms and conditions of the conditional use, or may reaffirm that the

holder has complied with all terms of its conditional use.

- (D) Except in extraordinary circumstances, the Zoning and Development Administrator shall not refer any alleged violations of a specific conditional use to the Planning Commission more often than once per year.
- (E) *Periodic review.* In addition to the consideration of substantial violation provisions of (A), (B), and (C), the Planning Commission may periodically review and reconsider a conditional use permit under the following criteria:

- (1) Receipt of a petition to review an approved conditional use permit from an adjacent property owner and 50% or more of the property owners within 100 feet of the property boundary on which the conditional use permit has been granted, in a form provided by the Planning Division. The property owners signing the petition must provide the reasons for which they feel reconsideration is warranted and how they are adversely affected by the approved conditional use permit.

- (2) Upon receipt of a verified petition, the Planning Commission may review the conditional use permit and either approve the conditional use as it exists or modify the conditional use with new or altered conditions to achieve a greater degree of compatibility with adjacent properties.

- (3) Appeals from the decision of the Planning Commission under this subsection shall follow the requirements of §155 Appeals of the Unified Development Code, for conditional use permits.

- (4) The right to a periodic review of a conditional use under this subsection may only be exercised five years or longer after the conditional use permit was granted. No periodic review may be conducted more than one (1) time in a five (5) year period.

- (5) This periodic review procedure is not applicable for wireless communication facilities and vital government facilities.

(Ord. 4837, 02-21-06; Ord. 5330, 6-15-10)

163.15 Transit System Shelters

- (A) *Intent.* Transit System Operators may apply for a conditional use permit to allow for the location of bus shelters in, or adjacent to, the right of way of public streets subject to the following conditions and requirements. A variance is not required for

TITLE XV. UNIFIED DEVELOPMENT CODE

transit system shelters located outside of the right-of-way but within the building setback. Transit system benches that are not sheltered from the elements may be located at bus stops with the approval of the Director of Development Services.

(1) Requirements for locating, constructing and maintaining a transit system bus shelter are as follows;

- (a) The bus shelter conditional use permit application shall require a site plan illustrating the location and dimensions of the proposed structure, the street right of ways and any existing utility easements.
- (b) A transit system shelter or structure shall not be required to meet the building or master street plan setback, as these structures are intended to be located in a convenient area for the use by the general public awaiting transit.
- (c) The City may require that the transit system provide a provision authorizing the City to remove, without liability, any part of a facility for which a permit has been issued if there is a lawful need for the site or for access to the site.
- (d) The City may require the transit system to provide public liability insurance.
- (e) The City may require that the transit system provide and pay for any necessary or essential traffic and safety studies.

(2) The Planning Commission may issue a bus shelter conditional use permit based on the following findings;

- (a) The improvement or facility will not be located, extend onto, or intrude on the roadway or the sidewalk to such an extent as to impede the area needed for vehicular traffic or pedestrian use.
- (b) The improvement or facility will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the street or sidewalk.
- (c) The design and location of the facility includes all reasonable planning to minimize the potential for injury or interference to the public in the use of the municipal street or sidewalk.

(3) Additional bus shelter elements may be

required to be installed and maintained by the Transit System Operator. These may include but shall not be limited to:

- (a) A concrete pad on which to locate the shelter and accompanying street furniture.
 - (b) Transit system shelters located within 20 feet of an existing street or parking lot light may not have additional lighting requirements.
 - (c) An integrated or detached "wayfinding totem" to identify location and bus routes.
 - (d) Transit system street furniture/benches that are not sheltered from the elements may be located at pre-approved transit stops with the approval of the Zoning and Development Administrator. Approval of any structure shall be subject to the findings found in section (A)(2) above.
- (4) Signage. Only signage denoting the bus stop location, or language associated with city wayfinding shall be allowed on bus shelter structures.

(Ord. 4946, 11-21-06; Ord. 5252, 7-21-09)

163.16 Clean Technologies

(A) *Clean Technologies*. Clean Technologies may be allowed as a conditional use where they are permitted subject to the following conditions:

- (1) *Low volume large truck traffic*. The Planning Commission shall determine that the intended use creates no greater amount of large truck traffic than what is typically generated with similar uses within the designated zoning district, for example food and beverage delivery to restaurants and bars.
- (2) *Nuisance*. The Planning Commission shall determine that the intended use does not result in the production of offensive noise, vibration, dust, smoke, noxious odors or other such nuisance that would be detrimental to adjoining or surrounding uses.

(Ord. 5195, 11-6-08; Ord. 5271, 9-1-09)

163.17-163.99 Reserved

