

ORDINANCE NO.

AN ORDINANCE TO REGULATE PERMITTING, SITING AND  
CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS  
FACILITIES, INCLUDING BUT NOT LIMITED TO TOWERS AND ANY  
ASSOCIATED EQUIPMENT OR FACILITIES

WHEREAS, the Telecommunications Act of 1996 affirmed the City of Gulf Shores' authority concerning the placement, construction and modification of wireless telecommunications facilities; and

WHEREAS, the City Council of the City of Gulf Shores finds that wireless telecommunications facilities may pose significant concerns to the health safety, public welfare, character and environment of the City and its inhabitants; and

WHEREAS, 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;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, as follows:

**Section 7-171 Purpose and Legislative Intent**

(a)The Telecommunications Act of 1996 affirmed the City of Gulf Shores' authority concerning the placement, construction and modification of wireless telecommunications facilities. This ordinance provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the City 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 Gulf Shores finds that wireless telecommunications facilities 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. In order 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 Ordinance 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 of Gulf Shores.

## Section 7-172 Severability

- (a) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance 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 Ordinance, 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 pursuant to this Ordinance shall be comprehensive and 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, upon determination by the City.

## Section 7-173 Definitions

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

- (a) “**Accessory Facility or Structure**” means an accessory facility or structure serving or being used in conjunction with wireless telecommunications 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.
- (b) “**Administrative Official**” means the Director of The City of Gulf Shores Planning and Development Department or his/her designee. The administrative official may appoint a representative as appropriate.
- (c) “**Amend**”, “**Amendment**” and “**Amended**” mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
- (d) “**Applicant**” means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.
- (e) “**Application**” means all necessary and required documentation that an Applicant submits in order to receive a special use permit or a building permit for wireless telecommunications facilities.

- (f) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
- (g) **“City”** means the City of Gulf Shores, Alabama.
- (h) **“Co-location”** has the same meaning as provided in 47 C.F.R. §1.40001 (b)(2), as may be amended, which defines that the term as “the mounting or installation of transmission equipment on an eligible support structure for transmitting and/or receiving radio frequency signals for communication purposes.
- (i) **“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 and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- (j) **“Complete” Application** means an application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an application and that all information is true, accurate and correct.
- (k) **“Concealment”** means screening, hiding, or “camouflaging” antennas and wireless components.
- (l) **“Council”** means the City Council.
- (m) **“DAS”** or **“Distributive Access System”** means a network or one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer service.
- (n) **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
- (o) **“Eligible Facility”** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a substantial modification.
- (p) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized

successor agency.

- (q) **“FCC”** means the Federal Communications Commission or its duly designated and authorized successor agency.
- (r) **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
- (s) **“Height”** means, when referring to a tower or wireless support structure, the distance measured from the pre-existing ground surface elevation level to the highest point on the Tower or structure, even if said highest point is an antenna or lightning protection device.
- (t) **“Information Service”** has the same meaning as defined and used in 47. U.S.C. 253, and subsequent FCC and applicable case law interpretation. It expressly is not a ‘Personal Wireless Service’ as defined in 47. U.S.C. 332.
- (u) **“Macro Wireless Facility”** means one or more antennas mounted on a telecommunication structure, that does not meet the requirements for a small wireless facility.
- (v) **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a modification of the facility.
- (w) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a wireless facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, 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. Modification and the type of modification shall be defined as set forth in FCC Report and Order 14-153.
- (x) **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
- (y) **“NIER”** means Non-Ionizing Electromagnetic Radiation.
- (z) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- (aa) **“Personal Wireless Service”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall all have the same meaning as defined and used in 47. U.S.C. 332, the 1996 Telecommunications Act, and subsequent FCC and applicable case law interpretation. It expressly is not an ‘Information Service’ as defined in 47. U.S.C. 253.

**(bb) "Repairs and Maintenance"** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will change the visible appearance of the facility from that originally permitted.

**(cc) "Small Cell" or "Small Wireless Facility"** means a wireless facility that meets the following qualifications:

- (1) The structure on which antenna facilities are mounted:
  - a) is fifty (50) feet or less in height including antenna, or
  - b) is no more than ten percent (10%) taller than other adjacent structures, or
  - c) is not extended to a height of more than fifty (50) feet or by more than ten percent (10%) above its preexisting height as a result of the collocation of new antenna facilities, whichever is greater; and
- (2) Each antenna array, including components of such, associated with the deployment or modification is no more than three (3) cubic feet in volume; and
- (3) All accessory equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume; and
- (4) The facility does not require antenna registration under FCC regulations; and
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. 800.16 (x).

**(dd) "Special Use Permit"** means the official document or permit by which an applicant is allowed to file for a building permit and/or a Construction within the City Rights of Way and Easement Permit to construct and use a facility as granted or issued by the City, including a substantial modification.

**(ee) "State"** means the State of Alabama.

**(ff) "Structural Capability" or "Structural Capacity"**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.

**(hh) "Substantial Modification"** has the same meaning as provided in 47 C.F.R § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this section organizes the FCC's criteria and thresholds for a substantial change according to the facility type and location.

- (1) For towers outside the public rights-of-way, a substantial change occurs when:
  - a) The proposed co-location or modification increases the overall height more than ten percent (10%) or the height of one additional antenna array not to exceed twenty (20) feet (whichever is greater); or
  - b) The proposed co-location or modification increases the width more than twenty (20) feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - c) The proposed co-location or modification involves the installation of more

- than the standard number of equipment cabinets for the technology involved, not to exceed four (4); or
- d) The proposed co-location or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- a) The proposed co-location or modification increases that overall height more than ten percent (10%) or ten (10) feet (whichever is greater); or
- b) The proposed co-location or modification increases the width more than six (6) feet from the edge of the wireless tower or base station; or
- c) The proposed co-location or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
- d) The proposed co-location or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted cabinets; or
- e) The proposed co-location or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- a) The proposed co-location or modification would defeat the existing concealment elements of the support structure as determined by the City; or
- b) The proposed co-location or modification violates a prior condition of approval as regards to height, width, number and size of equipment cabinets or any excavation that is inconsistent with the thresholds for a substantial change described in this section.
- (4) As to all measurements set forth herein, the following principles shall govern:
- a) Any threshold or limits of height increase is cumulative or collective.
- b) For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design.
- c) For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date of passage of the Middle-Class Tax Relief and Job Creation Act of 2012 Section 6409(a).

