

AN ORDINANCE RELATING TO THE ESTABLISHMENT OF RULES AND REGULATIONS FOR THE SITING, CONSTRUCTION AND MODIFICATION OF WIRELESS TELECOMMUNICATIONS FACILITIES.

WHEREAS, The Federal Telecommunications Act of 1996 affirmed the City of Chesterfield's authority concerning the placement, construction and modification of wireless telecommunications facilities; and

WHEREAS, The City Council of the City of Chesterfield has found that wireless telecommunications facilities may pose a unique impediment to the health, safety, public welfare and environment of the City of Chesterfield and its inhabitants; and

WHEREAS, The City Council of the City of Chesterfield 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 CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Title.

This ordinance shall be known and cited as the "wireless telecommunications facilities siting ordinance" of the City of Chesterfield, Missouri, (hereinafter referred to as the "ordinance").

Section 2. Purpose.

The purpose of this ordinance is to provide a process and a set of standards for the placement, construction, maintenance and modification of wireless telecommunications facilities in order to:

- (1). Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- (2). Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- (3). Insure that all city residents, businesses and public institutions have access to the full-range of the telecommunications services at reasonable, affordable rates.

(4). Allow competition in telecommunications services.

(5). Permit and manage reasonable access to the public rights of way of the City of Chesterfield for telecommunications purposes on a competitively neutral basis;

(6). Insure that the City of Chesterfield can continue to fairly and responsibly protect the public health, safety and welfare;

(7). Encourage the collocation of wireless telecommunications facilities, thus helping to minimize the adverse visual impacts on the community.

(8). Encourage configuration of wireless telecommunications facilities which minimize additional visual impact through careful and innovative siting, design, landscape and camouflage techniques.

(9). Insure that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to: minimize the visual impact on the immediate surroundings and throughout the community; minimize public inconvenience and disruption; minimize adverse effect on residential property values, and minimize the adverse impact from wireless telecommunications facilities on adjacent properties and on historical and environmentally sensitive areas.

(10). Enable the City of Chesterfield to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Section 3. Definitions.

As used in this ordinance, the following terms shall have the following meaning:

(1). *Alternative Support Structure*: Vertical components not generally designed for use as antenna support structures including but not limited to structures such as church steeples, light poles and water towers.

(2). *Antenna*: An electrical conductor or group of electrical conductors that transmit or receive radio waves, excluding amateur radio antennas.

(3). *Applicant*: Any person submitting an application to the City of Chesterfield for a facilities siting permit.

(4). *Application*: The form approved by the City, together with all necessary and appropriate documentation that an applicant submits in order to receive a facilities siting permit.

(5). *Attachment*: An antenna or other piece of related equipment affixed to a transmission tower, building, silo, smokestack, water tower, light or utility pole, or an alternative support structure.

(6). *City*: The City of Chesterfield, St. Louis County, Missouri.

(7). *Collocation*: Placement of an antenna on an existing tower (as defined herein), building, light or utility pole, water tower or other structure where the antenna and all supports are located on the existing structure.

(8). *Commercial Impracticability or Commercially Impracticable*: A circumstance which may excuse the applicant or holder from performing a requirement of this ordinance. Such an excuse may be granted where these three conditions exist:

- 1). A contingency occurs;
- 2). Nonoccurrence of the contingency has been a basic assumption on which the requirement was made; and
- 3). Performance of the requirement has been made “impractical” because of, including, but not limited to excessive and unreasonable cost.

(9). *Completed Application*: An application that contains all the submittals, information and/or data required under this chapter and necessary to enable the Council to make an informed decision with respect to an application.

(10). *Council*: The City Council of the City of Chesterfield, Missouri.

(11). *EPA*: The State and/or Federal Environmental Protection Agency or its duly designated and authorized successor agency.

(12). *Facilities Siting Permit*: The official document or permit by which an applicant is allowed to construct, collocate, materially modify and use wireless telecommunications facilities as granted or issued by the City

(13). *FAA*: The Federal Aviation Administration, or its duly designated and authorized successor agency.

