

MODEL WIRELESS COMMUNICATIONS FACILITIES CODE

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BILL NO. _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING _____
RELATING TO THE SITING, PLACEMENT AND APPROVAL OF WIRELESS
COMMUNICATIONS ANTENNAS AND SUPPORT STRUCTURES IN THE CITY**

Whereas, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in Chapter 89 of the Missouri Revised Statutes and additionally pursuant to its general and specific police powers established by Statute authorizing the regulations herein to protect the public health, safety and welfare; and

Whereas, the Federal Communications Commission (FCC) has exclusive jurisdiction over the regulation of the environmental effects of radio frequency emissions from telecommunication facilities and the regulation of radio signal interference among users of the radio frequency spectrum; and

Whereas, consistent with the Telecommunications Act of 1996, the regulations of this Ordinance will not have the effect of prohibiting the provision of personal wireless services and do not unreasonably discriminate among functionally equivalent providers of such service. The regulations also impose reasonable restrictions to protect the public safety and welfare and to ensure opportunities for placement of antennas with prompt approval by the City. This Ordinance does not attempt to regulate in areas within the exclusive jurisdiction of the FCC; and

Whereas, the uncontrolled proliferation of towers in the City of _____ is threatened without adoption of amended regulations, and would diminish property values, the aesthetic quality of the City, and would otherwise threaten the health, safety and welfare of the public; and

Whereas, a duly noticed and published public hearing was held regarding the proposed amended regulations in conformity with all requirements of Section 89.060 of the Missouri Revised Statutes, and the Planning and Zoning Commission has reviewed the amended regulations and given a recommendation of _____ upon a vote of ___ to ___.

NOW, THEREFORE, BE IT ORDAINED BY THE _____ OF THE CITY OF _____, MISSOURI, as follows:

SECTION ONE: _____ is hereby amended by _____ and adopting a new Article _____, Wireless Communications Facilities, attached hereto as Exhibit A and incorporated herein by reference.

SECTION TWO: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Governing Body would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION THREE: This Ordinance shall be in full force and effect both from and after its passage and approval by the Mayor.

This Bill was passed and approved this ____ day of _____, 20__, by the _____ of the City of _____, Missouri, after having been read by title or in full two times prior to passage.

Presiding Officer

ATTEST:

City Clerk

Mayor

ATTEST:

City Clerk

EXHIBIT A

ARTICLE ____: WIRELESS COMMUNICATIONS FACILITIES

SECTION 1: PURPOSE

A. *Statement of Purpose.* The general purpose of this Article is to regulate the placement, construction and modification of telecommunications Towers, Support Structures, and Antennas in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City of _____. Specifically, this Article is intended to:

1. Provide for the appropriate location and development of telecommunications facilities and systems to serve the citizens and businesses of the City of _____;

2. Minimize adverse visual impacts of Wireless Communications Facilities through careful design, siting, landscape screening, and innovative camouflaging techniques;

3. Maximize the use of existing and new Support Structures so as to minimize the need to construct new or additional facilities;

4. Maximize the co-location of facilities on any new Support Structures and facilitate the fewest and least visible new Support Structures capable of achieving these objectives;

5. Ensure that any new Support Structure is located in an area compatible with the neighborhood or surrounding community to the extent possible; and

6. Ensure that regulation of Wireless Communications Facilities does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service.

B. *Applicability.* Notwithstanding any ordinance to the contrary, the procedures set forth in this section shall be applicable to all Wireless Communications Facilities existing or installed, built or modified after the effective date of this Article to the fullest extent permitted by law.

SECTION 2: DEFINITIONS

As used in this Article, the following terms shall have the meanings and usages indicated:

ANTENNA: Any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. The term shall exclude satellite earth station antennas less than two (2) meters in diameter (mounted within twelve feet (12') of the ground or building-mounted) and any receive-only home television antennas.

AGL (Above Ground Level): Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty feet (50') from the center location of measurement.

CABINET: A structure for the protection and security of communications equipment associated with one (1) or more Antennas where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed four feet (4') by six feet (6'), and vertical height that does not exceed six feet (6').

DIRECTOR: The Director of the Department of _____ of the City or his/her designee or official acting in such capacity.

