

Article 7: Wireless Communication

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7.1 PURPOSE AND LEGISLATIVE INTENT

- A. The Telecommunications Act of 1996 affirmed the city of Southport's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. This ordinance provides for the safe and efficient integration of Wireless Facilities. Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.
- B. The City of Southport finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its residents. To assure that the placement, construction or modification of a facility is consistent with the city's land use policies, the city is adopting a single, comprehensive, Wireless Telecommunications facility application and permitting process. The intent of this article is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city.

7.2 SEVERABILITY

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this article or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this article, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B. Any special use permit issued under this article shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total.

7.3 DEFINITIONS

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application in administering the wireless communication provisions provided herein. The definitions provided herein shall apply to this article. Where conflicting terms are found in Article 8, the terms in Section 7.3 shall apply specifically to wireless communication facility regulations, whereas the definitions in Article 8 shall apply to the UDO in its entirety and to those terms not defined herein.

Accessory facility or structure means an accessory facility or structure serving or being used in conjunction with wireless telecommunication facilities and located on the same property or lot

as the wireless telecommunications facilities, including but not limited to utility or transmission equipment storage sheds or cabinets.

Applicable codes means The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons

Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

applicant means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

Application means all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for a wireless telecommunications facility.

Base station means a station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Building permit means an official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160D-1110.

City means the City of Southport, North Carolina.

City right of way means a right of way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

City utility pole means a pole owned by a town in the City right of way that provides lighting, traffic control, or a similar function.

Collocation means the placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

Commercial impracticability or commercially impracticable means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Communications facility means the set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communications service means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

Communications service provider means cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Completed application means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

DAS or distributive access system means a technique using antenna combining that allows for multiple carriers or wireless service providers to use the same set of antennas.

Eligible facilities request means a request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment and does not include a substantial modification or new tower. This includes a small wireless facility.

Facilities, unless the term is otherwise modified or limited in context of a particular provision in which the term appears in this article, means all and any forms of wireless telecommunications-related equipment, devices, buildings, structures and accessories in the broad sense of those terms and includes and is not necessarily limited to the terms "wireless telecommunications facility," "accessory facility or structure" and "wireless facility" and "wireless support structure" as defined in NCGS 160D-931.

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

FCC means the Federal Communications Commission, or its duly designated and authorized successor agency.

Height means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

Micro wireless facility means a small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Modification or modify means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a collocation is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters

that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Need means anything that is technically required for the wireless service to be provided primarily and essentially within the city and creates the least physical and visual impact. This does not necessarily mean the internal design standards of the applicant, as companies' standards can vary greatly and normally reflect preferences. Rather, the term "need" relates to the ability of the user-equipment to function as designed.

NIER means non-ionizing electromagnetic radiation.

Person means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless services or *PWS* or *personal telecommunications service* or *PTS* shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Repairs and maintenance means the repair or replacement of any component of a wireless facility where the component is effectively identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

Search ring means the area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility means a wireless facility that meets both of the following qualifications:

- A. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six (6) cubic feet.
- B. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Special use permit means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the city in the course of the city's quasi-judicial process.

State means the State of North Carolina.

Stealth or **stealth techniques** means to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean using

the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. The term "stealth techniques" expressly includes such techniques as DAS or its functional equivalent.

Substantial modification means the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

- A. Increasing the existing vertical height of the structure by the greater of (i) more than 10% or (ii) the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- B. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- C. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Temporary means temporary in relation to all aspects and components of this article, something intended to, or that does, exist for fewer than 90 days.

Tower means any monopole or self-supporting structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal. Guyed towers shall not be permitted anywhere in the city.

Utility pole means a structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, or electricity, lighting, or wireless services.

Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

- A. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- B. Wireline backhaul facilities.

- C. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless support structure means a new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

Wireless telecommunications facilities means and includes without limitation the following in connection with wireless telecommunications:

- A. A telecommunications site;
- B. A personal wireless facility and any facility in connection with personal wireless services or PWS or personal telecommunications service (PTS);
- C. A primary or accessory structure, facility or location of all types and kinds designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices, including, but not limited to towers, buildings, church steeples, silos, water towers, and signs.

