



Town of Mesilla, New Mexico

THE PLANNING AND ZONING HISTORICAL APPROPRIATENESS
COMMISSION (PZHAC) WILL HOLD A PUBLIC HEARING AT
MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA
MONDAY- APRIL 21, 2025 @ 5:00PM

Hearing #1

**Adopt proposed amendments to Mesilla Town
Code 18.54-Telecommunications Wireless
Facilities.**

Hearing #2

**Adopt proposed amendments to Mesilla Town
Code 18.65-Signs.**

Hearing #3

**Adopt proposed amendments to Mesilla Town
Code Title 18 relating to Planning and Zoning
Historical Appropriateness Commission.**

All 3 of these draft ordinances will be available at Mesilla Town Hall and Mesilla website @
<https://www.mesillanm.gov/> on March 31, 2025.

NOTE

If you need any accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us on 575-524-3262 at least 48 hours prior to the meeting.

Posted on 4/1/2025 at the following locations: Town Hall - 2231 Avenida de Mesilla; Public Safety Building - 2670 Calle de Parian; Mesilla Community Center - 2251 Calle de Santiago; Shorty's Food Mart - 2290 Avenida de Mesilla; and the U.S. Post Office – 2253 Calle de Parian Mesilla

Website: www.mesillanm.gov/minutes-agendas

Town of Mesilla
Amended Ordinance Draft March 22, 2025
Trustee Nevarez
Chapter 18.54
WIRELESS TELECOMMUNICATIONS FACILITIES

LEGEND: **Black** – existing Town of Mesilla ordinance
 Red - existing Town of Mesilla ordinance edits
 Blue – new copy

Sections:

18.54.010	Authority and purpose.
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18.54.090	Application review and inspection fee.
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18.54.110	Liability insurance.
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18.54.130	Removal of a wireless telecommunications facility.
18.54.140	Required annual report.
18.54.150	Provision for waiver or variance.
18.54.160	Penalty.
18.54.170	Default and/or revocation.
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18.54.190	Prohibition against illegally excessive emissions and Radio Frequency (RF) radiation testing.
18.54.200	Factual determinations to be rendered by the Town of Mesilla.
18.54.210	General Provisions.
18.54.220	Shot Clock Periods.
18.54.230	Shot Clock tolls, extensions and reasonable delay periods.

18.54.010 Authority and Purpose.

This chapter is intended to repeal and replace all previous versions of, and amendments to, Chapter 18.54.190, Wireless Telecommunications Facilities, of the Municipal Code of the Town of Mesilla ("Municipal Code"), all of which is hereby repealed and replaced in its entirety by this chapter et seq., as of the effective date of the ordinance codified in this chapter.

No Personal Wireless Service Facility (PWSF) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this chapter.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF, the town shall require a special use permit pursuant to the provisions of this section, which shall be applied for in accord with the procedure set forth within Chapter 18.85, Variances and special use permit, unless otherwise provided herein.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a special use permit.

Each application for a special use permit under this chapter and each individual PWSF for which an application for a special use permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a distributed antenna (DAS) system.

A. Authority. The comprehensive land use ordinance is amended pursuant to the enabling provisions of Section 3-21-1 through 3-21-14, NMSA 1978, as amended.

B. Purpose **and legislative intent**. The purpose of this chapter is to establish regulations and general guidelines for the siting of wireless telecommunications facilities (WTFs), that promote the health, safety, and general welfare of the residents of the Town of Mesilla and to preserve the scenic, historical, natural, and manmade character and appearance of the town, while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other PWSF consistent with applicable federal, state and local laws and regulations.

The town seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of

any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The town also seeks to ensure that, in applying this chapter, the Town of Mesilla is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Town of Mesilla to render factual determinations consistent with both the provisions set forth herein below and the requirements of the Federal Telecommunications Act of 1996 (TCA) when rendering decisions upon such applications.

To achieve the objectives stated herein, the town seeks to employ the “general authority” preserved to it under 47 U.S.C. § 332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the town, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsections of 47 U.S.C. § 332(c)(7)(B) of the TCA.

C. The goals of this chapter are to:

1. Protect residential areas and land uses from potential adverse impact of WTFs;
2. Minimize the total number of towers in the community; **give preference to newest and least intrusive technologies including but not limited to small cells and satellites.**
3. **Prioritize** ~~Strongly encourage~~ the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
4. **Require** ~~Encourage~~ users of WTFs to locate them, ~~to the extent possible,~~ in areas where the adverse impact on the community is minimal; **All studies are to be at the expense of the users, while the town will identify and approve all independent vendors.**
5. **Require** ~~Encourage~~ users of WTFs to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques **such as murals; all visual improvements are to be paid for by the WTF users.**
6. Enhance the ability of 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 engineering and careful siting of tower structures.

In furtherance of these goals and in approving sites for the location of towers and antennas, the town of Mesilla shall give due consideration to Mesilla’s master plan, its

zoning map, existing land uses and environmentally and historically sensitive areas, **maintaining the town character and including resident feedback.** [Ord. 2003-10 § 1]

Consistent with the balancing of interests which the United States Congress intended to embed with the TCA, , this chapter is intended to serve as a smart planning provision, designed to achieve the four simultaneous objectives of: (1) enabling personal wireless service providers to provide adequate personal wireless services throughout the town so that town residents can enjoy the benefits of the same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while (2) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (3) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the town's communities, residential areas, and individual homes, and (4) complying with all of the legal requirements which the TCA imposes upon the town, when the town receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

18.54.020 Definitions.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. The word "shall" is always mandatory and not merely directory. If, and to the extent that, the definitions set forth herein are inconsistent with any other definitions elsewhere within the Municipal Code, the definitions herein shall supersede any conflicting definitions set forth elsewhere within the Municipal Code, and the definitions set forth herein below shall control and apply to this chapter and all subsections herein.

"Accessory facility" or "accessory structure" means a facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.

"ACHP" means the federal Advisory Council on Historic Preservation.

"Adequate coverage," as determined by the Town of Mesilla in consultation with the town's consulting expert, means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless services the vast majority of the time, in the vast majority of the geographic locations within the town, that the success rate of using their devices exceeds 97 percent (unless building materials such as adobe or metal interfere with signal reception), and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly

traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

~~B. "Antenna" means any structure that radiates or receives radio or other communication signals.~~ "Antenna" means an apparatus designed for the purpose of emitting RF radiation, to be operated or operating from a fixed location, for the provision of personal wireless services.

"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a special use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless services facilities.

"Application" means all necessary and required documentation and evidence that an applicant must submit to receive a special use permit, building permit, or other approval for personal wireless services facilities from the town.

"Cell tower" means a free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, slim stick, lattice tower or other types of standing structures.

"CEQ" means the Council on Environmental Quality established under NEPA.

"CFR" means the Code of Federal Regulations.

~~C. "Co-location" means the physical attachment and/or placement of one communication structure upon another communication structure, and may include placing different or similar communication structures on the receiving structure.~~

"Colocation" and/or "co-locate" means to install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

"Complete application," "completed application" means an application that contains all the necessary and required information, records, evidence, reports, and/or data (including number of carrier's subscribers, and drive test maps) necessary to enable an

informed decision to be made with respect to an application. Where any information is provided, pursuant to the terms of this chapter and the town planning official or the town's expert or consultant or the Town of Mesilla, determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the town planning official, Town of Mesilla or the town's expert or consultant or the Town of Mesilla.

D- "Commercial tower" means a freestanding vertical structure that may or may not have various attachments thereto, which is intended to radiate and/or receive radio frequency signals for the purpose of providing a commercial service to the public. Commercial tower uses include, but are not limited to, cellular communications, paging stations, TV stations, AM and FM radio stations, two-way radio base stations, communication mobile service, common carrier wireless services and communications used for intra-business and inter-business purposes.

"Complex" means the entire site or facility, including all structures and equipment, located at the site.

E. "Communication structure" means any structure, including antennas and satellite service devices, or any other device which is normally used for radio, television, microwave or wireless communications. This shall include any device that is attached to a new or an existing tower, or attached to a building facade or roof or other non-communication structure, and such attachment is made to the facade or roof vertically, horizontally and/or diagonally.

DBM (dBm). DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can typically range from approximately -30 dBm to -110 dBm. The closer the number is to zero, the stronger the cell signal.

"Deployment" means the placement, construction, or substantial modification of a personal wireless services facility.

"Distributed antenna system (DAS)" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

"Effective prohibition" means a finding by the Planning, Zoning, and Historical Appropriateness Commission (PZHAC) that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the PZHAC deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services

within the town and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the town. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.

"Eleventh hour submissions" means an applicant's submission of new and/or additional materials in support of an application within 72 hours of the expiration of an applicable shot clock (as is hereinafter defined), or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town of Mesilla to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

"EIA" means the Environmental Improvement Act.

"Enure" means to serve to the use, benefit, or advantage of a person or party.

"EPA" means the United States Environmental Protection Agency.

"FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.

"Facial mount" means the physical attachment of a communication structure to a building or other noncommunication structure, which does not substantially increase the height of the building or structure. This can include attaching the structure either vertically, horizontally, or diagonally along the structure's building facade, facades, walls, roofs or other structures.

"Facility" means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

"FCC" means the Federal Communications Commission.

"General population/uncontrolled exposure limits" means the applicable radiofrequency radiation exposure limits set forth within 47 CFR 1.1310(e)(1), Table 1, Section (ii), made applicable pursuant to 47 CFR 1.1310(e)(3).

~~G. "Height," when referring to a tower or other structure, means the distance measured from the lowest adjacent ground level of the parcel of land vertically to the highest point on the tower or other structure, including the base pad and any antenna and whether~~

~~attached to the ground, the building, or other structure(s).~~ "Height" means, when referring to a tower, personal wireless service facility, or personal wireless service facility structure, the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning protection devices attached to the top of the structure.

"Historic structure" means any structure that would meet the definition of a regulated structure as defined in this chapter.

~~H. Historic Resources or Zones.~~ For the purposes of this chapter, a ~~resource or district~~ **zone** is considered historic if it is listed individually or collectively or eligible to be listed in the National Historic Landmark Register, the National Register of Historic Places or the State Register of Cultural Properties or if the resource or ~~district~~ **zone** has been identified by a governmental agency, such as the New Mexico Historic Preservation Division, as having significant value as an historic, cultural or archaeological resource.

"Illegally excessive RF radiation" or "illegally excessive radiation" means RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

"In-kind replacement" means the replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

"Macrocell" means a cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 199 feet in height.

"Maintenance" or "routine maintenance" means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

"Municipal code" means the town of Mesilla Municipal Code.

"Necessary" or "necessity" or "need" means what is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. "Necessary" or "need" does not mean what may be desired, preferred,

or the most cost-efficient approach and is not related to an applicant's specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a need or a necessity.

"NEPA" means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

"NHPA" means the National Historic Preservation Act, 54 U.S.C. § 300101 et seq, and 36 CFR Part 800 et seq.

"Node," "DAS node" means a fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

"Notice address" means an address, which is required to be provided by an applicant at the time it submits an application for a special use permit, at which the town, Town of Mesilla and/or town planning official can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this chapter, as well as any notice requirements of any other local, state and/or federal law.

"Notice of effective prohibition conditions" means a written notice which is required to be provided to the town at the time of the filing of any application, by all applicants seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, Town of Mesilla or body of the town, would constitute an "effective prohibition" within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate 47 U.S.C. § 332(c)(7)(B)(i)(II) of the TCA.