(ii) **“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.

(jj) **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.

(kk) **“Telecommunications Structure”** means a structure used to support equipment used to provide wireless communications.

(ll) **“Temporary”** means not permanent in relation to all aspects and components of this Ordinance, something intended to, and that does, exist for fewer than ninety (90) days.

(mm) **“Tower”** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.

(nn) **“Wireless Telecommunications Facility”** or **“Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water towers, signs or any other structure that is used or is proposed to be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters, and enclosures, cabinets and other structures associated with the facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.

## **Section 7-174 General Policies and Procedures for Applications under this Ordinance**

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and 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 Administratively granted authority for wireless facilities for the express purpose of achieving the following outcomes. The following are general policies intended to accomplish the permitting of wireless telecommunication facilities:

**(a) Requiring a Special Use Permit for:**

(1) the construction of any new wireless telecommunications facility including a new tower or other support structure; or

(2) the substantial co-location/modification of wireless telecommunication equipment on an existing tower or support structure that is not an Eligible Facility pursuant to the FCC’s Report and Order 14-153 dated October 17, 2014; or

(3) the co-location or modification of wireless telecommunication equipment on an existing tower or support structure that is defined as an Eligible Facility pursuant to

the FCC's Report and Order 14-153 dated October 17, 2014.; or

(4) the modification of any facility or support structure that is deemed by the City of Gulf Shores not to be general repair and maintenance.

- (b) Implementing an application process and requirements;
- (c) Establishing procedures for examining an application and issuing a Special Use Permit or Administrative Authority that is both fair and consistent;
- (d) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- (e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.
- (f) Minimizing the Visual Impact: For reasons of concealment, requiring, promoting and encouraging wherever possible, to the extent nondiscriminatory and competitively neutral, the placement, height and profile of 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 or camouflaging techniques.
- (g) The Administrative Official is the officially designated agency or body of the City to whom applications for a Special Use Permit for a facility must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Ordinance. The Administrative Official may at its discretion delegate or designate the City Planning Commission or other official agencies or officials of the City or **outside consultants** to accept, review, analyze, evaluate and make recommendations with respect to the granting or not granting or revoking Special Use Permits for wireless telecommunications facilities. The Administrative Official shall possess the authority to grant administrative authorization for all request or applications for eligible facility request or small wireless facilities. The City Council shall possess the sole right to grant Special Use Permits for all request or applications for substantial modifications and wireless support structures.
- (h) Pre-application meeting: The City encourages applicants to participate in a pre-application meeting for applications. The pre-application meeting may be requested by the City or the applicant and be held either at the proposed application site, telephonically or electronically as deemed appropriate by the City. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the application review and permitting process; and ii) identify and address certain issues or concerns the City or the applicant may have. A pre-application site meeting that is requested by the applicant shall not initiate the time period that the City has to review and/or approve an application.



- (i) Applicant(s) of Record:** The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification, the technical need for a new facility must be documented and substantiated by clear and convincing evidence showing a particular carrier's or other user-of-the-Facility's technical need for what is requested.
- (j) Properly Completed Application:** All Applicants shall closely follow the instructions for preparing an application. Not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete.
- (k) Amended Application:** Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- (l) No work of any kind on a facility shall be started until the application is reviewed and approved by the City and the Special Use Permit, or Administrative Authorization if applicable, has been issued and any applicable permits have been issued.**
- (m) Permits and Licenses:** A holder of a Special Use Permit shall obtain, at its own expense, permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- (n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.**
- (o) Certification:** Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
- (p) Concealment and Harmony with Surroundings:** A tower or other support structure and any and all accessory or associated structures and equipment for a Macro Wireless Facility shall use building materials, colors and textures designed to harmonize with the surroundings. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established limited or maximum permitted height.
- (q) Utilities:** In locations and to the extent required of all infrastructure deployments, utilities at a ground-mounted facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- (r) Vehicular Access:** 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. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change 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.

(s) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, 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 Electrical Safety Code, the National Electrical Code and 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. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

(t) Compliance: All Facilities, must at all times comply with all applicable local, State and Federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards.

(v)

#### **Section 7-175 Fees**

(a) At the time that a person submits an application for a Special Use Permit, such person shall pay a non-refundable application fee to the City.

(1) The application fee for a new macro wireless facility or a substantial modification on an existing macro wireless facility shall be \$5,000.00.

(2) The application fee for a modification or co-location of a macro wireless facility, that is an eligible facility request, shall be \$2,000.00.

(3) The application fee for the placement or modification of a small wireless facility on an existing pole shall be \$500.00 for a single up-front application that includes up to five (5) small wireless facilities, or \$1,000.00 for each new pole to support a small wireless facility.

(4) No Application fee is required in order to recertify a Special Use Permit for wireless telecommunications facilities, unless there has been a modification of the wireless telecommunications facilities since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not

previously been modified.

**(b) Annual license fee for Public Right of Way**

(1) Once a small cell wireless facility is approved and constructed in the City's Right of Way, the holder of the small cell wireless permit shall pay an annual license fee of \$270.00 per node for Right of Way access and/or attachment to a municipally-owned structure in the Right of Way. The Right of Way fee shall be recurring and be due on January 1 of each year. The annual license fee is not applicable to small wireless facilities constructed on private property.

**Section 7-176 Exceptions and Existing Facilities Prior to the Adoption of this Ordinance**

- (a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Ordinance shall be allowed to continue as it presently exists, provided that i) it exists and is operating as originally permitted; and ii) any modification of the facility has been properly permitted.
- (b) Any modification not properly permitted under a previously-existing ordinance must be permitted under this Ordinance.
- (c) Any modification of a facility or its equipment subsequent to the adoption of this Ordinance, must be permitted under this Ordinance and will require the entire facility and any new or modified installation to comply with this Ordinance, except that any tower or other support structure properly permitted prior to the adoption of this Ordinance may remain at the originally permitted height.
- (d) Any repair and maintenance of a wireless facility that does not, i) increase the height of the structure, ii) alter the profile, iii) change the loading, iv) change the RF emissions levels, v) increase the footprint of the facility or vi) otherwise exceed the conditions of the Special Use Permit, does not require an application for a Special Use Permit, but may require a building permit. In no instance shall any additional construction or modification be considered repair or maintenance.