DISGUISED SUPPORT STRUCTURE: Any free-standing, man-made structure designed for the support of Antennas, the presence of which is camouflaged or concealed as an appropriately placed and designed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, light standards, flag poles and artificial trees. For purposes of this definition, a structure "camouflaged or concealed as an appropriately-placed and designed architectural or natural feature" shall meet the following additional criteria: (1) it is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located, (2) it does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate, (3) it cannot be identified as an Antenna Support Structure by persons with reasonable sensibilities and knowledge, (4) its equipment, accessory buildings, or other aspects or attachments relating to the Disguised Support Structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated, and (5) it is of a height, design and type that would ordinarily occur at the location and neighborhood selected.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: The vertical distance measured from the average grade of the base of the structure at ground level to its highest point and including the main structure and all attachments thereto.

INCIDENTAL USE: Any use authorized herein that exists in addition to the principal use of the property.

MODIFICATION: Any addition, deletion or change, including the addition or replacement of Antennas, or any change to a structure requiring a building permit or other governmental approval.

SHELTER: A building for the protection and security of communications equipment associated with one (1) or more Antennas and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected Antennas is prohibited.

SUPPORT STRUCTURE: A Tower or Disguised Support Structure.

TOWER: A structure designed for the support of one (1) or more Antennas and including guyed towers, self-supporting (lattice) towers, or monopoles, but not Disguised Support Structures or buildings. The term shall also not include any Support Structure that includes attachments of sixty-five feet (65') or less in height owned and operated solely for use by an amateur radio operator licensed by the Federal Communication Commission.

WIRELESS COMMUNICATIONS FACILITY: Any Antenna, Cabinet, Shelter and Support Structure and associated equipment.

SECTION 3: APPLICATION PROCEDURES; TIMING.

A. Applications for permitted, administrative, or conditional uses pursuant to this Article shall be subject to the supplementary procedures in this Article. Applications shall be submitted to the City as a complete application on forms provided by the City. A "complete application" shall be an application submitted on the forms provided by the City, fully executed by the applicant, identifying the specific approval sought, and containing all attachments, fees and information as required thereon or by the City, consistent with this Article. Applications shall be accompanied by a building permit application and other applicable forms, and such application fees as may be established to reimburse the City for its inspection and review costs.

B. *Co-location requests.* A final decision on all applications to co-locate wireless communication facilities on an existing Support Structure shall be made no later than ninety (90) days after receipt of a complete application from an Applicant, unless extended by the City for good cause or by consent of the Applicant.

C. *Other applications; new Support Structures.* A final decision on all other applications under this Article, including but not limited to applications for new Support

Structures, shall be made no later than one hundred fifty (150) days after receipt of a complete application from an Applicant, unless such period is extended by the City for good cause or by consent of the Applicant.

D. *Incomplete applications.* Within thirty (30) days after receipt of an incomplete application, the Director shall provide notice to the Applicant stating that the application is incomplete and generally identifying the code provisions or application requirements not satisfied or information not provided that the Applicant must satisfy for a complete application commencing the City's review process. Nothing in this procedure shall alter the affirmative obligation of each applicant to review the applicable code and satisfy all applicable provisions as may apply to the applicant's specific submission.

SECTION 4: GENERAL REQUIREMENTS

A. The requirements set forth in this Article shall be applicable to all Wireless Communications Facilities within the City installed, built or modified after the effective date of this Article to the full extent permitted by law.

1. *Principal or incidental use.* Wireless Communications Facilities may be either a principal use in all zoning districts or an incidental use to institutional or non-residential uses, subject to any applicable requirement relating to yard or setback. An incidental use subject to a leasehold interest of a person other than the lot owner may be approved for a Tower only if the leasehold area separately meets all requirements for a separate subdivided lot, including dedicated access, parking, and lot size, applicable to a primary use in the district in which the use is proposed.