"Notice of incompleteness," "notice of incomplete application" means a written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a PWEF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting forth the reason or reasons why the application is incomplete and/or defective.

"Occupational/controlled exposure limits" means the applicable RF radiation exposure limits set forth within 47 CFR 1.1310(e)(1), Table 1, Section (i), made applicable pursuant to 47 CFR 1.1310(e)(2).

"Personal wireless service/personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. § 332(c)(7)(c)(i), and as defined therein.

⌚ "Personal (private) tower" means a freestanding vertical structure that may or may not have various attachments thereto, which is intended to radiate and/or receive RF signals for the purpose of radio communications without the intent of commercial service. Personal tower uses include, but are not limited to, television signal reception, amateur radio stations, AM and FM radio signal reception and citizen band (CB) base stations. Personal (private) towers are excluded from the C, H-C and H-R zones.

"Personal wireless service facility," "personal wireless services facility" or "PWSF" means a facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. § 332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services. Personal (private) towers are ~~excluded~~ **prohibited** from the C, H-C and H-R zones.

"Probative evidence" means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the PZHAC, as the finder-of-fact in determining whether to grant or deny applications for special use permits under this provision of the Municipal Code.

⚖ "PZHAC" means the planning, zoning and historical appropriateness commission, the body that shall review applications for WTFs and recommend action to the board of trustees, which is the governing body of the town of Mesilla.

"Repairs" means the replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

"RF" means radio frequency.

"RF radiation" means radio frequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both non-ionizing radiation and ionizing radiation.

~~K~~ "Satellite service device (SSD)" means any structure used to receive satellite programming services specifically associated with television reception from the transmission of signals from a satellite to a receiver, usually a round "dish" that can vary in size from 18 inches to 10 feet in diameter.

"Section 106 review" means a review under Section 106 of the National Historic Preservation Act.

"Setback" means for purposes of special use permit applications, a setback shall mean the distance between (1) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (2) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a special use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

"Shot clock" means the applicable period which is presumed to be a reasonable period within which the town is generally required to issue a final decision upon an application seeking special use permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA.

"Site developer" or "site developers" means individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or town upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.

"Small cell" means a fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

"Small wireless facility (SWF)" means a personal wireless service facility that meets all of the following criteria:

1. The facility does not extend the height of an existing structure to a total cumulative height of more than 50 feet, from ground level to the top of the structure and any equipment affixed thereto;
2. Each antenna associated with the deployment is no more than three cubic feet in volume;
3. All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than 28 cubic feet in volume;
4. The facility is not located in historic zones or on tribal land; and
5. The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR 1.1310(E)(1).

"Special use permit" means the official document or permit granted by the Town of Mesilla pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

"State" means the state of New Mexico.

~~A. "Alternative tower structure" means such structures as manmade trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.~~

"Stealth" or "stealth technology" means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

"Structure" means a pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

"Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

"TCA" means the Telecommunications Act of 1996, [47 U.S.C. § 332\(c\)](#).

~~L.~~ "Tower, **Telecommunications tower**" means any structure, vertical in inclination, that is designed and constructed and normally used for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. This may include television and radio transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and other freestanding towers, either for private or commercial purposes. The term includes the structure and any support thereto.

"Tolling" or "tolled" means the pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to resume running, as opposed to causing the shot clock to begin running anew.

"Town" means the Town of Mesilla.

"Undertaking" means any application for a special use permit seeking Town of Mesilla approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with [42 CFR 137.289](#) and [36 CFR 800.16](#).

~~M.~~ "Vertical structure" means any built object that is either independent of or attached to any building or other structure that is perpendicular in its direction to the nearest adjacent ground, including but not limited to flag poles, belfries, chimneys and parapet walls.

~~N.~~ "View corridors" are defined as an area identified either in the Mesilla comprehensive plan or by a federal or state agency as the location of a particular designated scenic or cultural resource or trail system and as an area from which a WTF can be seen.

~~O.~~ "Wireless telecommunications facility (WTF)" includes all equipment, buildings and structures with which a wireless communications service carrier broadcasts and receives the RF waves and all locations of said equipment or any part thereof. [Ord. 2003-10 § 2]

"Wireless carriers" or "carrier" means companies that provide personal wireless services to end-use consumers.

"Zoning appeals" means appeals made to the Town of Mesilla.

18.54.030 Applicability and exemptions.

A. 1. New Towers and Antennas. All new towers or antennas in the town of Mesilla shall be subject to these regulations, except as provided in subsections (B) and (C) of this section.

2. Amateur Radio Station Operators/Receive Only Antennas. The sections that follow shall not govern television antennas, satellite dishes and receive only antennas; provided, that the primary use of the property is not a wireless telecommunications facility (WTF) and that the antenna use is accessory to the primary use of the property. Nor shall the sections that follow govern any freestanding vertical structure or the installation of any freestanding vertical structure located in the R-1 zone that is under 30 feet in height or located in the RA zone that is under 40 feet in height or located in the RF zone that is under 50 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.

B. Pre-existing Towers or Antennas. Pre-existing towers and pre-existing antennas for which a building permit has been properly issued prior to the effective date of the ordinance codified in this chapter shall not be required to meet the requirements of this chapter, other than the requirements of MTC 18.54.040(G) and (H).

C. Public property owned or otherwise controlled by the town of Mesilla ~~shall not~~ may be exempt from the requirements of this chapter.

D. Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities. [Ord. 2003-10 § 3]

18.54.040 General standards and construction provisions.

A. Height. All structure heights shall be measured from the lowest adjacent ground level vertically to the highest point of all structures, whether attached to the ground, the building or other structure(s). The principal supporting structure for WTFs shall be permitted to exceed the height limit of the zoning district in which it is located; provided, that the setback standards in MTC 18.54.060 shall apply.

B. Lot Size. For the purposes of determining whether the installation of a tower or antenna complies with zoning development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WTF may be located on leased parcels within such lot.

C. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Mesilla irrespective of municipal and county jurisdictional boundaries.

D. Public Notice & Hearings. For purposes of this chapter, a special use permit request, a variance request or an appeal of a special use permit or variance shall require public notice in a local **publication of record which is _____** ~~general circulation within the town of Mesilla~~ and all public notification locations. **Each "notice of public hearing for new wireless facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special use permit, and the date, time, and location of the hearing.** In order that the town may notify nearby landowners, the application shall contain the names and address of all property owners of properties that are located within 1,500 feet of any property line of the lot or parcel on which the WTF is proposed to be located. This requirement is in addition to any and all notice requirements contained in the town's zoning ordinance.

Required Public Notices. The Town of Mesilla shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 18 point, the words:

NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an affidavit of mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

Hearings and public notice.

A. Public Hearings. The Town of Mesilla shall conduct a public hearing upon each special use permit application, consistent with the procedures in Section 18.36.060, except the Town of Mesilla shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the town and the Town of Mesilla under the requirements of the TCA.

Before the date scheduled for the public hearing, the Town of Mesilla shall cause to be published a "notice of public hearing for new wireless facility."

B. E. Minimum Wind Speed. All structures shall be constructed and installed to manufacture's specification and constructed to withstand a minimum 90-mile-per-hour wind, or the minimum wind speed as required by the town's adopted Uniform Building Code, as amended, whichever wind speed is greater.

C. F. Building Codes. Structures shall be permitted and constructed to meet current town of Mesilla building code requirements, including the Uniform Building Code, and required setback provisions as prescribed for the zoning districts in which such structures are permitted. If any setback or buffer yard as prescribed in the town's zoning code requires a greater distance than required in this chapter, the greater setback shall apply.

D. G. Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that the tower is maintained in compliance with the standards contained in applicable federal, state and town building codes. If, upon inspection, the town of Mesilla concludes that a tower fails to comply with such codes and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to do so shall constitute grounds for the removal of the tower or antenna at the owner's expense.

E. H. State or Federal Requirements. All towers shall meet or exceed current standards and regulations of the Federal Communication Commission (FCC), the Federal Aviation Administration (FAA) and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of the revisions, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

F. I. Business Registration Required. Business registrations are required for each WTF for commercial purposes located within the town limits of Mesilla, regardless of whether said structure is freestanding, co-located, facial or roof mounted, or part of an integrated structure or improvement. Business registrations are renewable annually.

G. J. Inventory of Existing Sites. Each applicant for a WTF shall provide to the PZHAC an inventory of existing towers, antennas or sites approved for towers or antennas that are located within the service area proposed to be served by the new tower, including specific information about the location, height and design, and the owners/operators of

each tower or site and indicate the distance of such towers, antennas or sites from the proposed WTF.

H. ~~K~~ Aesthetics. Towers and antennas shall meet the following aesthetic 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. The design of the buildings and related structures at a WTF site shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and any 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.

I. ~~L~~ Lighting. Only security lighting not to exceed 12 feet in height or lighting required by a state and/or federal agency is allowed, providing the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises.

J. ~~M~~ Signs. No signs shall be allowed on an antenna or tower other than signage required by the FCC or other regulatory agency and signs that warn of safety hazards or prohibit access; provided, that such signs are no larger than one square foot and are reviewed by town staff and approved by the board of trustees.

K. ~~N~~ Building and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply fully with the town's building codes.

L. ~~O~~ Health Issues. Every wireless telecommunications facility shall meet health and safety standards for electromagnetic field emissions as established by the Federal Communications Commission or any successor thereof, and any other federal or state agency.

M. ~~P~~ View Corridors. No wireless communication tower or facility is allowed within ~~660~~ 1320 feet (or one-eighth **quarter of a** mile) of the outer edge of the right-of-way of any designated view corridor, **to include but not limited to the Butterfield Trail, view of the Organ Mountains – Desert Peaks National Monument, Picacho Peak.**

N. ~~Q~~ Historic Preservation Review. No WTF that may affect archaeological, historic or cultural properties that are listed or are eligible for listing on the National Register of Historic Places shall be constructed, installed or modified without first obtaining Historic Preservation Division 106 Review as per 36 CFR part 800 in accordance with the National Historic Preservation Act of 1966, as amended. A project comment review letter

from the State of New Mexico Historic Preservation Division, Office of Cultural Affairs shall be filed with the town at the time of filing a business registration application and/or special use permit application.

~~O R.~~ Visual Models. Visual models shall be required of all applicants for a WTF as follows:

1. Photographic Simulation. The applicant shall be required to provide a photographic simulation with the image of a tower or other proposed communications structure and all structures associated with the site superimposed over the existing view to provide a sense of the visual impact expected from the proposed WTF.

2. Site-Located Height Model ~~or Balloon Test~~. A height model, which shall be a pole or other object erected or floated at the site to the requested height of the proposed WTF, may be required as a condition of the special use permit. If required, the following conditions shall apply:

a. The applicant shall submit photographs of the height model ~~or balloon test~~ from neighboring residential areas and public roadways and other locations around the town as specified by the PZHAC within three miles from which the height model or balloon is visible. The height model or balloon shall be a minimum of three feet in diameter.

b. Photographs of the height model ~~or balloon test~~ shall be submitted no less than 10 days prior to the scheduled public hearing date for the special use permit.

c. Height models ~~or balloon tests~~ shall be erected for a minimum of three days no less than 15 days prior to the scheduled public hearing date for the special use permits. The legal notice for the special use permit shall state the dates and location during which the height model ~~or balloon test~~ will be erected.

d. The PZHAC may waive this requirement if it is determined that the photographic simulation is adequate to address any and all visual impact issues.

e. Town staff shall issue administratively any permit necessary for a temporary height model required for staff and public inspection purposes.