**Section 7-177 Exclusions**

The following shall be exempt from this Ordinance:

- (a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- (b) Any wireless reception or transmission devices expressly exempted under 47 U.S.C. 332 or the FCC's rules and regulations.
- (c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications.

- (d) Gulf Shores Utilities and City of Gulf Shores facilities used exclusively for the supervisory control and data acquisition (SCADA) system.
- (e) Baldwin EMC facilities and associated equipment that are installed to support the distribution or provision of electrical service, or the monitoring of such service.
- (f) Non-Commercial Facilities used exclusively for providing unlicensed spread spectrum technologies where;
  - i) there is no charge for the use of the wireless service;
  - ii) the facility does not require a new tower or increase the height of the structure being attached to; and
  - iii) the service is not intended to be useable more than one-hundred feet (100') from the antenna(s).

### **Section 7-178 Special Use permit Requirements for Macro Wireless Facilities**

- (a) General Application Requirements: the following items are considered general application requirements and shall be included in all applications for a Special Use Permit:
  - (1) The name, address, phone number and e-mail address of the person preparing the application
  - (2) The name, address, and phone number 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 and all necessary contact information shall be provided.
  - (3) The postal address and tax map parcel number of the property.
  - (4) The zoning district or designation in which the property is situated.
  - (5) For all new Facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction and a copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
  - (6) All Applications shall include written commitment statements that:
    - a) the applicant's facility shall always without exception be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Board in writing;
    - b) the construction of the facility is legally permissible, including, but not limited to the

fact that the applicant is licensed to do business in the State.

(7) Certified detailed construction drawings, including but not limited to the following information:

a) the size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a certified boundary survey completed by a Professional Land Surveyor showing the location of all lot lines and rights-of-way.

b) location of the nearest residential structure and habitable structure

c) the location, size and height of all existing and proposed structures on the property.

d) enclosures and cabinets on the property on which the structure is located that are related to the subject of the application.

e) a site plan to-scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, underground utilities of any kind and any easements.

f) elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting.

g) proposed electrical and grounding plans for the facility.

(8) The azimuth, size, top of antenna height, locations of all proposed and existing antennas on the support structure, and the height of the tip of any lightning arrester.

(9) The type and manufacturer of the tower and a rigorous structural analysis and report, including the calculations, certified by a Professional Engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.

(10) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of the facility and its components, using the most recently adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices. No Special Use Permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Ordinance and other adopted standards of the City, 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 City.

(11) For telecommunications towers taller than thirty-three feet (33') in height, a

completed and signed checklist for categorical exclusion of radio frequency electromagnetic emissions. If the modification, co-location or construction of a new wireless facility is not categorically excluded based on the Federal Communications Commission's rules, the applicant shall provide a compliance letter to the City and shall remain in full compliance with all requirements set forth by the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65. In certain instances, the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an unredacted copy of the survey results along with all calculations provided, prior to the issuance of a Certificate of Compliance.

(12) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services pursuant to applicable Federal Communications Commission regulations.

(13) Cut Sheets or specifications for all equipment to be installed/mounted on the structure.

**(b)Co-location Application Requirements:** In addition to the requirements set forth in Subsection (a), these items shall be included in the application for a Special Use Permit for co-locations on existing structures:

(1)A copy of the lease with the owner of the structure, and the landowner if different than the structure owner, and if applicable a signed letter of agency granting authorization to represent and commit for the party represented. If the applicant owns the site, a copy of proof of ownership is required.

(2)The frequency, modulation and class of service of radio or other transmitting equipment.

(3)Transmission and maximum effective radiated power of the antenna(s).

(4)Direction of maximum lobes and associated radiation of the antenna(s).

(5)Photographic simulations of the Facility "before and after construction" from key viewpoints inside of the City and a map showing the locations of where the photos were taken and the distance(s) of each location from the proposed structure.

(6)A unredacted copy of the applicants Certificate of Liability Insurance.

**(c)New Wireless Structures and Substantial Modification Requirements:** In addition to the requirements set forth in Subsections (a) and (b), the following shall be included in the application for a Special Use Permit for new wireless support structures and Substantial Modifications of support structures:

(1)The applicant for a new tower shall submit clear and convincing technical evidence

by a wireless service provider justifying the technical Need for the proposed height of the facility and the need for such, to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include the modeling data and assumptions used to produce the studies on a form to be provided by the City.

- (2) The Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower.
- (3) If a Modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the permitted compound or property, a detailed narrative explaining what changes are needed and why they are needed.
- (4) The type of support structure, the number of antenna arrays proposed to be accommodated and a Certified structural report, including all calculations demonstrating the facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed.
- (5) A copy of the foundation design for new Macro Wireless Facilities and substantial modifications that impact the ground, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure.
- (6) 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. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the Facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- (7) A narrative description of what will be done to minimize the visual impact. The City expressly reserves the right to require the use of stealth or camouflage techniques.
- (8) For a new tower or other new support structure, or for a Substantial Modification, the applicant shall be required to submit clear and convincing evidence that a new tower or support structure or the Substantial Modification is the only option within one-half (1/2) mile of the proposed new tower or support structure that will enable the provision of wireless services within the intended service area.
- (9) In order to better inform the public, in the case of a new tower, the applicant shall hold a "balloon test" or erect a story pole, prior to the initial public hearing on the application. The balloon test shall be based upon the fact and circumstances of the application.
  - a) The applicant shall arrange to fly, or raise upon story pole, a minimum of a four

(4) foot in diameter, brightly colored balloon at the maximum height of the proposed new tower.

b) At least fourteen (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 fourteen (14) days after the conduct of the balloon test. The sign shall be at least two feet (2') by three feet (3') in size. Sign shall be placed off, but as near to, the public right-of-way as is possible. 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 published in a legal notice by the Applicant seven (7) and fourteen (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 fourteen (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 photos from various locations of the balloon and to-scale superimposed photo simulations of the facility when completed shall be provided with the application.