2. *Building codes, safety standards and zoning compliance.* Wireless Communications Facilities shall be constructed and maintained in compliance with all standards contained in applicable State and local building codes. A certified engineer's structural report shall be required with each application, unless waived upon application to the Director stating why such report is unnecessary to the specific application and a determination in the discretion of the Director approving such statement. In addition to any other approvals required by this Article, no Wireless Communication Facility or portion thereof shall be erected, replaced, or expanded prior to receipt of a Certificate of Zoning Compliance and the issuance of a Building Permit. For all sites located within a Historic Preservation District, a Certificate of Appropriateness shall also be required.

3. *Regulatory compliance.* All Wireless Communications Facilities shall meet or exceed current standards and regulations of the FAA, FCC and any other local, State or Federal agency with the authority to regulate Wireless Communications Facilities, and including all required licenses, permits and taxes applicable to such structure and/or modification. Should such standards or regulations be amended, then the owner shall bring such devices and structure into compliance with the revised standards or regulations within the time period mandated by the controlling agency. No approval for any placement, construction or modification of any Wireless Communications Facilities

permitted by this Article shall be granted for any Applicant having an uncured violation of this Article, any zoning regulation regarding the lot on which the structure is proposed, or any other governmental regulatory, licensing, or tax requirement applicable to such Antenna or structures within the City.

4. *Security.* All Wireless Communications Facilities shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build or modify Wireless Communications Facilities. Additional measures may be required as a condition of the issuance of a Building Permit or Administrative Permit as deemed necessary by the Director or by the Governing Body in the case of a Conditional Use Permit.

5. *Lighting.* Antennas and Support Structures shall not be lighted unless required by the FAA or other State or Federal agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application to install, build or modify the Antennas or Support Structure. Lighting may also be approved as a consistent component of a Disguised Support Structure. Equipment Cabinets and Shelters may have lighting only as approved by the Director or Governing Body on the approved site plan.

6. *Advertising.* Except for a Disguised Support Structure in the form of an otherwise lawfully permitted sign, the placement of advertising on Wireless Communications Facilities is prohibited other than identification signage of not greater than 1 square foot on ground equipment.

7. *Design.*

a. *Color.* Subject to the requirements of the FAA or any applicable State or Federal agency, Towers and attachments shall be painted a neutral color consistent with the natural or built environment of the site or an alternative painting scheme approved by the Director, or the Governing Body in the case of Conditional Use Permits, consistent with the requirements of this Article. Unpainted galvanized steel Support Structures are not permitted.

b. *Ground equipment.* Equipment Shelters or Cabinets shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located. All equipment shall be either placed underground, contained in a single Shelter or Cabinet, or wholly concealed within a building or approved walled compounds.

c. *Antenna design.* Antennas attached to a Disguised Support Structure or Tower shall be contained within the Disguised Support Structure or within or mounted flush on the surface of the Tower to which they are mounted. Antennas attached to an existing building or structure shall be of a color identical

to the surface to which they are mounted. All Antennas shall be designed to be disguised and maximally concealed on or within the Support Structure. Exposed Antennas on “crows nest” or other visible platforms or extensions are prohibited.

d. *Height.* Support Structures shall be no taller than necessary and shall not exceed the height limitation of any airport overlay zone as may be adopted by the City or other regulatory agency. Support Structures may exceed underlying zoning district height restrictions for buildings and structures only where shown to be necessary, provided that no reasonable alternative exists. District height restrictions shall be considered by the City in determining the appropriateness of the design and location of the application under the applicable standards for approval.

e. *Monopole design.* All Towers shall be of a monopole design. Lattice, guyed towers or other non-monopole Tower designs shall not be permitted.

f. *Compound walls/landscaping.* All Towers shall be surrounded by a minimum of six (6) foot high decorative wall constructed of brick, stone or comparable masonry materials and a landscape strip of not less than ten feet (10') in width and planted with materials, which will provide a visual barrier to a minimum height of six feet (6'). The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the Director, or by the Governing Body in the case of a Conditional Use Permit, upon demonstration by the Applicant that an equivalent degree of visual screening will be achieved. Landscaping or other improvements may be required for Disguised Support Structures if needed to implement an approved disguise.

g. *Setbacks.* All Support Structures, and related structures, fences and walls shall be separated from the property line of any adjacent property zoned for a residential use at least a distance equal to the height of the Support Structure, and shall be separated from all other adjacent property lines at least a distance equal to one-half ($\frac{1}{2}$) of the height of the Support Structure.

h. *Storage.* Vehicle or outdoor storage on any Support Structure site is prohibited, unless otherwise permitted by the zoning.

i. *Parking.* On-site parking for periodic maintenance and service shall be provided at all Antenna or Support Structure locations consistent with the underlying zoning district and the type of Antenna or Support Structure approval granted.