~~O S.~~ All utilities at a WTF site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the town of Mesilla, the National Electrical Safety Code and the National Electrical Code where appropriate.

~~P T.~~ All applicants for a WTF or any modification to an existing WTF should develop their plans to allow reasonable requests from the town to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities at no cost to the town. Provisions for adequate advance notice

regarding town access to the WTF for routine activities will be arranged with the applicant. [Ord. 2003-10 § 4]

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility:

Q. Small Wireless Facilities. Small wireless facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and nonwooden poles shall conform to the following criteria:

1. Proposed antenna and related equipment shall meet:

a. Design standards which the town may maintain and update as needed; provided, that the town makes its design standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the town; and

b. National Electric Safety Code (NESC) standards; and

c. National Electrical Code (NEC) standards.

2. Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

3. Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible if allowed by the pole owner. The number of conduits shall be minimized to the extent technically feasible. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWFs attached to pre-existing wooden and nonwooden poles, but shall additionally conform to the following criteria:

- a. The town prefers that wireless providers and site developers install SWFs on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.
- b. To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.
- c. The height of replacement poles and new poles shall conform with the height limitations applicable to the zone within which the applicant seeks to install their proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

R. Telecommunications Towers and Personal Wireless Service Facilities Which Do Not Meet the Definition of a Small Wireless Facility. The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

1. The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.
2. Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.
3. Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
4. Notwithstanding the height restrictions listed elsewhere in this chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.

5. Accessory Structures.

a. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Town of Mesilla to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.

b. Accessory structures shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

c. No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following: a sign of no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the town and/or the Municipal Code.

6. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

7. Existing Vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this chapter prior to the approval of the special use permit use.

8. Screening.

a. Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.

b. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town of Mesilla.

c. The applicant shall demonstrate to the approving Town of Mesilla that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

9. Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers is necessary. No exterior lighting shall spill from the site in an unnecessary manner.

10. Access.

a. Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

b. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

11. Parking. Parking shall be provided to assure adequate emergency and service access. The Town of Mesilla shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

12. Fencing. The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Town of Mesilla. The Town of Mesilla may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

18.54.050 Co-location.

To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location or shared use of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:

A. The antenna complies with all applicable FCC and FAA regulations.

B. A tower which is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, unless the PZHAC allows reconstruction as a monopole.

C. Height. An existing tower may be modified or rebuilt to a taller height not to exceed 30 feet over the tower's existing height, to accommodate the co-location of an additional antenna. This height change may occur only one time per communication tower and the additional height cannot require an additional distance separation as set forth in MTC [18.54.070](#)(D). The tower's premodification height shall be used to calculate such distance separations.

D. On-Site Location. A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved on-site within 50 feet of its existing location. If the tower is moved to accommodate co-location, only one tower may remain on the site. A relocated on-site tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to MTC [18.54.070](#)(D). [Ord. 2003-10 § 5]

18.54.060 Heights, placement provisions and setbacks.

A. Heights.

Zone	Towers	Other Communication Structures
HR, HC	Expressly prohibited	Prohibited
Towers and other communication structures are also expressly prohibited 1320 feet within 660 feet (or 1/48 mile) of the boundary of an historic resource or district or view corridor.		
C	Expressly prohibited	Must be concealed as per subsection (D) of this section
R-1	Up to 65 feet For noncommercial use only	Up to 65 feet For noncommercial use only
RA	Up to 65 feet For noncommercial use only	Up to 65 feet For noncommercial use only
RF	Up to 65 feet for a single user Up to 75 feet for three users Up to 100 feet for four or more users	See MTC 18.54.030 (B)

The applicant shall submit documentation justifying the total height of any tower or other communication structure, facility, and/or antenna and the basis therefore. Such documentation will be analyzed, to the extent practicable, in the context of the justification of the height needed to provide service primarily and essentially within the town boundaries and the immediately surrounding area, to the extent practicable.

No tower, including allowing for all attachments, shall exceed that height which shall permit operations without required artificial lighting of any kind in accordance with municipal, county, state and/or federal law, ordinance, code, rule or regulation.

Height restrictions.

1. **Small Wireless Facilities.** Personal wireless service facilities which meet the definition of a small wireless facility shall not exceed a maximum height of 60 feet above ground elevation in the public use, and residential single-family zones, and shall not exceed a maximum height of 45 feet within all other zoning zones.

2. **Non-small Wireless Facilities.** Personal wireless service facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of 75 feet above ground elevation in the public use in all zones.

B. The following placement and setback requirements shall apply to all freestanding vertical structures under 50 feet for which a special use permit is not required:

1. Towers and other freestanding vertical structures and satellite service devices in the R-1, RA and RF zones shall be placed within the primary buildable area for the lot's zone and must be to the side and/or rear of any and all residential dwelling structures, including houses, apartments, duplexes, etc.

2. Structures shall be set back from any adjoining property line one foot for each one foot in height plus 10 percent of the total height of the structure.

3. Additional setbacks may be required in both this section and in the following section to meet the distance equal to at least the potential fall radius of a support structure as certified by a licensed New Mexico professional engineer or to preserve the privacy and integrity of adjoining residential, public or historic properties.

4. Guy wires used to secure and steady a tower and accessory buildings shall conform to the minimum setback requirements for the lot's zone.

C. The following placement and setback requirements shall apply to all towers for which a special use permit is required:

1. Towers and other communication structures for which a special use permit is required shall be placed within the primary buildable area for the lot's zone and must be to the side and/or rear of the primary building structure. If the antenna, communication structure or satellite service device is the primary structure, then such structure shall be within the primary buildable area, including all equipment buildings.

2. Required tower or other antenna support setbacks from all property lines:

a. Up to ~~65~~ 75 feet, the setback is one foot for each foot of height, plus 10 percent of the total height of the structure;

~~b. From 75 to 125 feet, the setback is two feet for each foot of height;~~

~~c. From 126 to 150 feet, the setback is three feet for each foot of height.~~

3. When a proposed tower will be located in or adjacent to a district which permits residential use, or where a residential structure is located, the tower shall also be set back from the nearest residential use on the same or any adjacent parcel, a distance 20 percent greater than its total height.

4. A special use permit shall be required for WTFs proposed to be constructed on lots adjacent to property zoned R-1 or RA.

D. Concealed wireless communications facilities are permitted within the C zone providing the following conditions are met:

1. The structure is architecturally integrated with existing buildings, structures and landscaping, including height, color, style, massing, placement, design and shape and is not readily visible as a wireless telecommunications facility. No setback shall be required for an architecturally integrated WTF less than 24 feet high.

2. The structure is located in areas where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.

3. The structure is located on existing vertical infrastructure, such as utility poles and public utility structures, if possible.

4. The structure complies with all other aesthetic requirements as set forth in this chapter.

5. The structure is approved through the special use permit process. [Ord. 2003-10 § 6]

Setback requirements.

A. Small Wireless Facilities.

1. The minimum setback from any residential dwelling or structure shall be 1650 feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure.

2. Within all residentially zoned and other zones, all small wireless facilities shall be set back a minimum of 1650 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being collocated upon a pre-existing personal wireless service facility.

B. Cell Towers and All Personal Wireless Service Facilities That Do Not Meet the Definition of a Small Wireless Facility.

1. Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.

2. Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning zone where located, in the schedules of regulations for nonresidential and residential zones of this chapter, and such additional land if necessary to meet the setback requirements of this section.

3. Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to 110 percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning zones.

4. In addition to the above required setbacks from property lines, cell towers and personal wireless service facilities that do not meet the definition of a small

wireless facility, shall maintain a minimum setback of 1650 feet from any residential dwelling or structure in all zones.

18.54.070 Special use permits.

A. General. The following provisions shall govern the issuance of special use permits for the siting of a WTF, including but not limited to the construction of a tower and the placement of an antenna, by the board of trustees, the governing body of the town of Mesilla.

1. Applications for special use permits under this section shall be made to the Town of Mesilla, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

2. If the town planning official determines that the application is defective or incomplete, they shall promptly mail a notice of incompleteness to the applicant, to toll the applicable shot clock, to ensure that the town is afforded sufficient time to review and determine each respective application.

3. The absence of any one of which listed herein below, shall render the respective application incomplete:

A. Special Use Permit and Site Plan Applications. Completed applications for a special use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

B. Filing Fees. The appropriate filing fees then being charged by the town for special use permit applications and other related applications.

C. A "Notice Address." A "notice address," that being a specific address to which the town, Town of Mesilla, and/or town planning official may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, -, and/or their attorney, to comply with any requirement under this section as well as any local, state and/or federal law.

D. Proof of Authorization for Site Occupancy. Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, they shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to

which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to colocate new equipment into an existing facility, it shall provide a copy of its written colocation agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

E. A Drawn-to-Scale Depiction. The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the town planning official to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

F. Site Plan. The applicant shall submit a site plan and site plan application. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

G. Engineer's Report. To the extent that an application proposes the colocation of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

H. Environmental Assessment Form. A completed environmental assessment form (EAF) and a completed visual EAF addendum.

I. Visual Impact Analysis. A completed visual impact analysis, which, at a minimum, shall include the following:

1. Small Wireless Facilities. For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the

perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

2. Telecommunications Towers and Personal Wireless Service Facilities Which Do Not Meet the Definition of a Small Wireless Facility. For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

a. A "zone of visibility map" to determine locations from where the new facility will be seen.

b. A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its

base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

J. **Alternative Site Analysis.** A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific wireless carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a special use permit.

If, and to the extent that, an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

1. An inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
2. A map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
3. An outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.
4. A demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

K. **FCC Compliance Report.** An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible general population exposure limits, or alternatively, the occupational exposure limits, where applicable.

Such FCC compliance report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (1) whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the general population exposure limits or the occupational exposure limits. If the applicant and/or their engineer are asserting that the occupational exposure limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (2) the exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

L. FCC License. A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the town.

M. Effective Prohibition Claims. The town is aware that applicants seeking approvals for the installation of new wireless facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications. In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The town is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly 10,000 miles through nine states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine states.

At the conclusion of such testing, the FCC staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2 percent accuracy to a maximum of 64.3 percent accuracy.

As a result, the FCC staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC staff's 66-page report is made a part of this chapter by reference as Appendix 1. The town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town of Mesilla to render determinations upon applications for new wireless facilities consistent with both the requirements of this chapter and the statutory requirements of the TCA.

Consistent with same, if, at the time of filing an application under this chapter, an applicant intends to assert before the Town of Mesilla or the town that: (1) an identified wireless carrier suffers from a significant gap in its personal wireless services within the town, (2) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (3) that under the circumstances pertaining to the application, a denial of the application by the Town of Mesilla would constitute an "effective prohibition" under 47 U.S.C. § 332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled: "Notice of Effective Prohibition Conditions."