(14). *FCC*: The Federal Communications Commission, or its duly designated and authorized successor agency.

(15). *Guyed tower*: A tower which is supported by the use of cables (guy wires) which are permanently anchored.

(16). *Height*: The difference in elevations, as measured from the pre-existing natural grade level to the highest point on the tower or structure, even if said highest point is an antenna, attachments, or camouflage feature.

(17). *Lattice tower*: A self-supporting tower characterized by an open framework of lateral cross members which stabilize the tower.

(18). *Material Modification*: An important, essential or significant change to an existing wireless telecommunications facility. Changes that materially affect the obvious physical appearance of a facility, materially increase a facility's height or structural loading, or otherwise materially affect the safety of the facility would be material modifications. An increase of ten percent (10%) or more in the height of a wireless telecommunications facility shall be presumed to constitute a material modification, unless the applicant, owner or operator of the facility demonstrates that such increase or addition will not materially affect the appearance or safety of the facility. Collocation on a telecommunications structure for which a facilities siting permit allowing such collocation had previously been granted in conformity with this ordinance shall not be considered a material modification for purposes of this statute so long as such collocation does not increase the height of the wireless telecommunications facility and does not increase the previously-existing antenna array of the wireless telecommunications structure. Ordinary repair and/or maintenance (which includes the replacement or upgrade of components with substantially similar components), without any material addition, removal or other material modification of any visible components or aspects of a wireless telecommunications facility shall not be considered a material modification for purposes of this chapter.

(19). *Monopole*: A single upright pole engineered to be self supporting and does not require lateral cross supports or guys.

(20). *NIER*: Non-Ionizing Electromagnetic Radiation.

(21). *Person*: 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.

(22). *State*: The State of Missouri.

(23). *Stealth design*: An antenna, including support structure(s) if any, or telecommunication facility that is designed or located in such a way that the antenna and facility are not readily recognizable as telecommunications equipment.

(24). *Survey*: As provided or referenced herein, "Survey" refers to a cadastral survey, land survey, boundary survey, property survey, topographic

survey, spot survey, improvement survey, as may be appropriate to the individual section. In all cases, a survey is required to be a current survey which is signed and sealed by a registered, professional surveyor, licensed to practice in the State of Missouri.

(25). *Telecommunications Structure*: A structure used in the provision of services described in the definition of “Wireless Telecommunications Facility.”

(26). *“Wireless Telecommunications Facility” or “Telecommunications Tower” or “Telecommunications Site” or “Personal Wireless Facility”*: A structure, facility or location designed, or intended to be used as, or used to support, antennas or other telecommunications transmitting or receiving devices, including but not limited to, towers of all types, the tower compound, alternative support structures, fencing, enclosures, roads, parking areas, generators, required lighting, landscaping and similar structures that employ camouflage technology or stealth design, including but not limited to structures such as multi-story buildings, church steeples, silos, water towers, signs or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It does not include home or office devices that are contained wholly within an existing home or office, nor over-the-air-reception devices including reception antennas for direct broadcast satellites, multi-channel multipoint distribution (wireless cable) providers, television broadcast stations and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception. It is a structure intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal telecommunications services, commercial satellite services, or microwave telecommunications, and any commercial wireless telecommunication service not licensed by the FCC.

Section 4. Applicability.

(1). *Public Property*: The terms of this ordinance shall apply to all wireless telecommunications facilities proposed to be located within the City of Chesterfield whether on property owned by the City of Chesterfield or on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier.

(2). *Amateur Radio, Receive-Only Antennas*: This ordinance shall not govern any tower, or the installation of any antenna that is under thirty five (35) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(3). *Essential Services and Public Utilities*: Wireless telecommunications facilities will not be considered infrastructure, or essential services, as defined or used elsewhere in the City of Chesterfield’s ordinances and regulations. Wireless telecommunications facilities may be considered local public utility facilities over

sixty (60) feet in height. Wireless telecommunications facilities may be considered broadcasting, transmitting, or relay towers, studios, and associated facilities for radio, television and other communications. Siting of wireless telecommunications facilities is the use of land subject to the city's zoning ordinances and all other applicable ordinances and regulations.