(10) The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility by other wireless service providers, and shall:

a) Respond within 60 days to a request for information from a potential shared-use applicant;

b) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers.

c) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.

d) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.

(11) The Applicant shall provide a landscape plan including but not limited to screening of the facility. Screening, landscaping and buffers shall be in accordance with the requirements for specific uses set forth in Article XII, Landscaping, Screening, Buffers, of the Zoning Ordinance. For towers located within 500 feet of a residential area, the City may require wider screening, landscaped buffers and additional requirements. All fencing, walls, and landscaping shall be kept in good condition and repair and maintained in a neat manner by the



owner of the tower.

- (12) Co-location on an existing structure is not reasonably feasible if the co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for its use. Clear and convincing evidence to support such claims shall be submitted with an application.

### **Section 7-179 Special Use Permit Application Requirements for Small Wireless Facilities**

**(a)** To the extent practical, all Facilities and associated Accessory Equipment that are placed in the city shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the city or other entity unless the applicant demonstrates that no commercially or technology viable alternatives, including lack of colocation opportunities exist in the area where a need for a facility exists. A new pole or other Support Structure may be installed if the applicant demonstrates:

- (1) No viable collocation opportunity in the Rights-of-Way exists,
- (2) A pre-existing Support Structure cannot reasonably be re-enforced or replaced to accommodate the Antenna and associated Accessory Equipment .

**(b)** Batched Applications: Applicants or their agents of record may submit Applications for multiple facilities or locations with the following conditions:

- (1) No single batched submittal shall contain more than ten (10) Applications;
- (2) There must be a minimum of ten (10) calendar days between submittals of batched Applications;
- (3) No more than three (3) batched Applications shall be accepted in any thirty (30) consecutive day period.
- (4) In the interest of time efficiency, the City reserves the right to negotiate the amount of batched applications that may be submitted by an applicant on large scale installations. The negotiation shall require the parties, the applicant and the City, to agree in writing of the process and time that will be required for the initial review of the project.

**(c)** Prohibitions.

- (1) Small wireless facilities shall be located such that they do not interfere with public health, public usage or safety facilities, such as, but not limited to a streets, sidewalks, alleys, parkways, public ways, fire hydrants, fire escapes, water valves, underground vaults, or valve housing structures.
- (2) No equipment or work associated with a Small Wireless Facility shall interfere with, endanger, hamper, impede or disturb access to any utility or any other facility in the right of way.

- (3) No small wireless facility or equipment shall be installed directly over any existing water, sewer, or reuse main, service line or other utility and shall comply with the City's regulations for clearances between utilities.
  - (4) No Wireless Facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the right of way or any vehicular or pedestrian way.
  - (5) No facility or equipment shall materially interfere with the safe operation of traffic control equipment.
  - (6) No facility or equipment shall materially interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - (7) No facility or equipment shall materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (8) No facility or equipment shall be closer than 18 inches from the street curb or edge of pavement if no curb is present, unless otherwise approved by the City Engineer.
  - (9) No facility or equipment shall be placed on any arms or any horizontal structure used to support or mount traffic control signals or devices.
  - (10) No wireless facility may be hung from energized lines or on poles to be removed in conjunction with the city's existing and approved plans to utilize undergrounding of electrical utilities in a particular area.
  - (11) No small wireless facility or equipment shall be located in a manner that interferes with plans for future roadway growth and expansion projects in the City.
  - (12) No Special Use Permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Ordinance and other adopted standards of the City, 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 City.
  - (13) To the extent doing so would not result in an effective prohibition under federal law, the applicant shall comply with requirements that prohibit communications service providers from installing structures in the Public right of way in areas designated solely for underground or buried cable and utility facilities where the City has required all cable and utility facilities other than City poles and attachments to be placed underground by a date certain that is three months prior to the submission of the application. The City may authorize the placement of equipment on existing light standards or the replacement of City poles in the designated area upon good cause shown, as determined by the City.
- (d) The information required to be provided in an Application under this Section shall be as follows. Any items that are deemed not applicable to the Application(s) shall be identified in a pre-application meeting prior to the submission of the Application(s).
- (1) The name, address, phone number and e-mail address of the person preparing the application;
  - (2) The name, address, and phone number 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 and all necessary contact information shall be provided.

- (3) The nearest postal address and tax map parcel number of the property.
- (4) The zoning district or designation in which the property is situated.
- (5) To clarify the location of the proposed facility, the applicant shall submit the following:
  - a) GPS Coordinates (latitude and longitude) in decimal degrees for the proposed small wireless facility location.
  - b) Street map identifying the specific location.
  - c) Street view photographic images of the location.
- (6) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.
- (7) Written commitment statements that:
  - a) the applicant's facility shall always without exception be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Board in writing;
  - b) the construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
- (8) Additional standards for small cell wireless facilities located on private property.
  - i) Certified detailed construction drawings, including but not limited to the following information located within 100 feet from the new structure: the size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a certified boundary survey completed by a Professional Land Surveyor showing the location of all lot lines and rights-of-way
  - ii) location of the nearest residential structure and habitable structure.
  - iii) the location, size and height of all existing and proposed structures on the property that are more than 6' in height and are not buildings.
  - iv) enclosures and cabinets on the property on which the structure is located that are related to the subject of the application.
  - v) a site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping, buffers, fencing,

underground utilities of any kind and any easements.

- vi) elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting. Photo simulations may be required to be submitted with pictures of the proposed facility from key points surrounding the site.
- vii) proposed electrical and grounding plans for the facility.

(9) Cut Sheets or specifications for all equipment to be installed/mounted on the structure.

(10) Transmission and maximum effective radiated power of the antenna(s).

(11) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.

(12) The type the support structure and a structural analysis and report, including the calculations, certified by a Professional Engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.

(13) For all new Facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.

(14) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.