If an applicant files a notice of effective prohibition conditions, then the applicant shall be required to submit probative evidence to enable the Town of Mesilla to reasonably determine: (1) whether or not the conditions alleged by the respective applicant exist, (2) whether there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the town, (3) the geographic locations of any such gaps, and (4) the geographic boundaries of such gaps, to enable the Town of Mesilla to determine whether granting the respective application would be consistent with the requirements of this chapter and the legislative intent behind same, and whether or not federal law would require the Town of Mesilla to grant the respective application, even if it would otherwise violate the town's Municipal Code, including, but not limited to, this chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

1. Drive Test Data and Maps. If, and to the extent that, an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency

at which the carrier provides personal wireless services. The applicant shall provide the town and the Town of Mesilla with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- a. The date and time for the test or tests;
- b. The location, in longitude and latitude, of each point at which signal strength was recorded; and
- c. Each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers;
- d. The applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three signal strength coverage maps reflecting actual signal strengths in three DBM bins, the first being at the alleged minimum signal strength, and two additional three DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of -95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at -95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

2. Denial of Service and/or Dropped Call Records. If and to the extent that an applicant claims that a specific wireless carrier suffers from a capatown deficiency, or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and

conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

N. Estimate for Cost of Removal of Facility. A written estimate for the cost of the decommissioning, removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein.

O. Property Owner Consent and Liability Acknowledgment. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its special use permit application and acknowledge the potential landowner's responsibility.

4.-2- Applications for special use permits under this section shall be subject to the procedures and requirements of the zoning regulations and standards, MTC [18.55.010](#), [18.85.080](#), [18.85.100](#); and Chapter [18.85](#) MTC, Article III; except as modified in this chapter, with the planning, zoning and historical appropriateness commission (PZHAC) acting as a recommending body and the board of trustees acting as the granting body.

5. 2- The PZHAC, in recommending a special use permit to the board of trustees, and the board of trustees, in granting a special use permit, may impose conditions and limitations to the extent the commission and board conclude such conditions and limitations are necessary to minimize any adverse effect of the proposed WTF on adjoining properties.

6. 3. Any engineering information submitted by the applicant, whether civil, mechanical, or electrical, shall be certified by a professional engineer licensed in the state of New Mexico.

7. 4- An applicant for a special use permit shall submit the information described below in this section and a nonrefundable filing fee as described in the zoning regulations and standards, MTC [18.85.140\(A\)](#).

P. B- Wireless Telecommunications Facilities (WTFs) – Information Required. In addition to any information required for applications for special use permits pursuant to MTC [18.55.010](#) and Chapter [18.85](#) MTC, Article II, of the zoning

regulations and standards, applicants for a special use permit for a WTF shall submit the following information:

1. A special use permit and scaled site plan, ~~clearly~~ SUP applications shall identify all ???? indicating the location, type and height of the proposed tower; on-site land uses and zoning, adjacent land uses and zoning, including, when adjacent to the county or another municipality; adjacent roadways; proposed means of access; setbacks from property lines; elevation drawings of the proposed tower and any other structures; topography; parking and other information deemed by town staff to be necessary to assess compliance with this chapter.
2. Legal description of the property upon which or upon part of which the applicant proposed to located the WTF and a list of all mortgages on the property at the time of application.
3. The setback distance between the proposed tower and the nearest residential unit or the nearest platted or unplatted residentially zoned properties.
4. The separation distance from other existing towers within 1,000 feet of the proposed tower. The applicant shall also identify the type of construction of such existing tower(s) and their owner(s)/operator(s).
5. The landscape screening plan showing specific landscape materials.
6. Method of providing security, fencing or wall, and finished color and, if applicable, the method of camouflage and illumination.
7. A description of compliance with MTC 18.54.040(E) to (H) and (K) to (R) and all applicable federal, state and local laws.
8. A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.
9. Identification of the entities providing the network connections for the proposed tower and other cellular sites owned or operated by the applicant in the town of Mesilla.
10. A statement as to the projected number and locations of any WTFs proposed to be built in the town of Mesilla within two years of the date of

the current application and that are part of the same system as the WTF for which a special use permit is currently being sought.

11. The applicant shall submit documentation of the legal right to install the WTF, including ingress and egress easements, and shall include original signature(s) of such land owner(s) and a copy of the property deed, plus a full copy of any proposed lease agreement with subject property owner(s).

12. A copy of the tax map and parcel identification code number of the subject property as shown in the records of the Dona Ana County assessor's office.

13. A site plan showing all property within 1,500 feet of the perimeter of the proposed property that will house the proposed WTF. A list of the owners of each of the affected properties and their mailing addresses as shown by the Dona Ana County assessor's office.

14. A copy of the FCC license for the WTF and a notarized statement from the owner or operator of the WTF attesting that the WTF complies with current FCC regulations.

15. Project comment review letter from the State of New Mexico Historic Preservation Division and any other letters of clearance required pursuant to the National Historic Preservation Act 1996, as amended.

16. Photo simulations and, if required, the photographic results of the site-located height model ~~or balloon test~~.

17. Propagation maps showing the cellular coverage that the site will provide.

18. A written report indicating the applicant's efforts to secure shared use or co-location with existing towers, other structures or alternative technology or buildings within the town of Mesilla and neighboring areas within the town of Las Cruces and Dona Ana County. Copies of written requests and responses for shared use shall be provided to the PZHAC along with the application for a special use permit.

Q. G. Demonstration of Need. An applicant shall submit to the PZHAC documentation that demonstrates the need for the WTF to provide service within the geographical area proposed to be serviced by such WTF. The documentation shall include propagation

studies of the proposed site and all adjoining planned, proposed, in-service or existing sites.

R. D- Separation Distances. When a second tower is proposed near an existing tower, there shall be a minimum separation distance between them of not less than the combined height of the existing tower and the proposed tower, which distance shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan of the proposed tower. The same separation distance shall apply when more than one tower is proposed at one location.

S. E- Security Fencing. Towers shall be enclosed by a security fence or wall not less than six feet in height which is equipped with an appropriate anti-climbing device other than barbed or other cutting wire.

T. F- Screening. WTFs shall be landscaped with a buffer of plant material that effectively screens the view of the tower compound. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

U. G- Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer. [Ord. 2003-10 § 7]

18.54.080 Buildings or other equipment storage.

The following requirements shall apply to the buildings and all other equipment storage space associated with a WTF requiring a special use permit:

A. The related unmanned equipment structure or cabinet, being part of the WTF, used in association with an antenna(s) located on a tower shall not contain more than 120 square feet of gross floor areas or be more than 10 feet in height and shall be located in accordance with the minimum yard requirements of the zone in which it is located.

B. Such equipment structures or cabinets shall comply with all applicable building codes.

C. Security lighting, if required, shall not exceed 12 feet in height and the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises. [Ord. 2003-10 § 8]

18.54.090

Application review and inspection fee.

A. Initial Review. Upon their acceptance of an application that appears to be complete, the town planning official shall transmit the application to the Town of Mesilla for initial review.

The Town of Mesilla shall then conduct an initial review to consider whether or not to establish itself as lead agency pursuant to NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Town of Mesilla will be required to be made after the Town of Mesilla has declared itself to serve as lead agency and during the process of the planning Town of Mesilla considering a NEPA determination of environmental significance. That consideration of granting any required variances by the Town of Mesilla is done concurrently with the Town of Mesilla's review and consideration of special use permit and site plan approval.

The Town of Mesilla shall then conduct a public hearing upon each application, and render its determinations in accord with Sections 18.54.040 and shall ultimately determine whether or not to grant each applicant a special use permit and/or site plan approval.

An application review and engineering inspection fee of 15 percent of the total estimated cost of the installation of the tower and antenna(s) shall be paid by the applicant upon filing of an application for a special use permit with the town. This fee shall be deposited in an escrow account and it shall be used to reimburse the town for all reasonable costs of expert services for evaluation and consultation to the town in connection with the review of the application and the construction of the site once the WTF is permitted. In the event the amount held in escrow by the town is more than the amount of the actual invoicing for consultant and expert services for work performed through the date of issuance of a certificate of compliance for the project, the remaining balance shall be promptly refunded to the applicant. In the event the amount is less than the amount of actual invoicing, the town shall rely on MTC 18.85.140(B) of the zoning regulations and standards, which permits charging additional review fees. [Ord. 2003-10 § 9]

~~18.54.090~~ Application review and inspection; **plus independent consultant/vendors/experts fees deposit, or Dona Ana County ESRI location system, which are contracted by the Town of Mesilla and amount determined by Town of Mesilla.**

Application requirements.

Retention of consultants.

A. Use of Consultants. Where deemed reasonably necessary by the Town of Mesilla and/or the town, the Town of Mesilla and/or the town may retain the services of independent professional consultants to assist the Town of Mesilla in carrying out its

duties in deciding special use permit applications for personal wireless service facilities. Where the Town of Mesilla uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the town for such services. In no event shall that responsibility be greater than the actual cost to the town of such engineering, legal, or other consulting services.

B. Advance Deposits for Consultant Costs. The town and/or Town of Mesilla may require advance periodic monetary deposits held by the town on account of the applicant or landowner to secure the reimbursement of the town's consultant expenses. The town council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After audit and approval of itemized vouchers by the town comptroller as to reasonableness and necessity of the consultant charges, the town may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the town shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between town officers or employees and the town's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the town to pay current or anticipated vouchers, the town shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the town council. Consultants shall undertake no review on any matter scheduled before the Town of Mesilla until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements. This is in addition to 15% application fee.

C. Reasonable Limit Upon Consultant Expenses. A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing Town of Mesillas in connection with comparable applications for land use or development.

The town may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to

assist the Town of Mesilla in: (1) making factual determinations consistent with the goals of protecting or promoting the health, safety or welfare of the town or its residents; (2) assessing potential adverse environmental impacts such as those identified within a SEPA process; (3) assessing potential adverse impacts to historic properties, structures and/or zones, and/or (4) assessing and determining factual issues relevant to effective prohibition claims, as addressed herein, to enable the Town of Mesilla to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

D. Audits Upon the Request of an Applicant. Upon request of the applicant or landowner, the town council shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the town in connection with the review and consideration of a special use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the town council on reasonable advance notice.

E. Liability for Consultant Expenses. For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the town for funds expended to compensate services rendered to the town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the town for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the town to be due. In the event of failure to reimburse the town for such fees, the following shall apply:

The town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) in such actions shall be responsible for the reasonable and necessary attorney's fees expended by the town in prosecuting such action.

Alternatively, and at the sole discretion of the town, a default in reimbursement of such engineering, legal and consulting fees expended by the town shall be remedied by charging such sums against the real property that is the subject of the special use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the town. Such charges shall be levied and collected simultaneously and in the same manner as town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the town

council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

18.54.100

Performance security bond.

A. The applicant and the owner of record of any proposed WTF property site shall, at its cost and expense, be jointly required to execute and file with the town a bond or other form of security acceptable to the town as to type of security and the form and manner of execution, in the amount of at least \$75,000 to assure the faithful performance of the terms and conditions of this chapter and the conditions of any special use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect through the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit. [Ord. 2003-10 § 10]

B. Bond Requirement. At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town of Mesilla's engineer shall review this estimate.

Upon receiving a special use permit approval from the Town of Mesilla, and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the town a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within 30 days of the approval date and before any installation or construction begins.

Replacement bonds must be provided 90 days prior to the expiration of any previous bond.

At any time the town has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the facility, upon request by the town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

18.54.110 Liability insurance.

A. A holder of a special use permit for a WTF shall secure and at all times maintain public liability insurance for personal injuries, death and property damage and umbrella insurance coverage for the duration of the special use permit in the following amounts:

1. Commercial general liability covering personal injuries, death and property damage and automobile coverage each at \$1,000,000 per occurrence and \$2,000,000 aggregate and the commercial liability policy shall specifically include the town as an additional named insured.