7.4 GENERAL POLICIES AND PROCEDURES FOR APPLICATIONS UNDER THIS ORDINANCE

- A. In order to ensure that the location, placement, construction and modification of a facility or the components of a Complex do not endanger or jeopardize the city's health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this ordinance, the city hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administrative approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:
 - 1. The city shall not be required to issue a permit for a carrier to achieve its goal from a single location and facility only, and instead may require that multiple smaller and less intrusive facilities be used to achieve the applicant's goal.
 - 2. Requiring a special use permit for any new complex, facility or any substantial modification of a facility;

3. Requiring administrative approval and a properly issued building permit for any collocation or modification of a facility that is not a substantial modification or substantial collocation.
4. Implementing an application process and requirements;
5. Establishing a policy for examining an application and issuing a special use permit or administrative approval that are fair and consistent;
6. Promoting, and requiring wherever possible, the sharing and/or collocation of support structures among service providers;
7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a facility in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
8. Requiring that the facility and complex shall be the least visually intrusive among those options that are not technologically impracticable given the facts and circumstances.
9. If the proposed site is within one half (1/2) mile of another jurisdiction, written notification of the application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
10. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record, unless the owner is the city, in which case, to prevent a conflict of interest, the city shall not be a party to the application.
11. Within 30 days of the date of submission of an application the applicant shall be notified in writing of any deficiencies related to the completeness of the application. Remediation of deficiencies in an application shall be deemed an amendment of the application that was received.
12. No work of any kind on or at a facility shall be started until the application is reviewed and approved and the special use permit or administrative approval, as applicable, has been issued, and a building permit has been issued in accordance with the city's code.
13. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a facility shall be issued where the facility is not in full compliance with all applicable local, state and federal laws, rules, regulations and orders. A facility not in full compliance with this ordinance shall be required to be brought into full compliance before any permit of any kind will be issued.
14. Where a certification is called for in this ordinance, such certification shall bear the signature and seal of a professional engineer licensed in the state.
15. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the city.

16. At a facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. The use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
17. All work at a facility shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
18. Unless such is proven to be technologically impracticable, the city requires the collocation of new antenna arrays on existing structures, as opposed to the construction of a new complex or support structure or increasing the height, footprint or profile of a facility beyond the conditions of the approved special use permit for an existing facility. In instances not qualifying as an eligible facility, the applicant shall submit a comprehensive report inventorying all existing structures more than 50 feet in height within one-half (1/2) mile of the location of any proposed new facility.
19. Collocated equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the city, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
20. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this ordinance, regardless of the location or whether the facility or any of its components is located inside or outside a structure or building.
21. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this ordinance, as well as other applicable land use and zoning regulations. An applicant may not by-pass sites of higher siting priority than the priority chosen solely because the site proposed is under lease or an option to lease exists. If a site other than the number one (1) priority, or attaching to an existing structure is proposed, the

applicant must demonstrate and explain to the reasonable satisfaction of the city why collocation is technically or commercially impracticable. Contractual or build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the siting priorities.

22. All costs associated with the preparation and submission of an application and/or necessitated by the requirements for obtaining and maintaining any and all city permits shall be borne by the applicant or permittee.
23. Any new wireless facility shall be designed and constructed so as to be the least visually intrusive, create the least visual impact reasonably possible and have the least negative impact on nearby property values, provided that pursuant to 47 U.S.C. 332(c)(7)(B)(II) compliance with this requirement does not prohibit or effectively serve to prohibit the provision of the intended service from one or more facilities.
24. No new facility or antenna array shall be identifiable, recognizable or discernable as a wireless facility or antenna by a typical lay-person from a distance of 250 feet or more.
25. Vegetative buffering of the site shall be installed to screen and/or mitigate the impacts of the wireless facility on surrounding areas, properties, or rights-of-way. In order to provide spatial separation and create a visual block from adjacent properties and streets, a vegetative buffer shall be installed around the outside of all improvements on the site, including the tower, any ground buildings or equipment, and security fencing. Depending upon the specific situation for the location involved and the impact of such, ground-mounted equipment cabinets and buildings may be located outside the buffered area if they are constructed so the exterior appearance of the equipment cabinet or building has the appearance of surrounding structures. The applicant shall submit scaled elevations of such buildings to assist in the evaluation of compliance with this appearance criteria. For situations involving new support structures and/or above ground equipment in the public rights-of-way, if above-ground location is allowed, the screening requirements shall be determined at the time of the pre-application meeting or site visit and determined as appropriate for the situation at the location.
26. Given that wireless service is deemed primarily an essential service, all new towers or other vertical support structures containing wireless antennas shall be designed to an EIA-TIA 222 G Class III standard or any subsequently adopted more stringent standard.

7.5 RESPONSIBLE PARTY(S)

With the exception of the city itself, the owner(s) of a facility, any support structure used to accommodate wireless facilities, and of the land upon which a facility support structure is located, shall at all times be jointly and individually responsible for:

1. The clean, neat, non-littered and safe condition of the facility, support structure and all components on the site related to the facility;

2. Assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and
3. Assuring the proper permitting as required by this article and other city regulations by all lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the facility is operated in compliance with this ordinance, other city regulations and any special use permit.