(15) For telecommunications Towers, but only telecommunications towers, taller than thirty-three feet (33') in height, a completed and signed checklist for categorical exclusion of radio frequency electromagnetic emissions. If the modification, co-location or construction of a new wireless facility is not categorically excluded based on the Federal Communications Commission's rules, i.e. OET Bulletin 65, the applicant shall provide a certified compliance letter to the City certifying compliance and shall remain in full compliance with all requirements set forth by the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65. In certain instances, the City may deem it appropriate to have on-site testing of the facility done after the construction or modification of the facility to determine compliance with OET 65 regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a Certificate of Compliance.

(16) New Small Wireless Facility Support Structure: Provide written evidence that applicant was unable to co-locate on an existing facility and the reason(s) such as i) lack of an existing structure; ii) lack of a structure meeting technical Needs of the carrier; or iii) not being able to secure an attachment agreement with the owner.

(17) A copy of the applicant's Certificate of Liability Insurance.

(18) Any application for small wireless telecommunication facilities that is proposed to be located in the City's Right-of-Way shall contain a provision with respect to indemnification of the City.

(e) Construction in the Public Rights-of-Way (PROW)

(1) Attachment to Existing Structures:

- a) Unless it is found to be impracticable, all antennas shall be mounted on the top of the support structure and appear as a vertical extension of the support structure.
- b) All small cell carrier equipment shall be shrouded, if feasible.
- c) Only three enclosures including the disconnect and antenna shall be installed at each utility pole location.
- d) All equipment located within the public ROW shall be located such that it meets ADA requirements and does not obstruct, impede, or hinder usual pedestrian and vehicular travel.
- e) The cabling and wiring for a small wireless facility, that is proposed on a wood support structure shall be placed in conduit.
- f) The cabling and wiring for a small wireless facility that is proposed on a metal or non-conductive hollow pole shall be placed inside the pole to the extent feasible.
- g) If a small wireless facility is proposed in an area with no restrictions for overhead utilities, the accessory equipment for proposed structure shall be mounted on the support structure, on the ground or underground. Accessory equipment shall be placed in an enclosure.
- h) To the extent feasible, if a small wireless facility is proposed in an area with restrictions for overhead utilities, all associated equipment shall be contained inside the support structure, above ground within 5 feet of the structure at grade level, or placed in underground vault. Associated equipment that is placed above ground shall be contained in an enclosure and shall comply with any undergrounding requirements for the proposed location. Pole-mounted equipment is permitted on existing vertical structures.

(2) New Structures:

- a) New or replacement monopoles, utility poles, light structures, or traffic signals that are installed for the purpose of small wireless facilities shall match the existing infrastructure or streetscape in the immediate area or adjacent to the proposed facility in the same right of way. If the City has approved plans in upgrading infrastructure at the proposed location, the design of the proposed facility shall

conform to the approved plan for the infrastructure.

- b) New small wireless support structures may be upgraded to metal or non- conductive hollow poles or concealed facilities in areas with existing wood utility poles.
- c) New freestanding small cell structures shall be sized to be visually pleasing. For a structure to be considered visually pleasing, the following standards shall be met:
  - i) Equipment cabinet and pole shall match existing or proposed (in cases where infrastructure plans have been approved but not implemented) streetlight aesthetics.
  - ii) The freestanding small cell shall not exceed thirty (40) feet in height. The pole shall be measured from the top of the foundation to the top of the cantenna.
  - iii) Maximum equipment cabinet diameter shall be twenty (24) inches, sixteen inches is preferred.
  - iv) Maximum equipment cabinet height shall be six (6) feet.
  - v) The equipment cabinet shall be covered, and shall contain a lockable access door sized to install, maintain, and remove all small cell equipment as needed to meet Carrier's requirements.
  - vi) The upper pole shall be scaled to 0.5 to 0.75 the diameter of the equipment cabinet, with a ten (10) inch minimum outer diameter.
  - vii) Antenna and pole attachment shall be shrouded, with a tapered transition between the upper pole and cantenna.
  - viii) Antenna shroud shall be colored to match the pole.
  - ix) Each pole component shall be architecturally-compatible to create a cohesive aesthetic.
- d) All antennas and related mounted equipment shall be camouflaged, screened and/or obscured. Any new support structure shall be in keeping with the nature and character of the surrounding area or neighborhood.
- e) Unless it is found to be impracticable, infeasible or designed as a concealed facility, all antennas shall be mounted on the top of the support structure and appear as a vertical extension of the support structure.
- f) The cabling and wiring for a small wireless facility, that is proposed on a wood support structure shall be placed in conduit.
- g) The cabling and wiring for a small wireless facility that is proposed on a metal or non-conductive hollow pole shall be placed inside the pole to the extent feasible.
- h) If a small wireless facility is proposed in an area with no restrictions for overhead utilities, the accessory equipment for proposed structure shall be mounted on the support structure, on the ground or underground. Accessory equipment shall be placed in an enclosure.

- i) To the extent feasible, if a small wireless facility is proposed in an area with restrictions for overhead utilities, all associated equipment shall be contained inside the support structure, above ground within 5 feet of the structure at grade level, or placed in underground vault. Associated equipment that is placed above ground shall be contained in an enclosure and shall comply with any undergrounding requirements for the proposed location. Pole-mounted equipment is permitted on existing vertical structures.
- j) No closer than 300 feet away, laterally, from another small cell structure.
- k) Upon completion of the work the applicant shall restore and or repair the right-of-way to its pre-existing condition following installation.

**(f) Construction on Private Property:**

**(1) Attachment to Existing Utility Poles and Light Structures:**

- a) All antennas and related equipment mounted to existing utility poles and light structures shall be camouflaged, screened and/or obscured. Any attachment to an existing structure shall be in keeping with the nature and character of the surrounding area, neighborhood and/or the structure being attached to.
- b) Unless it is found to be impracticable, all antennas shall be mounted on the top of a utility pole or light structure and appear as a vertical extension of the support structure. Antennas shall be designed or placed in an enclosure designed to improve the appearance of the site and protect the antennas.
- c) The cabling and wiring for a small wireless facility, that is proposed on a wood support structure shall be placed in conduit.
- d) The cabling and wiring for a small wireless facility that is proposed on a metal or non-conductive hollow pole shall be placed inside the pole.
- e) Accessory equipment shall be mounted on the support structure, on the ground, underground for all utility poles and light structures. Accessory equipment shall be placed in an enclosure.