2. Workers' compensation at not less than minimum statutory limits.

B. The insurance policies shall be issued by an insurance agent of an insurance company licensed to do business in the state of New Mexico with a Best's rating of at least A and shall contain an endorsement obligating the insurance company to furnish the town with at least 30 days prior written notice in advance of the cancellation of the insurance. Renewal or replacement policies or certificates shall be delivered to the town at least 15 days before the expiration of the insurance that the policies are to renew or replace.

C. The holder of a special use permit for a WTF shall deliver to the town a copy of each of the policies or certificates representing the insurance in the required amounts before construction of the permitted WTF is initiated. [Ord. 2003-10 § 11]

18.54.120 Indemnification.

Any application for a WTF that is proposed for town property pursuant to this chapter shall contain an indemnification provision. Such indemnification provision shall require the applicant, to the extent permitted by the law, to at all times indemnify and hold harmless the town of Mesilla from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees, which might arise out of or be caused by the performance of work in the location, construction, modification, use, maintenance, repair, replacement or removal of the WTF, which causes contract bodily injury, illness or death or any other injury or for property damage caused by the negligent act or omission of the owner/operator/applicant of the WTF. [Ord. 2003-10 § 12]

18.54.130 Removal of a wireless telecommunications facility.

A. Under the following circumstances, the town may determine that the health, welfare and safety of the town residents warrant and require the removal of a WTF:

1. A permitted WTF has not been operated as a WTF for a continuous period of six months and is therefore considered to have been abandoned;

2. A permitted WTF falls into such a state of disrepair that it creates a health or safety hazard as determined by town staff;

3. A WTF has been located, constructed or modified without first obtaining, or in a manner not authorized by, the required special use permit.

B. If the town makes such a determination as appears in subsection (A) of this section, then the town shall provide the owner of such WTF with a notice of abandonment and an order to remove the same within 90 days of receipt of the notice of abandonment from the town.

C. Failure by the owner or his successors or assigns to remove the abandoned WTF and all associated structures and facilities from the site and to restore the site to as close to its original conditions as is possible or to take substantial steps toward removing the abandoned WTF within said 90 days shall be grounds to remove the WTF at the owner's expense. [Ord. 2003-10 § 13]

D. Removal of Abandoned Facilities. Any personal wireless service facility that is not operated or used for a continuous period of 6 consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with the facility.

If the facility is not removed within 90 days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

18.54.140 Required annual report.

In conjunction with the annual renewal of their business registration, the owner of each WTF shall submit a report to the Town of Mesilla, Town Clerk, PO Box 10, Mesilla, NM 88046, stating the current user status of the tower and providing proof of renewal of the insurance policies or certificates required pursuant to MTC [18.54.110](#). [Ord. 2003-10 § 14]

18.54.150 Provision for waiver or variance.

A. An administrative waiver of up to a 10 percent difference, except for height, or a variance for over a 10 percent difference, except for height, may be requested by the applicant at the time of filing for the special use permit. The conditions regulating the process for waiver and variance requests are set forth in Chapter [18.85](#) MTC, Article I, and shall apply in this chapter.

B. In instances where strict compliance with this chapter would result in a violation of a clearly established, applicable provision of the Telecommunications Act of 1996 or other

federal law or regulation, a minimal easing of the provision of this chapter may be granted by the board of adjustment to the extent required to comply with such law. [Ord. 2003-10 § 15]

18.54.160 Penalty.

Any person who violates any provision of this chapter or any special use permit issued pursuant to this chapter shall be charged with a petty misdemeanor and upon conviction may be punished by a fine of not more than ~~\$500.00~~ 15,000 or imprisonment for not more than 90 days or both such fine and imprisonment as provided for in MTC Title 1. [Ord. 2003-10 § 16]

18.54.170 Default and/or revocation.

A. If a WTF is repaired, rebuilt, placed, moved or modified in a way that is inconsistent or not in compliance with the provisions of this chapter or of the special use permit, then the town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation(s) or noncompliance and that action to begin correction of the violation(s) must be commenced within seven days of the date of the postmark or personal service of the notice, whichever is earlier, and completed within 45 days of such date. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes or presents an imminent danger to the health or safety of lives or property, the town may, at its sole discretion, order the violation remedied within 24 hours.

B. If within the 45-day time period set forth in subsection (A) of this section, the WTF is not brought into compliance with the provisions of this chapter or of the special use permit, or substantial steps are not taken in order to bring the affected WTF into compliance, then the town may revoke such special use permit for the affected WTF and shall notify the holder of the special use permit within 48 hours of such action. [Ord. 2003-10 § 17]

18.54.180 Eleventh hour submissions.

In the event that an applicant tenders eleventh hour submissions to the town and/or the Town of Mesilla in the form of (1) expert reports, (2) expert materials, and/or (3) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Town of Mesilla at such late point in the proceedings, the Town of Mesilla shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town of Mesilla shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Town of Mesilla, even if such review or services extend beyond the applicable shot clock period, so long as the Town of Mesilla completes such review and retains and secures such expert services within a reasonable period of time thereafter, and

otherwise acts with reasonable diligence in completing its review and rendering its final decision.

18.54.190 Prohibition against illegally excessive emissions and RF radiation testing.

In accord with the same, the town enacts the following RF radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF radiation as defined in Section 18.54.020, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the town, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town of Mesilla or any other Town of Mesilla or representative of the town is subject to modification or revocation by the Town of Mesilla following a public hearing.

A. Initial Certification of Compliance With Applicable RF Radiation Limits. Within 45 days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each telecommunications antenna shall submit to the town planning official a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's RF emissions comply with the limits codified within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's maximum permissible exposure (MPE) limits shall be submitted to the town planning official.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The town may require, at the applicant's expense, independent verification of the results of the analysis.

B. Random RF Radiofrequency Testing. At the operator's expense, the town may retain an engineer to conduct random unannounced RF radiation testing of such facilities to ensure the facility's compliance with the limits codified within 47 CFR 1.1310(e)(1) et seq.

The town may cause such random testing to be conducted as often as the town may deem appropriate. However, the town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR 1.1310(e)(1) et seq., in which case the town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

The engineer conducting any such testing shall measure the emissions from such facilities, including, but not limited to, the emissions from any individual facility as well as the cumulative emissions from multiple transmitters/facilities which are placed upon the same supporting structure or nearby structures to ascertain whether or not such facility or facilities are individually or cumulatively exposing members of the general public to emissions which exceed the permissible general population exposure limits, or occupational exposure limited, which have been set and/or approved by the FCC.

If the town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR 1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town of Mesilla at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two weeks' written notice by first-class mail to its notice address.

At such hearing, the burden shall be on the town to show that, by a preponderance of the evidence, the facilities' emissions exceeded the permissible limits under 47 CFR 1.1310(e)(1) et seq.

In the event that the town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town of Mesilla shall have the power to, and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town of Mesilla, town planning official and/or any other representative of the town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town of Mesilla shall impose a fine of not less than \$10,000, nor more than \$15,000 for such violation of subsection (A) of this section, or, in the case of a second offense within less than five years, a minimum fine of \$20,000, nor more than \$30,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subsection (A) of this section, three or more times within any five-year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR 1.1310(e)(1) et seq., the Town of Mesilla shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the town for a period of five years.

18.54.200 Factual determinations to be rendered by the Town of Mesilla.

A. Evidentiary Standards. In determining special use permit applications for personal wireless service facilities, the Town of Mesilla shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Town of Mesilla to make each of the factual determinations enumerated below.

Common examples of the types of evidence which the Town of Mesilla may require an applicant to produce are the following:

1. Where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Town of Mesilla can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or

delete any financial terms which would be irrelevant to the factual issues which the Town of Mesilla is required to determine;

2. Where the Town of Mesilla deems it appropriate, the Town of Mesilla can require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Town of Mesilla, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;

3. Where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Town of Mesilla may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three DBM each, to enable the Town of Mesilla to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application;

4. Where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Town of Mesilla may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

The Town of Mesilla shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Town of Mesilla shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Town of Mesilla to determine the accuracy of any factual allegations asserted by each respective applicant.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Town of Mesilla.

B. Factual Determinations. To decide applications for special use permits under this section, the Town of Mesilla shall render factual determinations, which shall include two specific types of factual determinations, as applicable.

First, the Town of Mesilla shall render local zoning determinations according to subsection (B)(1) of this section.

Then, if, and only if, an applicant asserts claims that: (1) its proposed wireless facility or installation is necessary to remedy a significant gap in personal wireless services for an explicitly identified wireless carrier, and (2) that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps, the Town of Mesilla shall additionally render TCA determinations, in accord with subsection (B)(2) of this section.

The Town of Mesilla shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations.

Each factual determination made by the Town of Mesilla shall be based upon substantial evidence.

For purposes of this provision, "substantial evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence which the Town of Mesilla may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Town of Mesilla may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to inure to the benefit of the town, its residents, and property owners, and not applicants.

If, and to the extent that, the Town of Mesilla fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town of Mesilla.

1. Local Zoning Determinations. The Town of Mesilla shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this chapter:

a. Compliance With Chapter 18.36. Whether the proposed installation will meet each of the conditions and standards set forth within Chapter 18.36 in the absence of which the Town of Mesilla is not authorized to grant a special use permit.

b. Potential Adverse Aesthetic Impacts. Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties that are located adjacent to, or in close proximity to, the proposed site, or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

c. Potential Adverse Impacts Upon Real Estate Values. Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site, or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

d. Potential Adverse Impact Upon the Character of the Surrounding Community. Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to, or in close proximity to, the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

e. Potential Adverse Impacts Upon Historic Properties or Historic Districts, HR and HC zones. Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

f. Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town. Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the town including, but not limited to, scenic areas and/or scenic ridgelines, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the town.

g. Sufficient Fall Zones. Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

h. Most Preferred Site on Hierarchy. Whether the site chosen by the applicant for its proposed facility is situated in the most preferred district within the hierarchy of preferred districts set forth within Section 18.23.220, and whether the applicant has established before the Town of Mesilla that it is not feasible for the applicant's proposed new facility to be siting in a more preferred district listed within such section.

i. Mitigation. Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla determines that the proposed facility would not meet the standards set forth within Chapter 18.36, or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town of Mesilla shall deny the respective application for a special use permit unless the Town of Mesilla additionally finds that a denial of the application would constitute an effective prohibition, as provided for in subsections (B)(2) and (3) of this section.

2. TCA Determinations. In cases within which an applicant has filed a "notice of effective prohibition conditions," the Town of Mesilla shall make three additional factual determinations, as listed herein below:

a. Adequate Personal Wireless Services Coverage. Whether the specific wireless carrier has adequate personal wireless services coverage within the geographic areas for which the applicant claims a significant gap exists in such coverage.

b. Significant Gap in Personal Wireless Services of an Identified Carrier. Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap in its personal wireless services within the town.

In rendering such determination, the Town of Mesilla shall consider factors including, but not necessarily limited to: (1) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (2) whether any such alleged gap is relatively large or small in geographic size, (3) whether the number of the carrier's customers affected by the gap is relatively small or large, (4) whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied

area, and/or (5) overall, whether the gap is relatively insignificant or otherwise relatively de minimis.