8. *Shared use.*

a. *Existing Support Structures.* Prior to the issuance of any permit to alter or modify any Support Structure existing on the effective date of this Article, the owner shall provide to the City a written and notarized agreement committing to make such Support Structure available for use by others subject to reasonable technical limitations and reasonable financial terms. Technical limitations regarding Disguised Support Structures shall include limitations as are necessary to maintain the requirements of a Disguised Support Structure. The willful and knowing failure of a structure owner to agree to shared use or to negotiate in good faith with potential users shall be unlawful and shall, among other remedies of the City, be cause for the withholding of future permits to the same owner to install, build, or modify Wireless Communications Facilities within the City.

b. *Support Structure inventories.* Prior to the issuance of any permit to install, build or modify any Support Structure, such Applicant shall furnish the Director an inventory of (1) all Support Structures owned or controlled by such Applicant and by the proposed Antenna user (if the proposed Antenna user is different from the Applicant), and (2) all Towers owned by any person located within one and one-half (1½) miles of the proposed structure. The inventory shall include the structure or Antenna reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing Antennas and an assessment of available ground space for the placement of additional equipment shelters.

c. *Shared use required--new Support Structures.* Any new Support Structure approved at a height of sixty feet (60') AGL (Above Ground Level) or higher shall be designed and constructed to accommodate at least one additional user unless a larger number is indicated by the response to the notification provisions herein. A written agreement committing to shared use as required by subsection (a) and a report describing the Support Structure's ability to support co-locations shall be submitted by the Applicant. The willful and knowing failure of the owner of a Support Structure built for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Article and, among other remedies of the City, shall be cause for the withholding of future permits to the same owner or Applicant to install, build or modify Wireless Communications Facilities within the City. The Director may waive this requirement for Disguised Support Structures if the Applicant submits a written request demonstrating that compliance cannot be achieved without violating one or more of the definitional requirements of a Disguised Support Structure.

d. *Notice of Support Structure applications.* Prior to any application for the construction of a new Support Structure, a copy of the application or a summary containing the height, design, location and type and frequency of Antennas shall be delivered by certified mail to all known potential Tower users within City, including but not limited to all companies providing wireless internet and commercial mobile radio services in the City, and such other potential users, if any, if identified on a schedule maintained by the Director. Proof of such

delivery shall be documented by the Applicant with the application to the City. The Director may establish a form required to be used for such notifications and establish other procedures consistent with and as may facilitate compliance with this Article. The Director shall, before deciding on the application or forwarding it to the Planning and Zoning Commission or Governing Body for review, allow all persons receiving notice at least fifteen (15) calendar days to respond to the City and the Applicant and request that the party receiving notice be permitted to share the proposed Tower or locate within one (1) mile of such area. The failure of the receiving party to use this process or respond to any such notice shall be considered cause for denying requests by such party for new Support Structures.

e. *Appeal of shared use violations.* Any party seeking shared use of a Support Structure subject to this provision shall after responding to notice of an application, negotiate with the Applicant for such use. The Applicant may on a legitimate and reasonable business basis choose between multiple requests for shared use on the same Support Structure, and may reject any request where legitimate technical obstacles cannot be reasonably overcome or where the party requesting shared use will not agree to reasonable financial terms. Any party believing that the Applicant has breached its duty to negotiate in good faith for shared use shall immediately notify the Applicant and the Director in writing. The Director may reject the application upon a finding that shared use has been improperly denied. A notice of breach of duty shall explain the precise basis for the claim and shall be accompanied by payment of an administrative review fee deposit of **twenty-five hundred dollar (\$2,500.00)** to the City to be used to offset the cost of review. After the Applicant's receipt of the notice, the Applicant shall have ten (10) calendar days to provide a written submission to the Director responding to the alleged violation of the shared use requirement. If deemed necessary by the Director, he/she may engage, at the cost of the party alleging the violation, a neutral, qualified technical consultant to provide an opinion on feasibility or costs of the shared use request. If the Director receives a notice alleging a violation of the shared use requirement, the time for a decision on an Administrative Permit is automatically extended for up to thirty (30) days until the Director has determined that the Applicant has complied. Nothing herein shall be deemed to create a cause of action for relief against the City or entitlement to any relief, process or enforcement other than review by the City as provided herein. An application for a new Support Structure shall not be deemed complete for acceptance until all information necessary for a decision on compliance has been provided by the Applicant.