**(2) Attachment to Existing Building or Other Support Structure:**

- a) All antennas and accessory equipment mounted to an existing building or other support structure shall be designed as a concealed facility.
- b) Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
- c) Roof-mounted antennas and accessory equipment may be permitted on buildings

and shall comply with height requirements for small wireless facilities.

- d) For antennas greater than two (2) feet in height, roof-mounted antennas and accessory equipment shall be setback from the edge of roof, one (1) foot for every foot of height of the equipment above roof.

(3)New Structures:

- a) New monopoles, utility poles, or light structures that are installed for the purpose of small wireless facilities shall be designed as a decorative structure or concealed and shall be in keeping with the nature and character of the surrounding area or neighborhood;
- b) All new support structures shall be hollow metal or made of a non- conductive, non-corrodible material;
- c) All antennas and related mounted equipment shall be camouflaged, screened and/or obscured. Any new support structure shall be in keeping with the nature and character of the surrounding area or neighborhood.
- d) Unless, it is found to be impracticable or designed as a stealth facility, all antennas shall be mounted on the top of the support structure and appear as an vertical extension of the support structure. Antennas shall be designed or placed in an enclosure designed to improve the appearance of the site and protect the antennas.
- e) The cabling and wiring for a small wireless facility that is proposed on a metal or non-conductive hollow pole shall be placed inside the pole.
- f) Accessory equipment shall be mounted on the support structure, on the ground or underground. Accessory equipment shall be placed in an enclosure.
- i) No closer than 300 feet away, laterally, from another small cell structure.

(g)Aesthetics/Appearance:

(1)Appearance:

- a) Small wireless facilities shall be designed to blend into the surrounding environment and complement existing streetscape elements or structures through the use of color, camouflaging, architectural treatment and/or concealment techniques. Any equipment mounted to the support structures shall also match the support structure in color and general design unless a different color is needed for public safety or service reliability reasons. A Small Wireless Facility shall not be easily recognizable as a wireless facility by a layperson.



- b) All antennas shall be mounted on the top of the existing structure, unless doing so is impractical, infeasible, or not permissible under applicable safety standards and regulations;
- c) The space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- d) There shall be no signage placed by the owner of any support structure or by any service provider on or in the vicinity of any support structure, other than a 4-inch by 6-inch (maximum) plate with the owner's name, location identifying information, and emergency telephone number permanently affixed to the shroud or as may be required by State or federal law or rule or safety code. All signs shall be of the minimum size allowed by law, rule or regulation.
- e) The facility or associated equipment shall not be illuminated.

(2) Height:

- a) The proposed attachment on an existing structure, shall not be extended in height by more than ten percent (10%) of the height of the structure, immediately prior to the attachment of wireless equipment; and shall never be extended to a total height of more than fifty feet (50'), including any attachments of any kind associated with the Wireless Facility.
- b) A new small wireless facility proposed on private property shall not be extended in height by more than ten percent (10%) of the height of existing adjacent structures within 500 feet of the proposed structure; and shall never be extended to a total height of more than fifty feet (50') on non-residential zoned property or thirty-five feet (35') on residential zoned property, including any attachments of any kind associated with the Wireless Facility.
- c) No antenna or other part of the facility shall extend more than six (6) feet above the structure.

(3) Size:

- a) Each antenna shall not exceed three cubic feet (3 ft<sup>3</sup>) in volume.
- b) All accessory equipment associated with the facility, shall cumulatively not exceed twenty-eight cubic feet (28 ft<sup>3</sup>) in volume.

**Section 7-180 Location of Macro Wireless Facilities**

- (a)** New Towers or other support structures shall be prohibited in Residential Districts, Historic Districts, and areas officially deemed to be visual or scenic sensitive areas unless the applicant provides clear and convincing evidence demonstrating that i) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; ii) that the intended area cannot be served from outside the District without a new tower or other support structure; iii) that no existing or previously approved facility can reasonably be used for antenna placement; and iv) that not to permit a new tower or other support structure would result in a significant gap in service.
- (b)** Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order:
- (1) On City-owned properties or facilities without increasing the height of the tower or support structure.
  - (2) On other existing structures without increasing the height of the tower or support structure.
  - (3) On City-owned properties or facilities without exceeding the maximum permitted height under this Ordinance.
  - (4) On other existing structures without exceeding the maximum permitted height under this Ordinance.
  - (5) On City-owned properties or facilities.
  - (6) On properties in areas zoned for non-residential use.
  - (7) On properties in designated Historic Districts, Restricted Overlay Districts and properties in areas zoned for Residential use.
- (c)** If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- (d)** The person seeking such an exception must satisfactorily demonstrate the reason(s) why a Special Use Permit or Administrative Authorization should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- (e)** 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. An applicant may not bypass sites of higher priority because the site proposed is under lease or an option to lease. Build-to-Suit agreements between a carrier and a tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the requirement to co-locate.

- (f) Notwithstanding the priorities set forth in the preceding §(a), the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Ordinance and the public interest as determined by the City and that serves the intent of the applicant.

### **Section 7-181 Type and Height of Macro Wireless Facilities**

- (a) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence. Maximum tower diameter shall not be greater than that which is required for the height of the tower.
- (b) The maximum permitted total height of a new tower or support structure outside the right-of-way shall be one hundred (100) feet above pre-construction ground surface elevation, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological need for a greater height.
- (c) In no case shall the height of the tower exceed the maximum height allowable under the Airport Height Zoning Ordinance of the City of Gulf Shores, Alabama.
- (d) As the City has made the policy decision that more facilities of a shorter height are in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- (e) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.

### **Section 7-182 Visibility and Aesthetics for Macro Wireless Facilities**

- (a) Concealment: To make new facilities as substantially invisible as possible to the greatest number of people, all new facilities, including but not limited to towers, shall utilize stealth or camouflage siting techniques, unless such can be shown to be either commercially or technologically impracticable.
- (b) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive

paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.