(4). Facilities siting permits may be issued for wireless telecommunications facilities in all zoning districts, consistent with the provisions of this ordinance.

Section 5. Facilities Siting Permit Application and Other Requirements.

(1). All applicants for a facilities siting permit or any material modification of such facility shall comply with the requirements set forth in this section. The Council is the officially designated agency or body of the community to whom applications for a facilities siting shall be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking facilities siting permits. The Council may at its discretion delegate or designate other official departments or agents of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking facilities siting permits.

(2). An application for a facilities siting permit shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application unless the applicant provides written authorization to sign the application on the landowner's behalf. For applications for collocations on existing telecommunications structures, the owner of the structure may sign the application in lieu of the landowner. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial or revocation of approval of the application without further consideration or opportunity for correction.

(3). Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Council.

(4). The applicant shall include a statement in writing:

(a). That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the facilities siting permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes,

ordinances, and regulations, including any and all applicable County, State and Federal ordinances, rules, and regulations;

(b). That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State of Missouri.

(5). No wireless telecommunications facility shall be installed or constructed until the site plan is reviewed and approved by the Council, and the facilities siting permit has been issued.

(6). All new wireless telecommunication facilities requiring a new supporting tower to be erected shall use a monopole tower, unless the Council approves a lattice or guyed design based on the specifics of the application. All applications for the construction or installation of new wireless telecommunications facilities, including antennas, shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a professional engineer, licensed to practice engineering in the State of Missouri. Where this section calls for certification, such certification shall be by a qualified professional engineer, licensed to practice engineering in the State of Missouri, acceptable to the City, unless otherwise noted. All application documents, including but not limited to forms, spreadsheets, drawings, surveys, photographs, studies, and other supporting information, is to be submitted in traditional paper format and a copy of all documents shall also be provided electronically on digital media in a form and format acceptable to the City. The application shall include, in addition to the other requirements for the facilities siting permit, the following information:

(a). Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily within the City and its police jurisdiction;

(b). Name, address and phone number of the person preparing the report;

(c). Name, address, and phone number of the property owner, operator, and applicant, to include the legal form of the applicant;

(d). Postal address and locator number of the property;

(e). Zoning district in which the property is situated;

(f). Outboundary survey, as directed by the City of Chesterfield prepared by a licensed professional surveyor, licensed to perform surveying within the State of Missouri, with an original seal and signature affixed thereto;

g). A detailed, scalable site plan prepared by a registered, licensed engineer or surveyor at any scale from one (1) inch equals twenty (20) feet to one (1) inch equals one hundred (100) feet from an accurate survey on one or more sheets whose maximum dimensions are thirty-six inches by forty-two inches (36" x 42"); page sizes eleven inches by seventeen inches (11" x 17") or twenty-four inches by thirty six inches (24" x 36") are acceptable and preferred alternative sizes. The site plan shall include at a minimum, the following information:

- Proposed location of facility;
- Location of and distance from boundary of the nearest residential zoning district(s);
- Location of nearest ten residential structures within one-half mile of the proposed facility;
- Location, size and height of all structures on the property which is the subject of the application and of all other structures within a radius of one hundred ten percent (110%) of the height of the structure;
- Location, size and height of all proposed and existing antennas and all appurtenant structures;
- Type, locations and dimensions of all proposed and existing landscaping, and fencing;
- At least two scaled cross-sections through the site, approximately perpendicular to each other.
- Proposed elevation of the highest feature of the tower, or attachments thereto, the elevation of the natural pre-existing ground elevation at the base of the proposed construction, and the elevation of the proposed finish grade at the base of the construction. All elevations are to be referenced upon mean sea level and referenced to a current approved benchmark. A temporary benchmark is to be provided and maintained on-site for reference purposes.

