

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Capitol Zoning District Commission

Department n/a

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Statutory Authority for Promulgating Rules A.C.A. 22-3-305 and 22-3-307

Rule Title: Relaxed Requirements for Wireless Communication (Cellular) Facilities -- Emergency Rule

Intended Effective Date
(Check One)

Date

Emergency (ACA 25-15-204)

Legal Notice Published _____

30 Days After Filing (ACA 25-15-204)

Final Date for Public Comment _____

Other _____
(Must be more than 30 days after filing date.)

Reviewed by Legislative Council _____

Adopted by State Agency April 16, 2015

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Boyd Maher boyd.maher@arkansas.gov 501-324-9644

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

501-324-9644 boyd.maher@arkansas.gov

Phone Number

E-mail Address

Executive Director

Title

April 17, 2015

Date

CAPITOL ZONING DISTRICT COMMISSION

Emergency Rule to Relax Requirements on Wireless Communication Facilities

Description: This emergency rule revises Rule# 034.00.00-002 to allow for wireless communication facilities (ie. cellular equipment) to be attached to existing buildings throughout the Capitol Zoning District, provided they are properly concealed. Under the current rule, free-standing cell towers are prohibited, but wireless equipment attached to existing buildings can be allowed on properties that would otherwise employ broadcast antennae (such as a radio station or hospital).

The only existing building in the Governor's Mansion Area tall enough to accommodate the needs of wireless carriers and customers is Parris Tower at 1800 Broadway, but no new WCFs may be installed on its roof, because of the current rule's restriction on land-uses at which cellular antennae may be located. While federal statutes and regulations allow for some local control of WCFs, a state or local government may not ban, neither outright nor effectively, WCFs from its jurisdiction. Staff believes that the agency's current rules for WCFs have the real effect of prohibiting them altogether in the Mansion Area, and may therefore be in conflict with federal law.

Wireless technology has advanced to a point where new WCFs are significantly smaller appurtenances than they were only a decade ago, and the wireless industry's ability and willingness to conceal or camouflage WCFs has also seen similar advancement. The agency therefore believes its current restriction on which land uses may host WCFs can be eliminated while retaining the requirements for antenna concealment.

The emergency rule removes the restriction on land uses to which WCFs can be attached, and also the treatment of WCFs as Conditional Uses. Finally, the proposed rule features new formatting which staff believes is easier to read and interpret.

Current Rule: The Commission adopted its current rules for WCFs in 2000, shortly after the installation of Sprint cellular equipment on the roof at 1800 Broadway. This rule can be found in the Commission's General Standards on page 20 and in the Arkansas Register as Rule# 034.00.00-002.

Advisory Committee Recommendations: The Capitol Area Advisory Committee reviewed staff's proposed language at its June 2014 meeting, the Design Review Committee reviewed staff's proposed language at its August 2014 meeting, and the Mansion Area Advisory Committee reviewed staff's proposed language at its September 2014 meeting. Each committee expressed general support for the proposed language.

Notification: The agency listed the proposed emergency rule on its website on April 13, 2015 as an agenda item for the Commission's meeting on April 16, 2015. The Little Rock Downtown Neighborhood Association, Arkansas Democrat-Gazette, and Arkansas Times were notified of Commission meeting, including the proposed rule on April 14, 2015.

Citizen Communication: A representative of Verizon Wireless spoke in favor of the proposed rule at the Commission's April 16 meeting.

Staff Recommendation: Because of pending applications from Verizon Wireless and from Sprint for new cellular equipment on the roof at 1800 Broadway, and because of the current rule's apparent conflict with federal regulations, staff recommended at the Commission's April 16, 2015 meeting that the Commission adopt the changes on an emergency basis.

Commission Action: The Capitol Zoning District Commission voted unanimously (9-0) at its meeting on April 16, 2015 to adopt the rule on an emergency basis.