- (c) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts and circumstances and thereby have the least adverse visual effect, all antennas attached to a Tower or other structure 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.
- (d) No tower or support structure constructed after the effective date of this Ordinance shall be tall enough to require lighting. In the event lighting is legally required, the applicant shall provide a detailed plan for sufficient 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 affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not 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. As of the effective date of this Ordinance, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the tower be retrofitted so as to comply with the lighting requirements of this Ordinance.
- (e) Attachments to Buildings: To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for 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 exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure. If antennas are required to be mounted above the roof-line of any building, the applicant must include a plan to camouflage the antennas.
- (f) 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 on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard. All attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.

### **Section 7-183 Reasons for Denial**

- (a) 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;
- (2) For a Macro Wireless Facility, the facility would not conform to the City's policy of concealment;
- (3) Conflict with the historic nature or character of a neighborhood, district or adjacent surrounding area;
- (4) The use or construction of facilities contrary to an already stated purpose of a specific zoning or land use designation;
- (5) The use or construction of facilities contrary to an approved development plan of the City;
- (6) The placement and location of facilities which would create an unacceptable safety to residents, general public, employees and agents of the City, or employees of the service provider, or other service providers, or the reasonable probability of such;
- (7) Conflicts with the provisions of this Ordinance.

#### **Section 7-184 Public Hearing Required.**

- (a) A Public Hearing shall be held for all new telecommunication towers. Small cell wireless do not require a public hearing. For any application involving a Public Hearing, at least twenty-one (22) days prior notice shall be given to the applicant informing the applicant of the date, time, place and purpose of the hearing. Proper legal notice shall also be published by the City in a newspaper of general circulation in the City at least fifteen (15) days prior to the public hearing. If a balloontest is required under the provisions of this ordinance, the applicant shall perform and satisfy the requirement of that section prior to the public hearing.
- (b) In order to insure that nearby landowners are informed, the Applicant shall be required to send via First Class Mail a notice, at least ten (10) days prior to the public hearing, to all landowners whose property is located within seven hundred fifty (750) feet of any property line of the lot on which the new wireless telecommunications facility are proposed to be located. The applicant shall also provide to the City's planning director prior to the public hearing: Written certification documenting the names and addresses of all property owners to whom notices were mailed and a representative copy of the notice mailed. Such notice shall include the date, time, place and purpose of the public hearing and state that questions regarding the notice may be directed to the applicant or the City Planning Department. The phone numbers for both the applicant and the City shall be included. The return address used for mailings shall be the "City of Gulf Shores Planning Department, P. O. Box 299, Gulf Shores, Alabama 36547-0299.

### **Section 7-185 Security for Macro Wireless Facilities**

All ground-mounted macro wireless telecommunications facilities and antennas on private property shall be secured by a security fence, at least eight (8) feet in height, around the perimeter of the compound that prevents unauthorized access. Specifically:

- (a) The security fence shall be designed and installed in accordance with the requirements set forth in Article XII, Landscaping, Screening, Buffers, § 2, Screening. All screenings shall be kept in good condition and maintained in a neat manner by the owner of the tower.
- (b) 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 climbed or collided with; and
- (c) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

### **Section 7-186 Signage for Macro Wireless Facilities**

- (a) Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. 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.

### **Section 7-187 Setback and Fall Zone for Macro Wireless Facilities**

- (a) Wireless Telecommunications Facilities shall maintain a minimum setback from each property line, recorded right-of-way, road and street line, residential district boundary, or residential structure a distance equal to the highest point of the tower as measured from the average existing grade. In no case, however, shall a tower be located nearer than two hundred (200) feet from any residential district boundary or any residential structure. Setbacks shall be measured from the perimeter of the nearest point of the tower base to the property line or district boundary. Wireless Telecommunications accessory facilities or structures located upon the same lot shall maintain a minimum setback equal to that applicable to principal structures within the zoning district (see City Zoning Ordinance) in which it is located. Setbacks for such apparatus shall be measured from the nearest point at which such apparatus intersects or contacts the ground to the property line.

- (b) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.

### **Section 7-188 Retention of Expert Assistance**

- (a) The City may hire a consultant to assist the City in reviewing and evaluating applications. Cost for any outside expert assistance shall be paid from the escrow account for each individual project.
- (b) The total amount of the funds needed as set forth in the City's Fee schedule 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 review, analysis and inspection of any construction or modification.
- (c) To prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunication facilities, an applicant shall place with the City a deposit, which shall be maintained in an escrow account for that application.
  - (1) The escrow deposit amount for new wireless telecommunication facilities and substantial modifications, shall be \$7,500.00.
  - (2) The escrow deposit amount for modifications and co-locations that are eligible facility request, shall be \$5,000.00.
- (d) If at any time during the review process this escrow account has a balance less than \$1,000.00, applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$2,500.00 or such other amount as determined to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the Certificate of Completion, the remaining balance shall be promptly refunded to the applicant upon request.
- (e) If an application is amended at any time prior to the grant of the permit or authorization required under this Ordinance, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the Special Use Permit or Administrative Authorization.
- (f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses.

- (g) The total amount of the funds needed as set forth in the City's Fee schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's arguments as regards the requirements of this Ordinance or other applicable law, rule or regulation.

### **Section 7-189 Additional Procedural Requirements for a Granting a Macro Facility Special Use Permit**

- (a) The following procedures shall apply where a Special Use Permit is requested:
- (1) The City shall schedule any required public hearing(s) once it finds the application is complete and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the application is not complete or if there are unresolved issues of non-compliance.
  - (2) The City may, at any stage prior to issuing a Special Use Permit or Administrative Authority, require such additional information as it deems necessary and is not prohibited from requiring as relates to the issue of the siting, construction or modification of or at a wireless facility.
  - (3) Upon City Council or the Administrative Officials review and approval, a Special Use Permit shall be issued. Notwithstanding the preceding, any required construction permits shall not be issued until the Special Use Permit is approved by the City.

### **Section 7-190 Action on an Application**

- (a) The City will undertake 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 or consultant for a non-binding recommendation.
- (c) Either after the public hearing if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may i) approve; ii) approve with conditions; or iii) deny a Permit or Administrative Authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof for compliance with this ordinance or the need for something not allowed, shall always be upon the applicant.
- (d) If, the City approves the Special Use Permit or Administrative Authority for the facility, then the applicant shall be notified of such approval within the time allowed by applicable law. The Special use Permit or Administrative Authorization shall be issued within the time allowed by applicable law, after such approval. The Special Use Permit



shall be valid one hundred-eighty (180) days from date of approval.