7.6 FEES

- A. All fees and charges, including but not limited to application fees, expert assistance fees, inspection fees and permit fees, shall be as set forth in the city's schedule of fees and charges. For new towers or other support structures or for substantial modifications, the expert assistance fee shall be as set forth in the city's fee schedule. The city may choose to waive their application fee if the applicant locates on city-owned property, not including in the city's public rights-of-ways.
- B. For collocated small wireless facilities, the city may charge an application fee that shall not exceed the lesser of
 1. The actual, direct, and reasonable costs to process
 2. The amount charged by the city for permitting of any similar activity; or
 3. \$100 per facility for the first five (5) small wireless facilities addressed in an application, plus \$50 for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

7.7 EXISTING FACILITIES AND COMPLEXES

- A. Any legally permitted facility, tower or other support structure that exists on the effective date of this ordinance of the city's codes shall be allowed to continue as it presently exists, provided that
 1. All work was properly permitted;
 2. The facility is in compliance with all applicable local, state and federal laws, rules regulations, orders and permit conditions; and
 3. The site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the site.
- B. Any work not properly previously permitted prior to the adoption of this ordinance must be properly permitted within 90 days of the effective date of this ordinance or prior to any modification of, on or at the site or facility.
- C. Any new collocation and/or modification of a facility, Tower or other support structure or a carrier's equipment located on the tower or facility, must be permitted under this ordinance and the entire facility and any new collocation or modification shall comply with all applicable laws, rules and regulations, including obtaining a valid COC.

7.8 CERTIFICATE OF COMPLETION

No work shall be allowed to be done at or on any facility, excepting normal repair and maintenance work as defined in this ordinance, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the facility, tower or other support structure shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the facility does not pass the initial final inspection, the owner shall be required to pay for any subsequent re-inspection prior to the re-inspection being conducted. A passing final inspection is required prior to the issuance of a COC.

7.9 EXCLUSIONS

- A. The following shall be exempt from this ordinance:
1. Any facilities expressly exempt from the city's zoning, land use, siting, building and permitting authority.
 2. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
 3. A facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 50 feet above ground level.
 4. Facilities used exclusively for providing wireless service(s) or technologies where
 - a) There is no charge for the use of the wireless service;
 - b) The facility does not require a new tower or increase the height or profile of the structure being attached to; and
 - c) The service is not intended to be useable more than 75 feet from the antenna.

7.10 NEW TOWER, NEW SUPPORT STRUCTURE, OR SUBSTANTIAL MODIFICATION - APPLICATION REQUIREMENTS

- A. All applicants for a special use permit for a new wireless facility, including for a new tower or other new support structure or that constitutes a substantial modification, shall comply with the requirements set forth in this section. In addition to the required information set forth in this section, all applications involving the construction of a new support structure or a substantial modification shall contain the information hereinafter set forth prior to the issuance of a building permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant. The requirements for submission of a special use permit as provided in Appendix A shall be met in addition to the following:
1. Ownership and Management.
 - a) The name, address, phone number and e-mail address of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name, e-mail address and all necessary contact information shall be provided;

- b) A copy of the FCC license(s) applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands to be used;
 - c) The applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the applicant to share any new telecommunication tower or support structure that it constructs or has constructed for it;
2. Zoning and Planning.
- a) The location, size of the footprint and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
 - b) A site plan to scale, not a hand drawn sketch, showing the footprint of the support structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with the city's building or development code, including but not limited to fencing and any other requirements of site plans;
 - c) Elevation drawings showing the profile or the vertical rendition of the tower or support structure at the facility and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
 - d) The type of tower or support structure, the number of antenna arrays proposed to be able to be accommodated and the basis for the calculations of the tower's or support structure's capability to accommodate the required number of antenna arrays for which the structure must be designed;
 - e) Pre-construction photos of the existing facility and post construction landscaped photo simulations, both as directed at the time of pre-application meeting.
 - f) Disclosure in writing of any agreement in existence prior to the submission of the application that would limit or preclude the ability of the applicant to share any new telecommunication tower that it constructs.
 - g) A certified statement of i) the total cost of construction for the work associated with the application; and ii) the total cost of all equipment of the applicant at the facility. To verify the accuracy of the information, the city reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.
3. Safety.
- a) The age of the tower or support structure and complex stated in years, including the date of the grant of the original permit;
 - b) A description of the type of tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;

- c) For a tower, the make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the state, proving the tower or support structure's capability to safely accommodate the facilities of the applicant without change or modification.
- d) If a substantial modification of a facility is needed, a detailed narrative explaining what changes are needed and why they are needed;
- e) A complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the facility;
- f) If substantially modifying an existing tower or other support structure, a complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the city regarding the physical condition and/or safety of the facility, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the UDO Administrator;
- g) In an instance involving a tower with only a single array of antennas, or for the first antenna array to be attached to a tower where the array will be 33 feet or more above ground level, and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the city, signed documentation in the form of the FCC's "Checklist to Determine whether a facility may be Categorically Excluded" may in certain cases be allowed to be used and shall be provided to verify that the facility and complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
- h) In certain instances, the city may deem it appropriate to have a post-construction on-site RF survey of the facility done after the construction or modification and activation of the facility, such to be done under the direction of the city or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;
- i) In the event the city deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection g of this section, the city expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to