A significant gap cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

c. **Least Intrusive Means of Remedying Gap(s) in Service.** Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Town of Mesilla based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Town of Mesilla shall consider factors including, but not necessarily limited to: (1) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for colocation, (2) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation, (3) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (4) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas, (5) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of stealth design, screening, use of color, noise mitigation measures, etc., and/or (6) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations, such as the installation of multiple shorter installations, instead of a single microcell facility.

3. Finding of Effective Prohibition or Lack of Effective Prohibition. If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla affirmatively determines that the applicant has failed to establish either: (a) that an identified wireless carrier suffers from a significant gap(s) in its personal wireless services within the town, and/or (b) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps, then the Town of Mesilla may deny the application pursuant to subsection (B)(2) of this section, and such denial shall not constitute an "effective prohibition."

If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla affirmatively determines that the applicant has established both: (a) that an identified wireless carrier suffers from a significant gap in personal wireless

services within the town, and (b) that the proposed installation is the least intrusive means of remedying such significant gap or gaps, then the Town of Mesilla shall grant the application, irrespective of any determinations the Town of Mesilla may make pursuant to subsection (B)(2) of this section, because any such denial would constitute an "effective prohibition."

The Mesilla Town Code is current through Ordinance 2021-03, passed December 30, 2021.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/> Town Telephone: (575) 524-3262
Codification services provided by [General Code](#)

Chapter 18.06 PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION

Sections:

- 18.06.010 Creation, purpose and establishment – Title.**
- 18.06.020 Membership – Ex officio members – Appointment – Qualifications – Terms – Pay.**
- 18.06.030 Notice of appointment.**
- 18.06.040 Member – Cause for removal – Procedure.**
- 18.06.050 Vacancy – Appointment – Term.**
- 18.06.060 Officers – Term – Vacancy.**
- 18.06.070 Meetings – Place – Quorum – Voting.**
- 18.06.080 Duties – Powers.**
- 18.06.090 Procedural rules – Records required.**
- 18.06.100 Records – Commission determinations to be filed.**
- 18.06.110 Review of applications within Historical and General Commercial zones – Considerations.**
- 18.06.120 Certificate of appropriateness – Conditions imposed – Permit for demolition or removal.**
- 18.06.130 Disapproval – Notice – Modification of application.**
- 18.06.140 Appeal from historical review action.**
- 18.06.150 Appeal from a planning and platting decision of the planning, zoning and historical appropriateness commission – Grounds – Action in district court.**
- 18.06.160 Appeal from a zoning decision of the planning, zoning and historical appropriateness commission – Grounds – Stay of proceedings.**

18.06.010 Creation, purpose and establishment – Title.

A. This chapter may be cited as the “planning, zoning and historical appropriateness commission ordinance.”

B. This commission is created by authority granted municipalities under the New Mexico State Statutes 1978, Sections 3-19-1(A)(1) and (2).

C. There is established a planning, zoning and historical appropriateness commission which shall be the planning commission and the zoning commission for the town of Mesilla. [Ord. 2009-05 § 2]

18.06.020 Membership – Ex officio members – Appointment – Qualifications – Terms – Pay.

A. The planning, zoning and historical appropriateness commission shall consist of five members who shall be appointed by the mayor with the consent of the board of trustees. A member of the board of trustees may be appointed as ex officio, nonvoting member of the commission. Up to two alternate commissioners can be appointed to the commission to participate in discussion but will only be allowed to vote when one of the five commissioners is absent. Alternates are necessary to ensure quorum is established.

B. The mayor with the advice and consent of the board of trustees shall appoint residents of the town of Mesilla to membership on the planning, zoning and historical appropriateness commission.

C. On the first planning, zoning and historical appropriateness commission, a majority of the members (3) shall be appointed for one-year terms and the balance of the members (2) shall be appointed for two-year terms. Each subsequent term of a member on the planning, zoning and historical appropriateness commission shall be for two years or less in order to maintain the original staggering of terms of membership. A vacancy in the membership of the planning, zoning and historical appropriateness commission shall be filled for the remainder of the unexpired term. A current alternate commissioner will be considered first before any new consideration is given to a new resident.

D. Members may succeed themselves. [Ord. 2010-04 § 1; Ord. 2010-02 § 4; Ord. 2009-05 § 2]

18.06.030 Notice of appointment.

Each person appointed to the planning, zoning and historical appropriateness commission shall be given notice of her/his appointment by a certificate stating that he/she was appointed as a member of the commission. The certificate shall be signed by the mayor, be attested by the town clerk-treasurer, and bear the municipal seal. [Ord. 2009-05 § 2]

18.06.040 Member – Cause for removal – Procedure.

A. After a public hearing and for cause stated in writing and made part of the public record, the mayor, with the approval of the board of trustees, may remove a member of the planning, zoning and historical appropriateness commission.

B. At least 10 days prior to a hearing by the board of trustees, the member in question shall be given a written notice of the specific grounds for which removal might be exercised and the time, date, and place of the public hearing. [Ord. 2009-05 § 2]

18.06.050 Vacancy – Appointment – Term.

If a vacancy occurs on the planning, zoning and historical appropriateness commission, the mayor with the advice and consent of the board of trustees shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term. [Ord. 2009-05 § 2]

18.06.060 Officers – Term – Vacancy.

A. The planning, zoning and historical appropriateness commission shall elect from its membership a chairperson, vice-chairperson and secretary. Officers shall serve for a one-year term and may succeed themselves.

B. Any office vacated shall be filled by the election of a new officer who shall serve for the remainder of the unexpired term. [Ord. 2009-05 § 2]

18.06.070 Meetings – Place – Quorum – Voting.

A. The planning, zoning and historical appropriateness commission shall meet the first and third Monday of each month or on days specified by the board of trustees. Regular and special meetings shall be called as required by MTC [2.70.010](#).

B. All meetings shall be held in the Mesilla Town Hall unless proper public notice to the contrary is given.

C. A majority of the members of the planning, zoning and historical appropriateness commission shall constitute a quorum for the transaction of business.

D. A motion shall carry upon the affirmative vote of the majority of the members of the planning, zoning and historical appropriateness commission present at a meeting. [Ord. 2009-05 § 2]

18.06.080 Duties – Powers.

A. Duties. The planning, zoning and historical appropriateness commission shall:

1. Prepare, review, hold hearings and recommend to the board of trustees changes, amendments and updating as required to the master plan, comprehensive plan, zoning map,

zoning ordinances, subdivision regulations, future land use plan, guidelines and criteria for preservation and development, and historical districts; provided, however, that:

- a. No maps, plans or regulations shall be effective until approved by the board of trustees; and
 - b. The board of trustees may, after a proper public hearing and notice as required by law, adopt maps, plans and regulations without any recommendation from the planning, zoning and historical appropriateness commission;
2. Approve or disapprove applications for business registrations, building permits for non-historically zoned applications, and sign permits;
 3. Review and recommend approval/disapproval of applications for building permits within the Historical zones and General Commercial zone, providing reasons for their recommendation to the board of trustees and the applicant;
 4. Review and recommend approval/disapproval of applications for special use permits, zone changes, and subdivision applications, (after following proper procedure as defined in the appropriate section of the comprehensive land use ordinance) providing reasons for the recommendation to the board of trustees and the applicant; and
 5. Enforce and carry out the provisions of law relating to planning, platting, zoning, and historical appropriateness; and
 6. Exercise such power, authority, jurisdiction and duty not inconsistent with this code and incidental and necessary to carry out the purpose of Section 3-19-2 and Sections [3-21-1](#) through [3-21-26](#) NMSA 1978 which have not been reserved to the board of trustees.

B. Powers. The planning, zoning and historical appropriateness commission will also:

1. Recommend preparation, changing or updating as required, the comprehensive plan for the town of Mesilla;
2. Hold public hearings on special use permits, amendments, supplements, or repeals of the zoning ordinances;
3. Recommend changes and amendments to the comprehensive land use ordinance for adoption by the board of trustees;
4. Hold regularly scheduled meetings;

5. Carry out duties as defined in the comprehensive land use ordinance for the town of Mesilla;
6. Make proposed changes or amendments to the future land use plan;
7. Carry out the duties and responsibilities assigned to the commission in this title. [Ord. 2009-05 § 2]

18.06.090 Procedural rules – Records required.

The planning, zoning and historical appropriateness commission shall adopt regulations for the transaction of business and keep a public record of its transactions, findings, resolutions, determinations and attendance of its members at its meetings. [Ord. 2009-05 § 2]

18.06.100 Records – Commission determinations to be filed.

The commission shall keep a permanent record of its resolutions, transactions and determinations, and may make such rules and regulations consistent with this title and prescribe such forms as needed. The commission shall file with the town clerk-treasurer a notice of all determinations made by it. [Ord. 2009-05 § 2]

18.06.110 Review of applications within Historical and General Commercial zones – Considerations.

A. All applications for work in the Historical zones and Commercial zone (not subject to administrative approval) shall be reviewed by the planning, zoning and historical appropriateness commission. The commission shall determine whether the request involved will be appropriate for the purposes of this title. If the request shall be determined to be inappropriate, the board shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historical district generally, such application may be approved without substantial detriment to the public welfare and without substantial derogation of the intent and purposes of this title.

B. In reviewing an application, the planning, zoning and historical appropriateness commission shall consider in addition to this chapter:

1. The historical and literary value and significance of the site, building, or structure;
2. The general design, arrangement, texture, material and color of the features, sign or billboard involved;
3. The relation of such factors to similar factors or sites, buildings and structures in the immediate surroundings; and
4. The appropriateness of the size and shape of the building or structure in relation to:

- a. The land area upon which the building or structure is situated;
- b. The landscaping and planting features proposed by the applicant; and
- c. The neighboring sites, buildings or structures within the historical district.

5. The commission shall also consider the applicable zoning and other laws of the town.

C. In recommending approval of an application the commission may impose conditions which shall be binding upon the property. Prior to approving an application subject to conditions, the commission may notify the applicant of its proposed action to solicit his opinion. The concurring vote of three members of the board shall be necessary to make a determination in favor of the applicant on any application.

[Ord. 2009-05 § 2]

18.06.120 Certificate of appropriateness – Conditions imposed – Permit for demolition or removal.

A. The planning, zoning and historical appropriateness commission shall review all applications in the Historical zones or Commercial zone for historical appropriateness, following the standards and processes outlined in Chapter 18.33 MTC (Historic Preservation). Upon the approval of an application by the planning, zoning and historical appropriateness commission, a certificate of appropriateness or permit for demolition or removal, as appropriate, shall be issued to the applicant. The certificate or permit shall state the nature of the approval and the date given. Following the certificate of appropriateness process, the case shall be reviewed for a building permit by the planning commission for recommendation to the board of trustees. The board of trustees will be the final decision for building permits in the Historical zones and Commercial zone.

B. In approving an application for historical appropriateness, the planning, zoning and historical appropriateness commission may impose conditions which, if the certificate of appropriateness is acted upon, shall be binding upon the applicant, the owner of the property and the owner's successors in title. Prior to approving an application for historical appropriateness subject to conditions, the commission may notify the applicant of its proposed action and permit the applicant to express her/his opinion thereon. The conditions will be part of the subsequent building permit process.