(h). The number, type and design of the telecommunications tower(s) antenna(s) proposed, together with a copy of the specification sheet(s), and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users;

(i). Prior to approval by the Council, the proposed make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users shall be submitted to the Council;

(j). A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

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

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

(m). Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage. Such propagation studies, including all backup data and assumptions used, shall show signal propagation at the height of the proposed antenna(s) and at increments of ten (10) feet lower, to allow verification of the applicant's need for the proposed height;

(n). Applicant's proposed tower maintenance and inspection procedures and related system of records;

(o). Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" showing that the wireless telecommunications facility with the proposed installation will be in full compliance with the current FCC RF emissions guidelines. If not categorically excluded, a complete RF emissions study is required to provide verification;

(p). A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities if the applicant is not licensed by the FCC;

(q). Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site, which certification shall be reviewed by a licensed engineer designated by the City;

(r). 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 any new telecommunication tower that it constructs.

(s). Where reasonably possible and practicable all applicants for facilities siting permits should develop their plans to allow reasonable requests from the City to use space on its towers and spaced within the existing or planned compound for deploying and operating public service radio facilities (e.g. police, fire, emergency, homeland security, and the like). Should the addition of City requirements exceed structural limits the request may be denied by the permit holder or owner of the wireless telecommunications facility. The City will pay reasonable market value for any such use. Where reasonably practicable, the City will also require access to its equipment at all times for maintenance and operating requirements. However, the City will work with applicants to insure they receive adequate advance notice for routine activities (excluding emergencies).

(7). In the case of a new telecommunications tower or antenna, the applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing telecommunications tower(s) or use of existing buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the Council.

(8). The applicant shall furnish written certification that the telecommunication facility, foundation and attachments are designed and will be constructed ("As Built") to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads, as required by the currently adopted building code.

(9). After construction and prior to receiving a certificate of compliance, the applicant shall furnish:

(a). Written certification that the wireless telecommunications facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

(b). As-Built plans, depicting the as-constructed site improvements in both horizontal and vertical dimensions and elevations.

(10). The applicant shall furnish a visual impact assessment which shall include:

(a). A "Zone of Visibility Map" which shall be provided in order to determine locations where the wireless telecommunications facility may be seen.

(b). Pictorial representations of "before and after" views from key viewpoints both inside and outside of the City, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Council, acting in consultation with its consultants or

experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.

(c). An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.

(11). Any and all representations made by the applicant to the Council, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Council.

(12). The applicant shall, in a manner approved by the Council, demonstrate and provide in writing and/or by drawing how it shall effectively screen from view its proposed wireless telecommunications facility's base and all related facilities and structures.

(13). All utilities from wireless telecommunications facilities sites shall be installed underground and in compliance with all ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Council may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.

(14). All wireless telecommunications facilities applications shall contain a demonstration that the facility be sited so as to minimize its visual and auditory effect on the environment and its character, and the residences in the area of the wireless telecommunications facilities sites, including but not limited to a landscaping plan, fencing or other screening;

(15). Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

(16). At a telecommunications site, an access road and parking 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 and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

(17). A person who holds a facilities siting permit shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facility in strict compliance with all current technical, safety

and safety-related codes adopted by the City, County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

(18). A holder of a facilities siting permit granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable rule, regulation or ordinance, 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.

(19). The Council may conduct an environmental review of the proposed project in combination with its review of the application under this ordinance.

(20). An applicant shall submit to the City Council the number of completed applications determined to be needed at the pre-application meeting. The applicant shall provide a notice of such application to the legislative body of all adjacent municipalities and provide copies of each notice to the Council.

(21). The applicant shall examine the feasibility of designing a proposed telecommunications tower to accommodate future demand for at least two (2) additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Council. The telecommunications tower shall be structurally designed to accommodate at least two (2) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provision of future shared usage of the telecommunications tower is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

(a). The foreseeable number of FCC licenses available for the area;

(b). The kind of wireless telecommunications facilities site and structure proposed;

(c). The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;

(d). Available space on existing and approved telecommunications towers. The applicant shall include rationale for this determination.