- determine or verify compliance with federal standards and guidelines that the city, itself, may be prohibited from determining.
- j) If not submitted in a previous application, a signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
4. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any facility where the application proposes to increase the height of the existing tower or support structure.
 5. New towers shall be prohibited in areas deemed to be visual or sensitive scenic areas within the city's corporate limits. The burden of proof in determining the town shall not obstruct visual or sensitive scenic areas within the city shall be on the applicant.
 6. All applications for a proposed facility applicable to this section shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the city expressly reserves the right to require the use of stealth or camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System), a small cell facility or a functional equivalent as regards size, and such shall be subject to approval by the city.
 7. If proposing a new tower or support structure, or a substantial collocation or modification of an existing structure, the applicant shall be required to submit clear and convincing evidence that there is no alternative solution within the search ring of the proposed site that would be less visually intrusive and that not to permit the proposed new tower or support structure, or a substantial collocation or modification would result in the prohibition of service or the perpetuation of a significant gap in service.
 8. An applicant proposing a new tower or support structure shall use the largest search ring technically possible and may be required to prove with certified technical/engineering documentation that the search ring used is the largest that could be used.
 9. In order to better inform the public, in the case of a new tower or support structure or substantial modification, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a 10 foot in length brightly colored balloon with horizontal stabilizers, at the maximum height of the proposed new tower or support structure or substantial modification. Unless conditions at the time preclude it for reasons of instability vis-à-vis wind speed, the use of spherical balloons shall not be permitted.
 10. At least 14 days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than 14 days after the conduct of the balloon test. The sign

shall be at least four feet (4) by eight feet (8) in size and shall be readable from the road by a person with 20/20 vision.

- a) Such sign shall be placed off, but as near to, the public right-of-way as is possible.
- b) Such sign shall contain the times and date(s) of the balloon test and contact information.
- c) The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the applicant seven (7) and 14 days in advance of the first test date in a newspaper with a general circulation in the city and as agreed to by the city. The applicant shall inform the city in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
- d) The applicant shall notify all property owners and residents located within 1,500 feet of the nearest property line of the subject property of the proposed construction of the tower and facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least 14 days prior to the conduct of the balloon test and shall be delivered by first-class mail. The UDO Administrator shall be provided an attested copy of the list of addresses to which notification is provided. The wireless telecommunications facility shall be structurally designed to accommodate at least four (4) antenna arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

11. The applicant shall provide certified documentation in the form of a structural analysis and report certified by a licensed professional engineer, including all calculations, showing that the facility will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent standards shall apply.
12. The applicant shall furnish a Visual Impact Assessment, which may be required to include:
 - a) A computer generated "Zone of Visibility Map" at a minimum of a one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage; and
 - b) To-scale photo simulations of "before and after" views from key viewpoints inside of the city as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and

- historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;
13. The applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view at least the bottom 15 feet of the facility and all related equipment and structures associated with the facility not located in the public rights-of-way. For situations involving new support structures and/or above ground equipment in the public rights-of-way, if above-ground location is allowed, the screening requirements shall be determined at the time of the pre-application site visit and determined based on the situation at any given location.
 14. A building permit shall not be issued for the construction of a new tower or other support structure until i) there is an application filed for or by a specific carrier that documents with verifiable technical evidence that the facility is necessary for that carrier to serve the community and that collocation on an existing structure is not feasible, or ii) that no owner of an existing structure within the applicant's search ring will allow attachment to the owner's building or other type of structure.

7.11 SMALL FACILITIES - ELIGIBLE FACILITIES AND OTHER SMALL FACILITY INSTALLATIONS OR MODIFICATIONS – APPLICATION REQUIREMENTS

- A. For a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be contained in an application. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.
 1. Safety.
 - a) Pre-construction photos of the existing facility from at least two (2) directions, and post construction landscaped photo simulations from at least two (2) directions from a distance no further than 50 feet;
 - b) the age of the Tower or other non-utility pole support structure in years, including the date of the grant of the original permit;
 - c) a description of the type of tower, e.g. guyed, self-supporting lattice or monopole, or a description of another other type of support structure;
 - d) if attaching to a tower or any type of non-utility pole structure, certified documentation in the form of a structural analysis and report done by a professional engineer licensed in the State of North Carolina. Said analysis and report shall include all supporting calculations, showing that the facility, as it exists, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, the North Carolina Building Code and all applicable ANSI

(American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.