Current Rule (General Standards, page 20)

WIRELESS COMMUNICATION FACILITIES

Free standing, detached wireless communication facilities (WCF) consisting of, but not limited to, omni-directional antennas (rods), directional antennas (panels), and parabolic antennas (disks) supported by monopoles, towers, self-supporting (lattice) or guywire supported towers, or other similar structures are inappropriate installations in both the Governor's Mansion and Capitol areas.

Wireless Communication Facility (WCF) means any unstaffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve necessary elevation.

Wireless Communications means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.

Attached Wireless Communications Facilities associated with a broadcasting or recording studio (including radio and/or television), medical facility, emergency facility or religious institution may be considered on a case by case basis in Capitol Zones A1, A2, B, C and D provided the antenna array does not interfere with sightlines to the State Capitol building. Attached WCF associated with the above listed institutions/facilities may also be considered on a case by case basis in Mansion Zones M (if associated with a historic commercial building only), N and O as a Conditional Use. In all instances, stealth technology must be employed to conceal, camouflage and minimize the antenna arrays associated with the facility or institution. Height, setback, appurtenance, design, land use and landscape requirements as specified in the Capitol Zoning District Rule, General Standards, and Design Standards must be followed at all times.

Attached Wireless Communications Facility means an antenna array attached to an existing building, structure or associated new construction with any accompanying pole or device that attaches the antenna array to the building or structure and associated connection cables, and any equipment facility which may be located either inside or outside the attachment structure.

Antenna Array means one or more rods, panels, disks or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel) and a parabolic antenna (disk).

Stealth Technology means systems, components and materials used in the construction and design of attached WCF which are developed to mask or conceal the facility and antenna array to make them compatible with the structure they are attached to, the surrounding properties, and the neighborhood in general.

Attached WCF shall not be artificially illuminated directly or indirectly, except as may be required by state or federal law and shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature except for a small message containing provider identification and emergency telephone numbers.

Wireless Communications Facilities (either attached or free standing) in existence on the date of the adoption of this amendment, which do not comply with the requirements of this amendment (nonconforming WCF) are subject to the following provisions:

- 1.** Nonconforming WCF may continue in use for the purpose now used, but may not be expanded or change users without complying with this amendment.
- 2.** Nonconforming WCF which become damaged or destroyed due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions provided the user does not change and the facility is not expanded.
- 3.** Any nonconforming WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such WCF shall remove same.

Proposed Rule (marked-up)

Red underlined indicates new text.

Red strikethrough indicates text to be removed.

Green strikethrough indicates text moved to somewhere else.

Green underline indicates text moved from somewhere else.

WIRELESS COMMUNICATION FACILITIES

~~Free standing, detached wireless communication facilities (WCF) consisting of, but not limited to, omni-directional antennas (rods), directional antennas (panels), and parabolic antennas (disks) supported by monopoles, towers, self-supporting (lattice) or guywire supported towers, or other similar structures are inappropriate installations in both the Governor's Mansion and Capitol areas.~~

A Wireless Communication Facility (WCF) ~~mean~~ is any unstaffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve necessary elevation. Wireless Communications means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.

1. An attached Wireless Communications Facility ~~mean~~ is an antenna array attached to an existing building, structure or associated new construction with any accompanying pole or device that attaches the antenna array to the building or structure and associated connection cables, and any equipment facility which may be located either inside or outside the attachment structure. ~~Attached Wireless Communications Facilities that meet each of the following criteria are allowed by right in all areas of the Capitol Zoning District. associated with a broadcasting or recording studio (including radio and/or television), medical facility, emergency facility or religious institution may be considered on a case by case basis in Capitol Zones A1, A2, B, C and D provided the antenna array does not interfere with sightlines to the State Capitol building. (Proposals for Attached WCFs that do not meet each of the criteria below associated with the above listed institutions/facilities may also be considered by the Commission on a case by case basis.) in Mansion Zones M (if associated with a historic commercial building only), N and O as a Conditional Use.~~

a. ~~In all instances, s~~Stealth technology must be employed to conceal, camouflage and minimize the visibility of the antenna arrays associated with the facility ~~or institution. Height, setback, appurtenance, design, land use and landscape requirements as specified in the Capitol Zoning District Rule, General Standards, and Design Standards must be followed at all times.~~ Attached Wireless Communications Facility means an antenna array attached to an existing building, structure or associated new construction with any accompanying pole or device that attaches the antenna array to the building or structure and associated connection cables, and any equipment facility which may be located either inside or outside the attachment structure.