(22). The owner of a tower permitted under this chapter shall negotiate in good faith for shared use of the tower by other wireless telecommunications service providers in the future, and shall:

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

(b). Allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable, fair market charges for such use, and the services are technologically compatible. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, permitting costs, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate such shared use without causing electromagnetic interference.

(23). An applicant shall attend a pre-application meeting with City's staff and, at the City staff's discretion, such expert consultant(s) that the City staff deems necessary, if any, that will help to expedite the review and permitting process. A pre-application meeting may also include a site visit if there has not been a prior site visit for the requested site. Costs to the City's consultants to prepare for and attend the pre-application meeting will be charged to the applicant's escrow account established under section 13 of this chapter.

(24). The holder of a facilities siting permit shall notify the City of any intended material modification of a wireless telecommunications facility and shall apply to the City to materially modify, relocate or rebuild a wireless telecommunications facility.

(25). The applicant will provide written comments from Spirit of St. Louis Airport and other applicable agencies as required by the City of Chesterfield.

(26). In addition, the applicant will provide certification by a qualified individual or organization, to determine if the telecommunications tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77 . This requirement shall be for any new tower, or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

Section 6. Collocation Requirements.

All telecommunication facilities erected, constructed, or located within the City shall comply with the following requirements:

(1). A proposal for a new telecommunication facility shall not be approved unless the City Council finds that the planned telecommunications equipment cannot be accommodated on an existing or approved tower or building within a one mile search radius of the municipal boundaries, unless the applicant can show that some other distance is more reasonable, due to one or more of the following reasons:

(a). The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(b). The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

(c). Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.

(d). Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

(2). Complete details of all fixtures and couplings, and the precise point of attachment to an existing tower or building shall be indicated in an application for a new telecommunication facility.

(3). All roof mounted telecommunication facilities, antennas and/or ancillary equipment shall employ stealth design and be screened from view. Telecommunication facilities, antennas and/or ancillary equipment proposed to be located on or within a building or structure shall employ stealth design and be architecturally compatible with the host building or structure.

(4). An applicant intending to share use of an existing telecommunications tower or other structure shall be required to document the intent of the existing structure owner to share use. In the event an application to share the use of an existing telecommunications tower does not increase the height of the telecommunications tower, the Council shall waive such requirements of the application required by this local ordinance as may be for good cause shown.

(5). All collocations shall comprise the minimum antenna array technologically required to provide service in the manner described in the application, to the extent practicable.

Section 7. Location of Wireless Telecommunications Facilities.

(1). Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority:

- (1). On existing telecommunications towers or other tall structures;
- (2). Co-location on a site with existing wireless telecommunications facilities or structures;
- (3). On municipally-owned properties or structures (provided space is available, loading is within the structure's capacity and the City deems the use appropriate);
- (4). On other government property in the City and its police jurisdiction.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(2). An applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is commercially impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of commercial impracticability or hardship.

(3). Notwithstanding the above, the Council may approve any site located within an area in the above list of priorities, provided that the Council finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants.

(4). If the site selected is not the highest priority, then the applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. No such report is required for an application for a collocation if there is already an antenna on the structure which is the subject of the proposed collocation. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

(5). Placement and location of wireless telecommunications facilities shall minimize impact to bluffs, existing tree coverage and waterways. Siting on slopes

in excess of 20% shall not be permitted. In addition, facilities shall be located to avoid a dominant silhouette on ridge lines, and preservation of view corridors of surrounding residential developments shall be considered in the location and design.

(6). Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Council may disapprove an application for any of the following reasons:

(a). Conflict with safety and safety-related codes and requirements;

(b). Conflict with traffic needs or traffic ordinances, or definitive plans for changes in traffic flow or traffic ordinances;

(c). Conflict with the historic nature of a neighborhood or historical district;

(d). The placement and location of wireless telecommunications facilities which would create an unreasonable risk, physical harm or safety issue arising from a collapse, structural failure or weather related safety issues all relating to the facilities;

(e). Conflicts with the provisions of this ordinance.