- e) If attaching to a utility pole in the public right-of-way, written evidence or certification by the pole owner that the pole is structurally rated to accommodate the new loading;
 - f) a copy of i) the installed foundation design, including a geotechnical sub-surface soils investigation report; and if necessary ii) a foundation remediation design and recommendation for the tower or other structure;
 - g) for an existing wireless facility, a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.
 - h) a copy of the FCC licenses for each frequency band applicable for the intended use of the wireless telecommunications transmission and/or receive equipment;
 - i) a list of all frequencies, to be used at the facility;
 - j) the number, type and model of the antenna(s) proposed, along with a copy of the manufacturer's specification sheet(s), i.e. cut sheet(s), for the antennas;
 - k) certification from the owner of the facility certifying that the facility and all attachments thereto are currently in compliance with the conditions of the approved special use permit or administrative approval or identifying any non-compliant situation.
2. Ownership and Management.
- a) the name, address and phone number of the person preparing the application;
 - b) the name, address, and phone number of the property owner and of the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
 - c) the postal address and tax map parcel number of the property;
 - d) a copy of the FCC license(s) applicable for the intended use of the Wireless Telecommunications Facilities.
3. Construction.
- a) A certified statement of i) the total cost of construction for the work associated with the application; and ii) the total cost of all labor and equipment of the applicant at the facility. To verify the accuracy of the

- information, the city reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.
4. In certain instances, the city may deem it appropriate to have an on-site RF survey of the facility performed after the construction and activation or modification and activation of the facility, such to be done under the observation and supervision of the city or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the site;
 5. In the event the city deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, the city expressly reserves the right to seek the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the city, itself, may be prohibited from determining.
 6. Attachments to Existing Structures Other Than Towers
 - a) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
 - b) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than 10% of the existing height beyond the top of the structure as originally permitted and no equipment other than cabling shall be lower than 15 feet above the ground. Only one (1) increase of the height of a utility pole or light standard shall be allowed.
 - c) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere less visually intrusive on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.
 - d) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

7.12 LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

- A. For structures not located in the public right-of-way, no new tower or other new support structure taller than 50 feet shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right and shall be the maximum permissible height subject to the independently verifiable proof of technical need for height information submitted.
- B. If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood and is proven by verifiable clear and convincing technical information to be a technical necessity for the applicant's service to be provided in the intended service area of the proposed facility, the support structure shall not be taller than the shorter of i) 10 feet above the tallest obstruction between the proposed support structure and a residential neighborhood; or ii) the shortest height that will not effectively serve to prohibit the provision of service to a substantial portion of the intended area.
- C. applicants shall locate, site and erect all facilities and associated equipment in accordance with the following order of priority:
 - 1. On existing structures outside the public right-of-way without increasing the dimensions or size of the structure;
 - 2. On existing structures, more than 1,000 feet from the nearest boundary of the public right-of-way without increasing the height or size of the profile of the tower or structure by more than is allowed for an eligible facility.
 - 3. On existing structures in the public right-of-way;
 - 4. On existing structures outside the public right-of-way without increasing the height of the structure by more than is technically needed, as such need can be proven by clear and convincing verifiable technical evidence using information provided by the applicant.
 - 5. On properties in areas zoned for commercial use.
 - 6. In historic districts or sensitive viewshed areas in the public right-of-way without increasing the height or size of the profile of the support structure, and if camouflaged or stealthed to the satisfaction of the UDO Administrator.
 - 7. In areas zoned for residential use in the public right-of-way, but without increasing the height of the size or dimensions of the support structure, and only if camouflaged or stealthed to the satisfaction of the UDO Administrator.
 - 8. In areas zoned for residential use, in the public right-of-way if camouflaged or stealthed to the satisfaction of the city.
- D. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:
 - 1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and fall zone requirements;
 - 2. Non-compliance with zoning, land use or safety regulations;

3. The placement and location of a facility would create an unacceptable risk, or the reasonable possibility of such, for physical or financial damage to any person or entity, or of trespass on private property;
 4. The placement and location of a facility would not be harmonious with or would result in a negative change in the nature or character of the adjacent and surrounding area, expressly including but not limited to loss in value of property as measured over the 12 months preceding the application having been filed;
- E. Notwithstanding anything to the contrary in this ordinance, for good cause shown such as the ability to utilize one or more shorter, smaller or less intrusive facilities elsewhere and still serve a substantial portion of the intended service area, the city may require the relocation of a proposed site if relocation could result in a less intrusive facility singly or in combination with other locations, including allowing for the fact that relocating the site chosen by the applicant may require the use of more than one (1) facility to serve substantially the same area.