C. Demolition Permit. If the commission recommends approval of an application for a permit for demolition, the commission shall forward its recommendation to the board of trustees. [Ord. 2009-05 § 2]

18.06.130 Disapproval – Notice – Modification of application.

A. Disapproval. In the case of disapproval of an application for a permit for demolition or removal, the commission shall issue a notice of its determination, dated and signed by its chairman to the applicant, detailing the reasons for its determination.

B. The commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, color and similar factors before disapproving the application.

[Ord. 2009-05 § 2]

18.06.140 Appeal from historical review action.

A. Any person or persons, or any board, taxpayer, or the town government aggrieved by any decision of the planning, zoning and historical appropriateness commission may appeal the commission decision. Appeals from a decision of the planning, zoning and historical appropriateness commission shall be made to the board of trustees by a written notice of appeal which shall be filed and dated in the town clerk-treasurer's office within 20 days of the date of the decision of the planning, zoning and historical appropriateness commission. The town clerk-treasurer shall forthwith forward the notice of appeal to the mayor.

B. The board of trustees shall act to either confirm commission action or to overcome such action in conformance with the submitted appeal within 40 days after a notice of appeal is filed.

C. Action by the board of trustees shall be final and conclusive. [Ord. 2009-05 § 2]

18.06.150 Appeal from a planning and platting decision of the planning, zoning and historical appropriateness commission – Grounds – Action in district court.

A. The board of trustees shall provide by resolution the procedure to be followed in considering appeals from planning, zoning and historical appropriateness commission action on planning and platting matters.

B. Any person, in interest, dissatisfied with any planning and platting order or determination by the planning, zoning and historical appropriateness commission may appeal to the board of trustees. An appeal shall be filed within 20 days of the decision of the planning commission and dated in the town clerk-treasurer's office. The town clerk-treasurer shall forthwith forward the appeal to the board of trustees.

C. If the board of trustees determines that the order or determination or any part thereof of the planning, zoning and historical appropriateness commission is unlawful or unreasonable, the board of trustees may make any appropriate change in any such order or determination. The board of trustees shall act upon the appeal within 40 days after the notice of appeal was filed.

D. An appeal from the decision of the board of trustees may be appealed to the district court as provided by Section 3-19-8 NMSA 1978. [Ord. 2009-05 § 2]

18.06.160 Appeal from a zoning decision of the planning, zoning and historical appropriateness commission – Grounds – Stay of proceedings.

A. The board of trustees shall provide by resolution the procedure to be followed in considering appeals from planning, zoning and historical appropriateness commission action on zoning matters.

B. Any aggrieved person or any officer, department or board or bureau of the municipality affected by a zoning decision of the planning, zoning and historical appropriateness commission, or official or committee thereof, in the exercise of its zoning duties and powers may appeal to the board of trustees. An appeal shall be filed within 20 days of the decision of the planning commission and dated in the town clerk-treasurer's office. The town clerk-treasurer shall forthwith forward the appeal to the board of trustees. An appeal shall stay all proceedings in furtherance of the action appealed unless the planning, zoning and historical appropriateness commission, or official or committee thereof, from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the planning, zoning and historical appropriateness commission, or official or committee thereof, from whom the appeal is taken and on due cause shown.

C. If the board of trustees determines that the order or determination or any part thereof of the planning, zoning and historical appropriateness commission is unlawful or unreasonable, the board of trustees may make any appropriate change in any such order or determination. The board of trustees shall act upon the appeal within 40 days after the notice of appeal was filed.

D. When an appeal alleges that there is error in any order, requirement, decision or determination by the planning, zoning and historical appropriateness commission, or an official or committee thereof, in the exercise of its powers and duties, the board of trustees by a two-thirds vote of all of its members may:

1. Authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution:

a. Which are not contrary to the public interest;

b. Where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and

c. So that the spirit of the zoning ordinance is observed and substantial justice done; or

2. In conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:

a. Reverse any order, requirement, decision or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof;

b. Decide in favor of the appellant; or

c. Make any change in any order, requirement, decision, or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof. [Ord. 2009-05 § 2]

The Mesilla Town Code is current through Ordinance 2021-03, passed December 30, 2021.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/>

Town Telephone: (575) 524-3262

[Code Publishing Company](#)

Chapter 18.65 SIGNS*

Sections:

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* Prior legislation: Ords. 89-08 and 92-05.

18.65.010 Title.

This chapter and all subsequent amendments hereto may be cited as the “sign standards and regulations ordinance.” [Ord. 94-08; prior code § 11-3-1]

18.65.020 Purpose.

This chapter is for the purpose of regulating the installation and use of signs within the town of Mesilla. [Ord. 94-08; prior code § 11-3-2]

18.65.030 Authority for chapter.

This chapter is adopted pursuant to the provisions of an Act of the State Legislature known as Chapter 3, Laws of Article 19 (being Sections 1 through 12 of the New Mexico State Statutes Annotated, 1978) as amended. The provisions of this chapter are adopted in acceptance of and in accordance with said Act. [Ord. 94-08; prior code § 11-3-3]

18.65.040 Existing uses – Nonconforming signs.

Nonconforming signs which have been approved by the Mesilla board of trustees or signs which are not in conformity with these regulations but for which permits or variances were granted under previous ordinances, may continue, until one of the following occurs:

- A. The business is terminated.
- B. The sign is changed, modified, or painted.
- C. Five years after the ordinance codified in this chapter is in effect. [Ord. 2008-04 § 1; Ord. 94-08; prior code § 11-3-4]

18.65.050 Definitions.

For the purpose of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

A. General.

- 1. Words used in the present tense include the future tense. The singular includes the plural. The word “person” includes a municipality, firm, association, organization, partnership, trust, company, or corporation as well as an individual.
- 2. The word “lot” includes the word “plot” or “parcel.” The term “shall” is mandatory; the term “may” is permissive. The word “town” shall mean the town of Mesilla. The words “board of trustees” shall mean the town board of trustees of the town of Mesilla. The word “commission” shall mean the planning, zoning and historical appropriateness commission of the town of Mesilla.

B. Specific.

- 1. “Sign” shall mean and include every sign, billboard, ground sign, wall sign, roof sign, illuminating sign, projecting sign, marquee, awning, canopy, and shall include any announcement, declaration, demonstration, illustration or insignia used to advertise or promote the interest of any person when the same is placed out of doors. Allowed signs in the town of Mesilla shall be limited to wall signs, projecting signs, freestanding signs, development identification signs, sandwich board signs and directory signs, as well as those signs that are identified as “temporary signs” or exceptions as defined in MTC [18.65.070](#).

- a. "Freestanding sign" as regulated by these guidelines shall include any sign attached to or supported from the ground and not attached to any building.
- b. "Temporary sign" shall mean any banner or advertising display with or without frames intended to be displayed for a period of less than 15 days. Maximum total sign space not to exceed 15 square feet and no more than two permits per business per year may be issued.
- c. "Sandwich board or A-frame sign" shall mean any sign of a nonpermanent nature which is a type of advertisement composed of two boards (holding a message or graphic) and being set up (for example next to a store advertising its goods) in a triangle shape, hinged along the top.
- d. "Projecting sign," as regulated by these guidelines, shall include any sign, which is attached to a building or other structure and extends beyond the line of said building or structure.
- e. "Wall sign," as regulated by these guidelines, shall include all flat signs with projecting letters attached to a wall, or signs with letters painted directly upon a wall, or painted sign board attached to a wall.
- f. "Development identification sign," as regulated by these guidelines, shall include any sign at the entrance/exit to a commercial development to identify the development name and logo only, and not attached to any building.
- g. "Directory sign" is a sign that identifies the names and locations of tenants in a multi-tenant building or in a development made up of a group of buildings. A directory sign may also be a sign that identifies the development or building which the group of businesses/tenants occupy.

2. "Location" shall mean the lot or premises upon which the sign may be permitted.

3. "Display" shall mean to exhibit any item or items on the interior or exterior, for the purpose of attracting people for business. [Ord. 2008-04 § 2; Ord. 2003-05 § 1; Ord. 94-08; prior code § 11-3-5]

18.65.060 Permits required.

Other than the exceptions listed in MTC [18.65.070](#), temporary signs, and repair and maintenance of existing conforming signs, it shall be unlawful for any person to place, erect, repair, alter, relocate, or retain within the town of Mesilla any sign or other advertising structure without first obtaining a review

and recommendation by the planning, zoning and historical appropriateness commission and a permit approved by the Mesilla board of trustees. [Ord. 2008-04 § 3; Ord. 2005-06 § 1; Ord. 94-08; prior code § 11-3-6]

18.65.070 Exceptions.

The provisions and regulations of these guidelines shall not apply to temporary signs and the following signs; provided however, the number of exception signs does not exceed two for each business or use (with the exception of subsection (G) of this section) and said signs do not deviate radically from standards set forth herein:

A. Real estate signs not exceeding six square feet in area which advertise the sale, rental, or lease of the premises upon which said signs are located.

B. One professional name plate not exceeding one square foot in area.

C. One bulletin board not over eight square feet in area for public, charitable, or religious institutions when the same are located on the premises of said institutions.

D. Signs denoting the developer, architect, engineer, or contractor when placed on work under construction and when not exceeding 12 square feet in area.

E. An occupational sign denoting only the name and profession of an occupant in a commercial building, public institution, or dwelling, and not exceeding two square feet in area.

F. Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.

G. Traffic or other municipal signs, legal notices, railroad crossing signs, danger, and such temporary, emergency, or other nonadvertising signs as may be approved by the Mesilla board of trustees.

H. Agricultural signs may be permitted where crops are grown; provided, they do not exceed 15 square feet in area in RA and RF zones and six square feet in area for all other zones and only advertise farm products for sale, the majority of which are grown on the premises.

I. Political signs supporting a candidate or candidates for public office; provided, that it is placed no more than 30 days prior to the pertinent election and does not exceed four feet by eight feet in size. Political signs shall be removed no later than seven days following an election.

J. Occupants may place displays or descriptions of their merchandise or services behind the glass of windows or doors. Any business on the plaza must not occupy more than one-third of the glass area with displays or descriptions.

K. Parking, directional or OPEN/CLOSED signs which do not exceed two square feet in area.

L. Cottage industries signs; provided, that only one unlighted sign be placed, having a maximum area of 10 square feet.

M. House signs that warn of safety hazards, "Private Drive," "No Parking" or family name signs; provided, that they are not larger than one square foot.

N. Signs of historical significance.

O. Temporary directional signs for nonprofit organizations guiding patrons to functions approved by the board of trustees; provided, the sign does not exceed eight square feet. [Ord. 2008-04 § 4; Ord. 2005-06 § 2; Ord. 2003-05 § 2; Ord. 94-08; prior code § 11-3-7]

18.65.080 Application to erect a sign.

Application to erect a sign shall be made upon forms provided by the Mesilla Town Hall and shall contain, or have attached thereto the following information:

A. Name, address, and telephone number of applicant.

B. Location of building, structure, or lot upon which the sign is attached or erected.

C. Position of the sign, in relation to other signs, lot lines or other building.

D. A complete dimensioned scale drawing with full description of size, material, texture and/or finish lettering and graphics to be used.