Section 8. Height of Telecommunications Tower(s).

(1). The applicant for a new support structure must submit documentation justifying to the Council the total height of any telecommunications tower, facility and/or antenna and the basis thereof. Such justification shall be to provide service within the City and/or police jurisdiction, to the extent practicable, unless good cause is shown.

(2). Telecommunications towers shall be no higher than the minimum height necessary to provide reasonable service and reasonable collocation. Unless waived by the Council upon good cause shown, the maximum height shall be one hundred-ten (110) feet, based on three (3) collocated antenna arrays and ambient tree height of one hundred feet.

(3). No tower constructed after the effective date of this chapter shall exceed the minimum height necessary to eliminate gaps in coverage or otherwise to provide service, as demonstrated by the propagation studies submitted under paragraph 6(m) of Section 5 of this ordinance.

Section 9. Visibility of Wireless Telecommunications Facilities.

(1). Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by this ordinance or other regulatory authority.

(2). Telecommunications towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council, and shall be maintained in accordance with the requirements of this ordinance.

Section 10. Security of Wireless Telecommunications Facilities.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specific requirements are as follows:

(1). All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

(2). Transmitters and telecommunications control points and all utility connections must be installed such that they are readily accessible only to persons authorized to operate or service them.

Section 11. Signage.

Wireless telecommunications facilities shall contain signs no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. These signs shall be placed on the perimeter of the facility. In addition, the facility shall contain a sign no larger than four (4) square feet, containing 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 located so as to be visible from the access point of the site. The sign shall not be lighted unless the Council shall have allowed such lighting or unless such lighting is required by applicable provisions of this or any other applicable ordinance. The sign shall be approved by the Council before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless otherwise required by local, state or federal law or regulation.

Section 12. Lot Size and Setbacks.

Wireless telecommunications facilities shall be located with a minimum setback from any property line a distance equal to the height of the wireless telecommunications facility or the existing setback requirement of the underlying zoning district, whichever is greater, unless the applicant demonstrates the support structure is designed with a failure point allowing for a setback distance

less than tower height. This requirement shall not apply to collocations on existing support structures. Further, any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated. The provisions of the subdivision regulations notwithstanding, the leasing of property for the location of a wireless telecommunications facility does not require subdivision approval by the Planning Commission.

Section 13. Application Review Costs.

(1). The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating any applications and any requests for recertification and for inspecting construction and/or material modification of wireless telecommunications facilities.

(2). An applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs for consultant and expert evaluation and consultation to the Council in connection with the review of any application, including the construction and material modification of the site, once permitted. The initial deposit shall be \$7,500.00 for a new tower and \$4,000 for a collocation or material modification of an existing structure. However, should multiple (three or more) projects, by the same applicant, be started to proceed concurrently the escrow amounts may be negotiated. The placement of the escrow amounts with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall bill or invoice the City for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the review process this escrow account appears to be inadequate to complete the consultants' / experts' reviews, the applicant shall immediately, upon notification by the City, replenish that escrow account so that it has a balance of at least \$1,000.00. Such additional escrow 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 escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

(3). The total amount of the funds needed as set forth in subsection (2) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or material modification.

(4). Application review costs and fees shall be reviewed and adjusted biennially, as needed to insure that the amounts required to be deposited into escrow under this section and the amount of the non-refundable application fee

charged under section 19 of the ordinance represent, as accurately as practicable, the City's cost of reviewing and processing applications.

(5). In no event shall the total of application review costs under this section and the city's fee paid pursuant to section 19 of this ordinance exceed \$15,000.00 for a new tower, or \$8,000.00 for a collocation or material modification. All invoices received by the City to be paid out of funds held in escrow under this section shall be open to inspection by the applicant during regular business hours upon reasonable prior notice.