7.13 TYPE AND HEIGHT OF TOWERS

- A. No new towers of a lattice or guyed type shall be permitted.
- B. Except in the public rights-of-way and in residentially zoned areas, the maximum permitted total height of a new tower or other proposed support structure, shall be 50 feet above pre-construction ground level, unless it can be shown by clear and convincing verifiable technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service to at least a substantial portion of the intended service area within the city. The maximum permitted height is permissive and is expressly not as-of-right.
- C. If the applicant chooses to provide evidence in the form of propagation studies, to enable verification of the need for the requested height or location, such must include all modeling information and support data used to produce the studies at the requested height and at a minimum of 10 feet lower.
- D. The city reserves the right to require a drive test to be conducted under the supervision of the city or its designee to verify the technical need for what is requested.
- E. At no time shall a tower or other support structure be of a height that requires lighting by the FAA.
- F. The height can be increased if needed, towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a tower or other support structure.
- G. New Structures within Rights-of-Ways – Required Design Characteristics. The following shall govern new poles and other support structures in the rights-of-way.
 1. Wireless installations shall be consistent throughout the city limits and any extraterritorial jurisdiction (ETJ);
 2. Wireless installations shall be on non-conductive poles or structures;
 3. All antennas shall be unrecognizable as such by an average person;
 4. Wireless installations shall utilize a “concealed” design, including all cabling being inside a hollow pole;

5. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, in a pole-mounted cabinet or under a pole-mounted shroud;
6. Cabinets should be consistent in size and no larger than standard DOT streetlight signal cabinets;
7. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new additional poles, any wireless installation in the public right-of-way shall replace a pre-existing utility pole or light standard;
8. Wireless installations in the public right-of-way shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222;
9. Any new poles installed shall be environmentally “green” and not leach any volatile organic compounds or toxic materials into the ground; and
10. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be of a corrodible type of metal or concrete.

7.14 VISIBILITY AND AESTHETICS

- A. No tower, nor any support structure that is not a building and is constructed after the effective date of this section, shall be tall enough to require lighting by the Federal Aviation Agency (FAA).
- B. Stealth: All new facilities, including but not limited to towers, shall utilize stealth or camouflage siting techniques that are acceptable to the city, unless such can be shown to be either commercially or technologically impracticable.
- C. Finish/Color: Towers and other non-building support structures shall be of an appropriate color to harmonize with the surroundings.
- D. Lighting: Notwithstanding the prohibition against lighting, in the event lighting is subsequently required by the Federal Aviation Agency (FAA), the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and federal regulations. For any facility for which lighting is required under the FAA’s regulations, or that for any reason has lights attached, all such lighting shall be of the minimum wattage needed, and if required to be lighted by the FAA shall be affixed with equipment that enables the light to be seen as intended from the air, but that minimizes the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least one (1) mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- E. Retrofitting: In the event a tower or other support structure that is lighted as of the effective date of this ordinance is modified, at the time of the first modification of the facility the city reserves the right to require that the tower be retrofitted so as to comply with the lighting requirements of the preceding Subsection D of this section or be reduced to a height that does not require lighting.
- F. Flush Mounting: Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted, or as close to flush-mounted on the support structure as is

functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such would have the effect of prohibiting the provision of service to a substantial portion of the intended service area alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.

- G. Placement on Building: If attached to a building, all antennas shall be mounted on the fascia of the building, camouflaged to match the color and, if possible, the texture of the building, or in a manner that makes the antennas as visually innocuous and undetectable as is reasonably possible given the facts and circumstances involved. A false façade on the roof that is acceptable to the city may be used to camouflage roof-mounted antennas and equipment.

7.15 SECURITY

- A. All facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - 1. All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be easily climbed or collided with and shall expressly include removing the climbing steps for the first 10 feet from the ground on a monopole; and
 - 2. Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

7.16 SIGNAGE

- A. Facilities shall contain a sign no larger than four (4) square feet and no smaller than one (1) foot square in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of at least two (2) square feet shall also be installed bearing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s).
- B. The contact information sign shall be located on the equipment shelter or cabinet of the applicant, must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet and contain a 24 hour/365 day emergency contact phone number. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.
- C. For wireless facilities in the public rights-of-way the RF Radiation Warning sign may be
 - 1. The standard warning symbol for RF Radiation;
 - 2. Be of a size no smaller than 6" x 6" and
 - 3. Placed no less than four feet (4) nor more than six feet (6) from ground level.

7.17 SETBACK AND FALL ZONE

- A. All proposed towers and any other proposed wireless support structures not located in the public rights-of-way shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances:

1. A distance equal to the height of the proposed tower or support structure plus 10%, otherwise known as the fall zone; or
 2. The existing setback requirement of the underlying zoning district.
- B. For new support structures in the public right-of-way, the setback shall be determined at the time of the pre-application site visit and determined based on the situation at the location.
 - C. For any facility located within a fenced compound, any accessory structure shall be located within the compound as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the public right-of-way and any occupied building or domicile and any property boundary lines.
 - D. The nearest portion of any private access road leading to a facility shall be no less than 10 feet from the nearest property line.
 - E. There shall be no development of habitable buildings within the setback area or fall zone.