SECTION 5: PERMITTED USE

A. The placement of Wireless Communications Facilities is permitted in all zoning districts only as follows:

1. The attachment of additional or replacement complying Antennas or equipment to any existing fully conforming Wireless Communications Facility provided that (1) additional equipment is located within the existing Shelter or Cabinet, (2) no expansion of the compound area or increase in height occurs, and (3) all requirements of this Article and the underlying zoning ordinance are met.

2. The mounting of Antennas on any existing and conforming building or structure other than a Support Structure (such as a water tower), provided that the presence of the Antennas and equipment is concealed by architectural elements or fully camouflaged and concealed by painting a color identical to the surface to which they are attached and further provided that all requirements of this Article and the underlying zoning ordinance are met.

3. The mounting of Antennas on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than ten feet (10'), provided that all requirements of this Article and the underlying zoning ordinance are met, except minimum setbacks provided in this Article shall not apply.

4. The installation of Antennas or the construction of a Support Structure on buildings or land owned by the City following the approval of a lease agreement by the Governing Body and subject to such specifications, conditions and requirements as set forth in the lease.

SECTION 6: AUTHORIZATION BY ADMINISTRATIVE PERMIT

A. The placement of Wireless Communications Facilities is permitted in all zoning districts by Administrative Permit approved by the Director only as follows:

1. The attachment of additional or replacement Antennas, equipment, Cabinets or Shelters to any nonconforming Support Structure existing on the effective date of this Article or subsequently approved in accordance with these regulations and not satisfying the requirements for such attachment pursuant to Section 6 as a permitted use as long the Applicant provides documentation from which the Director has reasonably determined that the application will bring the Support Structure (including ground equipment and site) into conformance with this Article to the maximum extent feasible and further provided that the proposal does not increase the height of the Support Structure or increase any exterior equipment compound area. A "nonconforming Support Structure" shall be any Support Structure or associated site or equipment that does not comply with all of the requirements of this Article, including but not limited to the General Requirements herein and the requirements of the underlying zoning district.

2. The one-time replacement of any Tower existing on the effective date of this Article or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate

a safety hazard and the new structure otherwise complies with this Article. The new Tower shall be of the same type as the original except that a guyed or self-supporting (lattice) tower shall be replaced by a monopole. The height of the new monopole Tower may exceed that of the original by not more than ten feet (10'). Subsequent replacements shall require the approval of a Conditional Use Permit.

3. The construction of a Disguised Support Structure provided that all related equipment shall be placed underground or concealed within the structure or associated buildings consistent with the disguise when the structure is located in any district other than a district authorizing industrial uses as a permitted use. Equipment may be placed in an appropriately concealed Cabinet if the Disguised Support Structure is incidental to an industrial, commercial, institutional or other non-residential use.

4. The placement in any commercial district of camouflaged Antennas on wooden or steel functioning utility poles not to exceed forty feet (40') in height and on any such poles (or functional replacement poles of no greater height) existing in any other district on the date of adoption of this Article. All related equipment for Antennas permitted by this sub-section shall be located outside of the rights-of-way in a concealed Cabinet or underground and shall otherwise comply with requirements for accessory utility facilities provided in Section _____ of this Zoning Code.

5. Temporary Towers erected and maintained for a period not to exceed sixty (60) days for the purpose of replacing an existing Tower, testing an existing or proposed network, or special events requiring mobile towers. The approval for such Tower shall be limited to the amount of time necessary for its purpose and approval may be further conditioned for public safety and other purposes of this Article.