Section 14. Exceptions from a Facilities Siting Permit.

(1). No person shall be permitted to site, place, build, construct, materially modify, or prepare any site for the placement or use of, wireless telecommunications facilities as of the effective date of this ordinance without having first obtained a facilities siting permit. Notwithstanding anything to the contrary in this section, no facilities siting permit shall be required for those exceptions noted in the definition of wireless telecommunications facilities, such as those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

(2). New construction and material modification of existing wireless telecommunications facilities, shall comply with the requirements of this ordinance.

(3). All wireless telecommunications facilities legally existing on or before the effective date of this ordinance shall be allowed to continue as they presently exist, provided however, that any material modification to existing wireless telecommunications facilities must comply with this ordinance.

Section 15. Public Hearing Required.

(1). Prior to the approval of any application for a facilities siting permit, a public hearing shall be held by the Planning Commission. In order to insure that nearby landowners are informed, the applicant, at least three (3) weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the lot on which the new wireless telecommunications facilities are proposed to be located and certify that the applicant has provided notice to said landowners of the public hearing. In addition, notice of the public hearing shall be published in a newspaper of general circulation within the City no less than fifteen (15) calendar days prior to the scheduled date of the public hearing.

(2). The public hearing referred to in subsection (1) of this section shall be scheduled once it found that the application is complete. The hearing shall concern only the applicant's compliance with the provisions of this Chapter.

(3). The above provisions notwithstanding, if the application is for a facilities siting permit for collocating on an existing telecommunications tower or high structure, where the increase in height of the Tower or structure is five (5) feet or less, no public hearing will be required prior to the approval of the application.

Section 16. Action on an Application for a Facilities Siting Permit.

(1). The Council will undertake a review of an application pursuant to this ordinance in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

(2). The Council may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.

(3). After the public hearing and after formally considering the application, the Council may approve and issue, or deny, a facilities siting permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

(4). If the Council approves the facilities siting permit, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the Council's action, and the facilities siting permit shall be issued within thirty (30) days after such approval.

(5). If the Council denies the facilities siting permit, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the Council's action.

(6). Except for necessary building permits, once a facilities siting permit has been granted hereunder, no additional permits or approvals from the City, such as site plan or zoning approvals, shall be required by the City for the wireless telecommunications facilities covered by the facilities siting permit.

Section 17. Recertification of a Facilities Siting Permit.

(1). At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effective date of the facilities siting permit and all subsequent fifth anniversaries of the effective date of the original

facilities siting permit, the holder of such a facilities siting permit shall submit a signed written request to the Council for recertification. In the written request for recertification, the holder of such facilities siting permit shall note the following:

- (a). The name of the holder of the facilities siting permit;
- (b). If applicable, the number or title of the facilities siting permit;
- (c). The date of the original granting of the facilities siting permit;
- (d). Whether the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise modified since the issuance of the facilities siting permit and if so, in what manner;
- (e). If the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
- (f). Any requests for waivers or relief of any kind whatsoever from the requirements of this ordinance and any requirements for a facilities siting permit;
- (g). That the wireless telecommunications facilities are in compliance with the facilities siting permit and compliance with all applicable codes, ordinances, rules and regulations;
- (h). Recertification that the telecommunication tower and attachments both are designed and constructed (“As Built”) and continue to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified Missouri State licensed professional engineer acceptable to the City, the cost of which shall be borne by the applicant.
- (i). A list of collocators.

(2). If, after such review, the Council determines that the permitted wireless telecommunications facilities are in compliance with the facilities siting permit and all applicable statutes, local laws, codes, rules and regulations, then the Council shall issue a recertification facilities siting permit, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local ordinances, codes, rules and regulations. If, after such review, the Council determines that the permitted wireless telecommunications facilities are not in compliance with the facilities siting permit and all applicable statutes, local laws, codes, rules and regulations, then the Council may refuse to issue a recertification facilities siting permit, and in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of such decision by the Council. Any

such decision shall be in writing and supported by substantial evidence contained in a written record.