E. Name of person, firm, corporation or association erecting structure.

F. Written consent from the owner of the building, structure, or land to which or on which the structure is to be erected. [Ord. 94-08; prior code § 11-3-8]

18.65.090 Permit issued if application is in order.

When the proposed sign is in compliance with all the requirements of these guidelines and all other laws and ordinances of the town, the permit may be issued administratively by the duly authorized representative for repair and maintenance of existing signs, temporary signs or sandwich board signs

and may be issued following the recommendation of the planning, zoning and historical appropriateness commission, and approval of the board of trustees for all other signs that are in compliance with the requirements of these guidelines and all other laws and ordinances of the town. If the work authorized under a sign permit has not been completed within six months after date of issuance, the permit shall become null and void. The application must be acted upon by the board of trustees within 75 days from the date of application. [Ord. 2008-04 § 5; Ord. 94-08; prior code § 11-3-9]

18.65.100 Permit fees.

Every applicant after being granted a permit shall pay to the town of Mesilla a fee of \$2.00 per square foot for the permitted sign. The maximum fee for any sign shall be \$50.00. No fee shall be assessed for signs listed under exceptions or temporary signs. [Ord. 2008-04 § 6; Ord. 2005-06 § 3; Ord. 94-08; prior code § 11-3-10]

18.65.110 Inspection.

The Mesilla board of trustees, or authorized designated representative, shall inspect as they deem necessary each sign regulated by these guidelines for the purpose of ascertaining that the sign conforms with the approved sign permit. [Ord. 94-08; prior code § 11-3-11]

18.65.120 Obstruction.

No signs shall be erected, relocated or maintained so as to prevent free ingress or egress at any door, window, or fire escape.

No sign or other advertising structure as regulated by these guidelines shall be erected in the 30-foot clear sight triangle of any street or in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape, or color, it may interfere with or obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes use of the words "STOP," "DANGER" or any other word, phrase, symbol, or character in such manner as to interfere with, mislead or confuse traffic. Signs shall also conform to the sight distance of MTC [18.60.340](#), Wall, fence or hedge. [Ord. 94-08; prior code § 11-3-12]

18.65.130 Temporary signs.

A. A business may have a temporary sign for a period of 15 days. The temporary sign shall be no larger than 15 square feet in area. Each business may have up to two temporary signs per year.

B. Temporary signs may be administratively approved by community development staff pursuant to guidelines established by the board of trustees by adoption of a resolution. [Ord. 2008-04 § 7; Ord. 2005-06 § 4; Ord. 94-08; prior code § 11-3-13]

18.65.135 Sandwich board or A-frame signs.

A. A sandwich board or A-frame type sign may be permitted for a business establishment. Such sign shall be located on the premises where the business is located, and shall be nonpermanent in nature, brought inside when the business closes for the day. This sign shall be no larger than six square feet in area.

B. Sandwich board signs will be allowed for a three-month trial period upon approval of the ordinance codified in this section by the board of trustees. They are only allowed in the Commercial (C) zone and at the Town Hall. [Ord. 2008-04 § 8]

18.65.140 Wall signs.

A. Wall Sign Area.

1. Within the Historical Commercial (H-C) zone, the wall sign area, on any given house or building, shall in no case exceed 10 percent of any wall area including apertures or 15 square feet, whichever is less. Dimensions of painted signs or graphics with no frame shall be determined by measuring the extent of the painted sign or graphic horizontally and vertically and calculating the area.

2. Within the Commercial (C) zone, the wall sign area on any given house or building shall in no case exceed 10 percent of any wall area including apertures or 25 square feet, whichever is less. Dimensions of painted signs or graphics with no frame shall be determined by measuring the extent of the painted sign or graphic horizontally and vertically and calculating the area.

B. No wall sign shall be permitted to be more than six inches thick. All wall signs shall be safely and securely attached to the building wall. [Ord. 2008-04 § 9; Ord. 2003-05 § 3; Ord. 2000-02 § 1; Ord. 94-08; prior code § 11-3-14]

18.65.150 Projecting signs.

A. No projecting sign may rise above the level of the first story of the building to which it is attached. All projecting signs must be at least seven feet above sidewalk or ground level, and must be located within the central one-third of the facade length so as not to obstruct neighboring signs.

B. Projecting signs shall be limited in area as follows:

1. A maximum of four feet projecting from the wall of the building;

2. A maximum of eight square feet of total sign space including frame. Both sides of a projecting sign may be used for advertisement.

C. The supporting structure of any projecting sign must be of adequate strength so as to have no need for guy-wires or wire reinforcement. [Ord. 94-08; prior code § 11-3-15]

18.65.160 Freestanding signs.

A. A freestanding sign (ground-based or post) may be permitted where a business establishment is set back from a street alignment of building facades more than 10 feet. A business establishment thus set back, in addition to the signs permitted upon the building itself, may maintain a freestanding sign of not more than 15 square feet in area including the frame but not the supports, and such sign must relate to the conduct of the business within. If a building has an unencumbered front setback of at least 25 feet, a two-face freestanding sign with a maximum of 15 square feet of area on each face, sign dimensions no greater than six feet in any dimension will be permitted; provided, it relates to the business conducted on the premises.

B. The bottom of freestanding signs supported by posts, which are not within two feet of the ground shall not be less than seven feet above the ground level.

C. For freestanding ground-based signs, the wall of a freestanding ground-based sign shall have a maximum square footage of 15 square feet for the Historical Commercial (H-C) zone and 25 square feet for the General Commercial (GC) zone. The height of a ground-based sign will be no more than four feet high. The ground-based signs shall also be required to have building permits for the structure complying with any building code requirements, clear sight triangle requirements or any other applicable codes or regulations.

D. All freestanding signs with posts shall be securely constructed, and erected upon posts extending at least three feet below the surface of the ground. All wood post parts below ground level shall be treated to protect them from moisture by an approved method.

E. No freestanding sign or any part thereof shall be more than 15 feet above the level of the street which the sign faces, or above the adjoining ground level, if such ground is higher than the street level.

F. All parts of a freestanding sign shall be two feet inside the property line. [Ord. 2006-01 § 1; Ord. 2003-05 § 4; Ord. 94-08; prior code § 11-3-16]

18.65.165 Directory signs.

A. A directory sign may be permitted for a building or development where there is more than one business or tenant. A directory sign may be a wall sign, projecting sign, or freestanding sign, provided the sign complies with all requirements for the type of sign.

- B. A directory sign shall be limited to 15 square feet in area for signs located in the Historical Commercial (H-C zone) zone and 25 square feet in area for signs located in the Commercial (C) zone.
- C. All directory signs shall be located on the premises where the businesses are located.
- D. A directory sign may list all businesses or only the building or development name.
- E. Each business may have one individual sign in addition to the identification on the directory sign, in accordance with the sign regulations and all other laws and ordinances. [Ord. 2008-04 § 10]

18.65.170 Development identification signs.

A development identification sign may be permitted at the entrance/exit to a commercial development to identify the development name and logo only.

- A. The structure of a development identification sign shall be no larger than 48 square feet in size, and have a height no higher than four feet.
- B. The actual sign portion of the development identification sign shall not exceed 25 square feet for the Commercial (C) zone, or 15 square feet for the Historic Commercial (H-C) zone. Area of the actual sign shall be determined by measuring the extent of the painted sign or graphic horizontally and vertically and calculating the area. [Ord. 2003-05 § 5; prior code § 11-3-17]

18.65.180 Illumination.

- A. No signs that flash, blink, revolve, or are otherwise in motion, vary in intensity, or seem to be in motion shall be permitted.
- B. No sign shall have any illumination outside of the face of the letters, other than goose neck lighting; there shall be no neon or similar lighting, exposed bulbs, or any moving parts or lights that give effect of moving parts.
- C. Goose neck lights with reflectors shall be permitted on projecting signs, freestanding signs and wall signs, provided the illumination falls upon the sign so as to prevent glare upon the street or adjacent property.
- D. Nonblinking electric signs including neon signs may be placed inside windows and glass doors provided their proportions are not in excess of the window area so allowed in MTC [18.65.070\(J\)](#). Interior electric signs must be approved by the board of trustees or their designated representative. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-18]

18.65.190 Lettering and coloring.

All letters, figures, characters or representations in cut-out or irregular form maintained in conjunction with, attached to or superimposed upon any sign shall be safely and securely built or attached to the sign structure. Color of signs must be approved at the time of application for sign permit.

In Mesilla, signs shall not detract from the historic cultural attraction of the town; therefore, approval of color and design are left to the board of trustees or their designated representatives. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-19]

18.65.200 What may be advertised.

Exterior signs shall advertise a bona fide business conducted in or on said premises, and the advertising of products shall not exceed 25 percent of the area of such sign. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-20]

18.65.210 Maintenance.

The plot where the sign is located is to be maintained by the owner thereof in a safe, clean, sanitary, inoffensive condition, and free and clear of all obnoxious substances, rubbish, and weeds. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-21]

18.65.220 Number of permitted signs.

A. A total of two exterior signs may be allowed to each store or bona fide place of business.

B. When more than one business occupies a single building each business will be limited to one sign plus a space on a directory sign at each entrance. [Ord. 2008-04 § 11; Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-22]

18.65.230 Location.

No off-premises signs will be permitted for commercial business. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-23]

18.65.240 Miscellaneous.

A. Parking Lots, Etc. Where the nature of a business does not involve a structure on which a sign may be attached, such as parking lots, freestanding signs are allowed and the same regulations apply.

B. Exterior Commercial Display. The exterior display of items for sale is not permitted on town property or where the condition endangers the health, welfare and safety of the general public. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-24]

18.65.250 Unlawful signs.

It shall be unlawful to construct, erect and maintain a sign or other advertising structure in violation of the provisions and guidelines of this chapter. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-25]

18.65.260 Notice of unlawful signs and abatement.

The town may issue a notice directed to the owner of record of the property on which the unsafe or unlawful sign occurs, or to the occupant or tenant of the property, or both. The notice shall describe the violation and shall establish a reasonable time limit for abatement which shall not be less than two days nor more than 10 days after serving the notice. The notice may be served either personally or by registered mail at the owner's or occupant's last known address. The town shall be held harmless of all unsafe or unlawful signs. The person who owns the sign shall assume all liability or risk of damage to persons or property which may arise from an unsafe or unlawful sign and save the town of Mesilla, its officers and agents harmless from any and all liability which may arise or be incurred from the erection, construction, or operation of same. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-26]

18.65.270 Complaint.

In the event the owner or occupant of the property where the unsafe or unlawful sign exists has failed, within the prescribed time, to abate the nuisance, then the town shall file a complaint charging violation of this with the municipal court. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-27]

18.65.280 Removal of unsafe or unlawful sign.

Upon the failure of the person to remove or correct the unsafe or unlawful sign, the town shall proceed to correct or remove the sign and shall prepare a statement of costs incurred. Any and all costs shall constitute a lien against property upon which the unsafe or unlawful sign existed, or against personal property of the owner of the unsafe or unlawful sign, which lien shall be filed, proven and collected as provided by law.

Alternatively, the town attorney may bring a civil action by verified complaint in the name of the town, by any public officer, in the municipal court against any person who shall create or maintain an unsafe or unlawful sign.

When judgment is against the defendant in an action to remove an unsafe or unlawful sign, he shall be adjudged to pay all court cost and a reasonable fee for the town attorney. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-28]

18.65.290 Injunctions.

The board of trustees or their representatives, when a violation exists as set forth in this chapter, may request an action in the name of the municipality to perpetually enjoin all persons from maintaining or

permitting the unsafe or unlawful use and to abate the same. [Ord. 2003-05 § 6; Ord. 94-08; prior code § 11-3-29]

The Mesilla Town Code is current through Ordinance 2021-03, passed December 30, 2021.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/>

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