i. **Antenna Array** means one or more rods, panels, disks or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel) and a parabolic antenna (disk).

ii. **Stealth Technology** means systems, components and materials used in the construction and design of attached WCF which are developed to mask or conceal the facility and antenna array to make them compatible with the structure they are attached to, the surrounding properties, and the neighborhood in general.

b. Attached WCFs shall comply with all standards for ~~H~~height, setback, appurtenance, design, land use and landscape any other applicable requirements as specified in the Capitol Zoning District Rule, General Standards, and Design Standards must be followed at all times.

c. Attached WCF shall not be artificially illuminated directly or indirectly, except as may be required by state or federal law and shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature except for a small message containing provider identification and emergency telephone numbers.

2. Free standing, detached wireless communication facilities (WCF) consisting of, but not limited to, omni-directional antennas (rods), directional antennas (panels), and parabolic antennas (disks) supported by monopoles, towers, self-supporting (lattice) or guywire supported towers, or other similar structures are inappropriate installations in both the Governor's Mansion and State Capitol Areas.

3. Wireless Communications Facilities (either attached or free standing) in existence on ~~the date of the adoption of this amendment~~ July 1, 2015, which do not comply with these requirements of this amendment (nonconforming WCFs) are subject to the following provisions:

1a. A Nonconforming WCF may continue in use for the purpose now used, but may not be expanded or change users without complying with this amendment.

2b. A Nonconforming WCF which become damaged or destroyed due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions provided the user does not change and the facility is not expanded.

3c. Any nonconforming WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such WCF shall remove same.

Proposed Rule (clean)

WIRELESS COMMUNICATION FACILITIES

A **wireless communication facility (WCF)** is any unstaffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve necessary elevation. Wireless Communications means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.

1. An attached WCF is an antenna array attached to an existing building, structure or associated new construction with any accompanying pole or device that attaches the antenna array to the building or structure and associated connection cables, and any equipment facility which may be located either inside or outside the attachment structure. **Attached WCFs that meet each of the following criteria are allowed by right** in all areas of the Capitol Zoning District. (*Proposals for attached WCFs that do not meet each of the criteria below may also be considered by the Commission on a case by case basis.*)

a. Stealth technology must be employed to conceal, camouflage and minimize the visibility of the antenna arrays associated with the facility.

i. Antenna Array means one or more rods, panels, disks or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel) and a parabolic antenna (disk).

ii. Stealth Technology means systems, components and materials used in the construction and design of attached WCF which are developed to mask or conceal the facility and antenna array to make them compatible with the structure they are attached to, the surrounding properties, and the neighborhood in general.

b. Attached WCFs shall comply with all standards for height, setback, design, and any other applicable requirements in the Capitol Zoning District Rule, General Standards, and Design Standards.

c. Attached WCFs shall not be artificially illuminated directly or indirectly, except as may be required by state or federal law and shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature except for a small message containing provider identification and emergency telephone numbers.

2. Free standing, detached wireless communication facilities (WCF) consisting of, but not limited to, omni-directional antennas (rods), directional antennas (panels), and parabolic antennas (disks) supported by monopoles, towers, self-supporting (lattice) or guywire supported towers, or other similar structures **are inappropriate installations** in both the Governor's Mansion and State Capitol Areas.

3. Wireless Communications Facilities (either attached or free standing) in existence on July 1, 2015, which do not comply with these requirements (nonconforming WCFs) are subject to the following provisions:

a. A nonconforming WCF may continue in use for the purpose now used, but may not be expanded or change users without complying with this amendment.

b. A nonconforming WCF which become damaged or destroyed due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions provided the user does not change and the facility is not expanded.

c. Any nonconforming WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such WCF shall remove same.