B. *Application Procedures.* Applications for Administrative Permits shall be made on the appropriate forms to the Director and accompanied by a deposit of **two thousand five hundred dollars (\$2,500.00)**, or such other deposit amounts as may be established. In addition to the above fee, upon request by the Director, an Applicant shall deposit with the City such additional amounts reasonably necessary to reimburse the City for such anticipated costs and fees for legal, engineering or other contractual or other consultant services determined by the City to be needed in review or action on the application. No application for an Administrative Permit under this section shall be deemed complete until the Applicant has paid all fees and deposits required under this Article. Any amount not used by the City shall be refunded to the Applicant upon written request after a final decision. Applicant shall submit along with its completed application form a:

1. A detailed site plan, based on a closed boundary survey of the host parcel, indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, public rights-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas,

hydrologic features, and the coordinates and height AGL of the existing or proposed Support Structure.

2. The application shall be reviewed by the Director to determine compliance with the above standards and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.

3. In reviewing an application, the Director may require the Applicant to provide additional information, including technical studies, and/or may require Applicant to pay the cost of such studies if to be performed by the City, if reasonably necessary to assess whether the standards for approval are satisfied. An application shall not be deemed complete until satisfaction of all application requirements and submission of all requested information as provided herein.

4. The Director shall issue a decision on the permit within the time provided in Section 3 or the application shall be deemed approved unless the time period for review and action is extended by writing of the Director or Governing Body for reasonable cause. The Director may deny the application or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with and to effectuate the purposes of this Article. The Director may consider the purposes of this Article and the factors established herein for granting a Conditional Use Permit, as well as any other considerations consistent with the Article. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

C. *Appeals.* Unless otherwise required by law, appeals from the decision of the Director shall be made first to the Governing Body in accordance with the procedures for a contested case as defined in Chapter 536, RSMo., within ten (10) days of any denial.

SECTION 7: CONDITIONAL USE PERMIT REQUIRED

A. All proposals to install, build or modify Wireless Communications Facilities not permitted by Section 5 (Permitted Uses) or Section 6 (Administrative Permit) shall require the approval of conditional use permit following a duly advertised public hearing by the Planning and Zoning Commission and Governing Body, subject to the forthcoming limitations.

1. *Applications.* Applications for conditional use permits shall be filed on such forms required by the Director and processed subject to the requirements of and in the manner and time frame as established for conditional use permits in the Zoning Code and, in addition to such other requirements, shall be accompanied by a deposit of **two thousand five hundred dollars (\$2,500.00)**, or such other deposit amount as may be established by the Governing Body. In addition, upon request by the Director, an Applicant shall deposit with the City such additional amounts reasonably necessary to

reimburse the City for such anticipated costs and fees for legal, engineering or other contractual or other consultant services determined by the City to be needed in review or action on the application. No application for a Conditional Use Permit under this section shall be deemed complete until the Applicant has paid all fees and deposits required under this Article. Any amount not used by the City shall be refunded to the Applicant upon written request after a final decision.

2. *Additional minimum requirements.* No conditional use permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of Wireless Communications Facilities pursuant to Section 5 (Permitted Uses) or Section 6 (Administrative Permits) of this Article is not technologically or economically feasible. The City may consider current or emerging industry standards and practices, among other information, in determining feasibility.

3. *Decision and findings required.* A decision shall be accompanied by substantial evidence supporting the decision, which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. Evidence shall be under oath and may be submitted with the application or thereafter, or presented during the public hearing by the Applicant or others.

4. Findings Required: In addition to the determinations or limitations specified herein and by Sections _____ of this Zoning Code for the consideration of Conditional Use Permits, no Conditional Use Permit shall be approved by the Governing Body unless findings in the affirmative are made that the following conditions exist:

a. No existing Towers, structures or buildings within the necessary geographic area for the Applicant's Tower meet the Applicant's necessary engineering requirements considering:

- (1) Height;
- (2) Structural strength;
- (3) Resulting signal interference;
- (4) Feasibility of retrofitting;
- (5) Feasibility of redesigning the Applicant's network; or
- (6) Other limiting conditions that render Towers, structures or buildings within the Applicant's required geographic area unsuitable.

b. That the design of the Wireless Communications Facilities, including ground layout, maximally reduces visual degradation and otherwise

complies with provisions and intent of this Article. New Towers shall be of a monopole design.

c. That the proposal minimizes the number and/or height size, and visibility of Wireless Communications Facilities that will be required in the area. Where alternate technology or design exists or is reasonably available that would satisfy the general need for the proposal, this factor is ordinarily not satisfied.

d. That the Applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Article or otherwise.

e. That no land owned by any agency of the Federal or State government, or by any political subdivision of the State, is available for locating the Wireless Communications Facility.