7.18 RETENTION OF EXPERT ASSISTANCE COST TO BE BORNE BY APPLICANT

- A. The city may hire any consultant of its choice to assist the city in reviewing and evaluating applications and negotiating leases, provided the consultant has at least five (5) years of experience working exclusively for the public sector regulating towers and wireless facilities and negotiating leases, and has not had a recommendation successfully legally challenged.
- B. Since retail subscriber rates reflect all capital costs, including costs of permitting such as but not limited to payment of the cost of the city's expert assistance, and to prevent taxpayers from having to bear the cost related to the issue of permitting and regulating a commercially used wireless telecommunications facilities or negotiating agreements to lease or amend or modify a lease for any city-owned property or structure, an applicant shall pay to the city fees as set forth in the city's fee schedule. The fees are intended to cover all reasonable costs of the expert assistance needed by the city in connection with the review of any application, including both the technical and non-technical review, and the permitting, inspection, construction or modification requested, any application pre-approval evaluation requested by the applicant and any lease negotiations. The payment of the expert assistance fees to the city shall precede any work being done that is related to the intended application or lease, including a pre-application meeting or site visit.
- C. The total amount of the funds needed for expert assistance for substantial modifications and new support structures may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary technical and non-technical reviews, analysis and inspection of any construction or modification or the amount of time spent responding to an applicant's requests, questions, assertions or arguments as regards its application with respect to the requirements of this ordinance or applicable state or federal law, rule or regulation.

- D. For a new tower or other support structure or a substantial modification, to prevent taxpayer subsidization, the expert assistance fee shall be no less than \$7,500. For eligible facilities, the consulting fee shall not exceed \$500 per application.
- E. The city will maintain an accounting record for the expenditure of all such funds.
- F. If an application is amended, or a waiver or relief is requested from any regulations at any time prior to the grant of the Certificate of Completion required under this ordinance, the city reserves the right to require additional payment for the review and analysis equal to, but not exceeding, the cost created for the city by the applicant or its application. Such amount shall be paid to the city prior to the issuance of the special use permit or administrative approval or the Certificate of Completion, whichever is procedurally needed next.

7.19 PROCEDURAL REQUIREMENTS FOR A GRANTING A SPECIAL USE PERMIT

- A. Prior to issuance of a special use permit, all requirements and procedures as provided in Section 2.7.C shall be met in addition to all applicable provisions of this article.
- B. The city shall schedule any required hearing(s) once it finds the application is complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The city shall not be required to set a date for a hearing if the application is not complete or if there are unresolved issues of non-compliance by the applicant or a party to the application. The city may, at any stage prior to issuing a special use permit, require such additional information as it deems necessary and that is not expressly prohibited from being required by applicable law as relates to the issues of the siting, construction or modification of or at a wireless telecommunications facility.
- C. Upon Board of Adjustment approval, a special use permit shall be issued for a new tower or substantially modified facility. Notwithstanding the preceding, the building permit for such shall not be issued until an applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this ordinance.

7.20 ACTION ON AN APPLICATION

- A. The city will undertake, or have undertaken, a review of an application pursuant to this article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. The city may refer any application or part thereof to any advisory committee and/or consultant for a non-binding recommendation.
- C. Either after the public hearing if a hearing is required, or after administrative review for a non-substantial modification or an eligible facility application, the city may
 1. Approve;
 2. Approve with conditions; or
 3. Deny for cause a permit or administrative approval application. Any decision shall be in writing. Throughout the application and permitting process, the burden of proof with respect to compliance with this article shall always be upon the applicant.

7.21 TRANSFER OR ASSIGNMENT

- A. The extent and parameters of a special use permit or administrative authorization for a facility shall be as follows:
 - 1. Such special use permit or administrative authorization shall not be assigned, transferred or conveyed without the express prior written notification to the city, such notice to be not fewer than 60 business days prior to the intended assignment, transfer or conveyance.
 - 2. A transfer, assignment or other conveyance of the special use permit or administrative authorization shall require the written commitment of the proposed new holder of the special use permit or administrative authorization to abide by all applicable laws, rules and regulations, including but not limited to this ordinance.

7.22 VIOLATIONS

Violations of this article shall be subject to Section 2.15.

7.23 REMOVAL AND PERFORMANCE SECURITY

- A. Removal and Performance: The applicant and the owner of record of any proposed new tower or other support structure shall, at its sole cost and expense, be required to execute and file with the city a bond or other form of security that is acceptable to the city as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower or other support structure and with such sureties as are deemed adequate by the city to assure the faithful performance of the terms and conditions of this ordinance and the conditions of any special use permit issued pursuant to this ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or, if abandoned, 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. The amount of the bond is, in part, determined by the current cost of demolition, removal and site restoration multiplied by the compounding or cumulative effect of a 3% annual cost escalator over a 30-year projected useful life of the structure.
- B. Performance: The owner of any equipment attached to a support structure or located in a complex shall be required to execute and file with the city a performance bond or other form of performance security that is acceptable to the city as to the type of security and the form and manner of execution, in the amount of \$25,000.