- (e) If the City denies the Special Use Permit or Administrative Authority for the facility or the modification, then the applicant shall be notified of such denial at the Council Meeting and/or in writing within 30 calendar days of the action and shall set forth in writing the reason or reasons for the denial.

### **Section 7-191 Extent and Parameters of Special Use Permit or Administrative Authority for Wireless Telecommunications Facilities**

- (a) The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility shall be as follows:
  - (1) A 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 thirty (30) 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 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.
  - (3) Following notice and an opportunity to cure and if not cured, a Special Use Permit or Administrative Authorization granted under this Ordinance may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as is permissible.
  - (4) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.
  - (5) Following the original notice and an opportunity to cure as relates to a given facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

### **Section 7-192 Removal and Performance Security for Macro Wireless Facilities**

- (a) **Support Structure Removal and Performance:** The Applicant and the owner of record of any proposed new tower or 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 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 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.

### **Section 7-193 Reservation of Authority to Inspect Wireless Telecommunications Facilities**

- (a) In order to verify that the holder of a Special Use Permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities 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 may inspect, or cause to have inspected by a third party, 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 and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components.
- (b) Refusal to allow or grant access to a City representative upon reasonable notice shall be deemed a violation of this ordinance.

### **Section 7-194 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 minimum amounts as set forth below:
  - (1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate; and
  - (2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate; and
  - (3) A \$3,000,000 Umbrella coverage; and
  - (4) A \$1,000,000 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 contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

- (d) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- (e) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit or Administrative Authorization shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- (f) 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 Ordinance.

### **Section 7-195 Indemnification**

- (a) Any application for wireless telecommunication facilities that is proposed to be located on City property or rights of way shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, commissions, committees, employees, 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, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be 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 § (A) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Special Use Permit for a wireless telecommunications facility.

### **Section 7-196 Fines**

- (a) In the event of a violation of this Ordinance, or any Special Use Permit or Administrative Authorization or Building Permit issued pursuant to this Ordinance, the City may impose and collect, and the holder of the Special Use Permit or Administrative Authorization shall pay to the City fines or penalties as established by the City and as allowed by State law.
- (b) Notwithstanding anything in this Ordinance, the holder of the Special Use Permit or Administrative Authorization for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any

section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit or Administrative Authorization. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Ordinance.

### **Section 7-197 Responsible Party(s)**

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (1) the physical and safe condition of the facility 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 owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Ordinance, other City regulations, and any Special or Conditional Use Permit.

### **Section 7-198 Default and/or Revocation**

If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Special Use Permit or Administrative Authorization, then the City shall notify the holder of the Special Use Permit or Administrative Authorization in writing of such violation. A Permit or Administrative Authorization holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time, the Special Use Permit or Administrative Authorization shall be subject to revocation.

### **Section 7-199 Removal, Relocation or Abandonment of Wireless Telecommunications Structures and Facilities**

- (a) If attached to an existing structure, unless the Administrative Official deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another, or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- (b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon i) the provision of convincing evidence satisfactory to the City Council of the need to move or relocate the facility; and  
i) convincing evidence satisfactory to the City Council of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service

provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.

(c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the Administrative Official prior to abandoning any facility.

(d) Whenever the city reasonably determines that the relocation or removal is needed as described below, then within ninety (90) days following written notice from the city, the applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any wireless facilities whenever the city has determined that such removal, relocation, change or alteration, is reasonably necessary for, as follows:

(1) A facility has been abandoned (i.e. not used as a Wireless Telecommunications Facility) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) non-consecutive days in any three hundred sixty-five (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; and/or

(2) The construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way; and/or

(3) A small cell facility or its related equipment is interfering with or adversely affecting proper operation of any city-owned light poles, traffic signals, or other equipment in the Public Way; and/or

(4) A wireless facility is deemed an attractive nuisance or a visual blight; and/or

(5) 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 Authorization, and the Special Permit or Administrative Authorization may be revoked.

(e) If the City makes a determination that a facility creates a public health or safety hazard, then within forty-eight (48) hours following written notice from the city, that said Facility shall be brought into compliance and conformity or removed.

(f) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or Special Use Permit holder.

(g) If the City removes, or causes facilities to be removed, and the owner of the facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the Facility a nuisance.

(h) The city retains the right and privilege to cut or move any small wireless facility or related structure located within the rights-of-way of the city, as the city may determine to

be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall notify the Applicant and provide the Applicant an opportunity to move its own facilities, if possible, prior to cutting electrical service or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

- (i) Notwithstanding anything in this Ordinance to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (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 Authorization and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Ordinance and utilize the performance and removal bond.

### **Section 7-200 RF Emissions**

- (a) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within 100' of the boundaries of the site, 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 warning signs as needed and appropriate to warn individuals of the potential danger.

### **Section 7-201 Relief**

- (a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a Special Use Permit or Administrative Authorization, or in the case of an existing or previously granted Special Use Permit or Administrative Authorization, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- (b) If relief waiver or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal Amendment of the Application, including the payment of all fees and charges.
- (c) Any variance or relief from the standards in these regulations must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.
- (d) Any relief or variance granted may contain one (1) or more conditions;

- (e) Any variance from the regulations contained in this ordinance shall be subject to a test of
  - i) technological impracticability and ii) commercial impracticability, both in relation to the area intended to be served by the proposed Facility; and iii) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.
- (f) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- (g) Any variance or relief from the standards in these regulations must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.
- (h) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- (i) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.

#### **Section 7-202 Adherence to State and/or Federal Rules and Regulations**

- (a) To the extent that the holder of a Special Use Permit or Administrative Authorization for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- (b) 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 Authorization for wireless telecommunications facilities, then the holder of such a Special Use Permit or Administrative Authorization shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (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.

#### **Section 7-203 Conflict with Other Laws**

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this

Ordinance shall apply.

**Section 7-204 Effective Date**

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

**Section 7-205 Authority**

This Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Approved as to Form