Provided, that if one, but not more than one, of the previous five (a-e) conditions is not satisfied, approval may be granted only on a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of this Article.

B. *Additional height limitations.* No Tower shall be approved at a height exceeding one hundred fifty feet (150') AGL unless the applicant clearly demonstrates that such height is required for the proper function of the applicant's system or that of a public safety communications system of a governmental entity sharing the Tower. Such showing must also be supported by the opinion of a telecommunications consultant hired by the City at the expense of the Applicant. The opinion of the consultant shall include a statement that no available alternatives exist to exceeding the height limit including but not limited to the use of two or more Support Structures, and the reason why such alternatives are not viable.

C. *Historic Preservation:* A Conditional Use Permit shall not be issued for any Wireless Communications Facility that the Governing Body determines would create a significant negative visual impact or otherwise have a significant negative impact on the historical character and quality of any property within a Historic Preservation District or such District as a whole.

D. *RF engineer certification required; additional studies.* The City may require, at the expense of the Applicant, any additional studies or the hiring of an external consultant, including technical and legal services, to review exhibits and/or other requirements in accordance with this Section. Applications for a new Tower shall be considered only after a letter, certified by a Radio Frequency Engineer under oath, stating that the planned telecommunication equipment cannot be accommodated on an existing or already approved Support Structure that is capable of shared use and providing facts (including (1) all alternatives considered and (2) precise cost estimates where cost is a basis for the determination) clearly demonstrating one or more of the following conditions:

1. Planned telecommunications equipment would exceed the structural capacity of an existing or approved Support Structure, and the Support Structure cannot be reinforced to accommodate planned telecommunication equipment at a reasonable cost;

2. Planned telecommunications equipment will cause radio frequency interference with other existing or planned telecommunications equipment for that Support Structure and the interference cannot be prevented at a reasonable cost;

3. Existing or approved Support Structures do not have space on which the planned telecommunications equipment can be placed so it can function effectively and at least in parity with other similar telecommunications equipment in place or approved by the City or other area jurisdictions; or

4. Other reasons that make it impractical and not feasible to place the telecommunications equipment planned by the Applicant on an existing or approved Support Structure.

SECTION 8: OBSOLETE NON-COMPLYING SUPPORT STRUCTURES

Any upper portion of a Support Structure which is not occupied by active Antennas for a period of twelve (12) months, and any entire Support Structure which is not so occupied for a period of six (6) months, shall be removed at the owner's expense. Removal of upper portions of a Support Structure manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the Support Structure or property owner's expense. Any Applicant for a new Support Structure not built as a disguised part of another existing or permitted structure shall place a bond or other security with the City prior to any final approval for the purpose of removing any Support Structure as required herein and to compensate the City for performing proper maintenance of such Support Structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Article. The bond or security shall be in the form approved by the Director, and in the amount of fifteen thousand dollars (\$15,000.00), or such other amount as is determined by the Director to satisfy the requirements hereof with regard to the specific Support Structure to which it would apply.

SECTION 9: COMMERCIAL OPERATION OF UNLAWFUL WIRELESS COMMUNICATIONS FACILITIES

Notwithstanding any right that may exist for a governmental entity to operate or construct Wireless Communications Facilities, it shall be unlawful for any person to erect or operate for any private commercial purpose any Wireless Communications Facilities in violation of any provision of this Article, regardless of whether such Wireless Communications Facilities are located on land owned by a governmental entity.

SECTION 10: PENALTY

Except as may otherwise be provided by law, any person violating this Article shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or 90 days in jail or both. Each day the violation continues shall constitute a separate offense.