7.24 RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES

- A. In order to verify that the holder of a special use permit for a facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this ordinance, the city or its designee shall have the right to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited

to, towers, antennas, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.

- B. Refusal to allow or grant access to the city's representative upon reasonable notice shall be deemed a violation of this ordinance.

7.25 LIABILITY INSURANCE

- A. A holder of a special use permit for a wireless telecommunications support structure 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 amounts as set forth below:
 - 1. Commercial General Liability covering personal injuries, death and property damage: \$2,000,000 per occurrence/\$5,000,000 aggregate; and
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
 - 3. A \$5,000,000 Umbrella coverage; and
 - 4. Workers Compensation and Disability: Statutory amounts.
- B. For a facility located on city property, the Commercial General Liability insurance policy shall specifically name the City and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with an AM Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the city with at least 30 days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the city at least 15 days prior to the expiration of the insurance that such policies are intended to renew or replace.
- F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days prior to the grant of the building permit, the holder of the special use permit shall deliver to the city a copy of each of the policies or certificates representing the required insurance in the required amounts.
- G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the city shall not be deemed to comply with this section.

7.26 INDEMNIFICATION

- A. Any application for wireless telecommunication facilities that is proposed to be located on city property or in the city-owned or managed right-of-way shall contain a signed statement fully and completely indemnifying the city and to at all times defend, indemnify, protect, save, hold harmless and exempt the city and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility. Notwithstanding the preceding, there shall be no claim of indemnification with

respect to any act attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city.

- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the city itself, or an agency or department of the city, applies for and secures a special use permit for a wireless telecommunications facility.

7.27 MOVING OR REMOVAL OF COLLOCATED FACILITIES AND EQUIPMENT

- A. If attached to an existing tower or other support structure, unless the city deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without verifiable clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in a substantial portion of the intended service area.
- B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the city of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the city of the lack of impact on the neighborhood or area of the intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not commercially impracticable shall not be deemed a permissible reason for relocating.
- C. The owner of any facility shall be required to provide a minimum of 30 days written notice to the city clerk prior to abandoning any facility.
- D. Under the following circumstances, the city may determine that the health, safety, and welfare interests of the city warrant and require the removal of facilities.
 - 1. A facility that has been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a cumulative total of 180 non-consecutive days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 - 2. A support structure, facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3. A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or administrative approval, and the special permit or administrative approval may be revoked.
- E. If the city makes a determination as noted in Subsection D.2 or D.3 of this section, then the city shall notify the holder of the permit for the facility that said facility is to be removed.
- F. The holder of the special use permit or administrative approval, or its successors or assigns, shall dismantle and remove the facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is

reasonably possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within 90 days of the receipt of a written notice from the city. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the city.

- G. If a facility has not been removed, or substantial progress has not been made to remove the facility, within 90 days after the permit holder has received notice, then the city may order officials or representatives of the city to remove or have removed the facility at the sole expense of the owner or special use permit holder.
- H. If the city removes, or causes a facility to be removed, and the owner of the facility does not claim and remove it from the site to a lawful location within 10 days, the city may take steps to declare the facility abandoned and sell all remaining equipment and materials.
- I. Notwithstanding anything in this section to the contrary, the city may approve a temporary use permit/agreement for the facility, but for no more than 90 days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit or administrative approval and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may take possession and dispose of the affected facility in the manner provided in this section and may utilize the bond in Section 7.23 of this ordinance.

7.28 RF EMISSIONS

- A. As may be deemed appropriate from time to time, to assure the protection of the public health and safety, the city expressly reserves the right under its police powers to require
 - i) that a user of a facility or the owner of the facility, verify compliance with the FCC's regulations regarding cumulative RF emissions at the site under the observation of a qualified staff member or the city's consultant; and
 - ii) that all users of the facility cooperate in a prompt and timely manner with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this section and subject the non-cooperating party to all applicable and permissible fines and penalties.
- B. In the event the city deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection A of this section, the city expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the city, itself, may be prohibited from determining.
- C. With respect to support structures other than towers, if any section or portion of the structure attached to or to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the

potential danger. As deemed warranted by the city at any time, the right of the city is expressly reserved to do itself, or order done, an on-site RF emissions survey.

7.29 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS

- A. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative approval for wireless telecommunications facilities, then the holder of such a special use permit or administrative approval shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

7.30 CONFLICT WITH OTHER LAWS

Where this article differs or conflicts with other local Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, state or federal government, the more stringent shall apply.