(3). If the applicant has submitted all of the information required by this ordinance, and if the Council does not complete its review, as noted in subsection (2) of this section, prior to the five (5) year anniversary date of the facilities siting permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the facilities siting permit for up to six (6) months, in order for the Council to complete its review.

(4). If the holder of a facilities siting permit does not submit a request for recertification of such facilities siting permit within the timeframe noted in subsection (1) of this section, then such facilities siting permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the facilities siting permit, or subsequent fifth anniversaries, unless the holder of the facilities siting permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the facilities siting permit may submit a late recertification request or application for a new facilities siting permit.

Section 18. Extent and Parameters of Facilities Siting Permit.

The extent and parameters of a facilities siting permit shall be as follows:

(1). such facilities siting permit shall be non-exclusive;

(2). such facilities siting permit shall not be assigned, transferred or conveyed without written notification to the City. Such notification will occur within one hundred eighty (180) calendar days of such assignment, transfer or conveyance.

(3). such facilities siting permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the facilities siting permit, or for a material violation of this ordinance after prior written notice to the applicant and the holder of the facilities siting permit.

Section 19. Application Fee.

(1). At the time that a person submits an application for a facilities siting permit for a new telecommunications tower, such person shall pay a non-refundable application fee of \$5,000.00 to the City. If the application is for a facilities siting permit for collocating on an existing telecommunications tower or high structure, where no increase in height of the tower or structure is required,

the non-refundable fee shall be \$2,000.00. These fees shall include the cost of any applicable permits. These fees represent the City's best estimate of the actual cost of city personnel and resources for processing applications and monitoring compliance with this chapter for the life of a wireless telecommunications facility, which is estimated to be thirty (30) years. Application review costs and fees shall be reviewed and adjusted biennially, as needed to insure that the amount of the fees represents, as accurately as practicable, the city's cost of reviewing and processing applications and monitoring compliance with this chapter.

(2). No application fee is required in order recertify a facilities siting permit for wireless telecommunications facilities, unless there has been a material modification of the wireless telecommunications facilities since the date of the issuance of the existing facilities siting permit for which the conditions of the facilities siting permit have not previously been modified. In the case of any material modification, the fees provided in subsection (1) shall apply.

Section 20. Performance Security.

(1). The applicant for a telecommunications siting permit and/or the owner of record of any proposed wireless telecommunications facility shall at their cost and expense, execute and file with the City a bond with one or more sureties reasonably satisfactory to the city, or other form of security acceptable to the City, in an amount to be selected by the City from among three estimates presented to it by the applicant and sufficient to assure the faithful performance of the terms and conditions of this ordinance and conditions of any facilities siting 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 facilities siting permit and/or until the removal of the wireless telecommunications facilities and 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 facilities siting permit. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the facilities siting permit and shall entitle the Council to revoke the facilities siting permit after prior written notice to the holder of the permit and after a hearing upon due prior notice to the holder of the facilities siting permit.

(2). Remedies for Default: If the developer or surety fails to comply with the City of Chesterfield's requirements as described above, fails to complete construction or abandons the subject site or otherwise violates the deposit agreement provisions, the City of Chesterfield may in addition or alternatively to other remedies suspend the right of anyone to build or construct on the subject site by issuance of a Stop Work Order (SWO). Issuance of a SWO shall result in a suspension of all construction activity on the site, until the cause is resolved to the City's satisfaction. The SWO shall also suspend the right of the permittee, applicant, owner contractor, developer or any related entity to build or construct

any structure or public improvement on any portion of the site. The City of Chesterfield, upon issuance of a SWO, are authorized to suspend the issuance of building permits, occupancy permits, special activities permits, and business licenses(if applicable) for the site. All inspections and plan review related to any work on the site shall also be suspended until such time the cause is resolved to the City's satisfaction. Any person who continues to work in or about the site after a SWO has been posted, except work related to remediation of the violation shall be subject to penalties specified in the Chesterfield Code.

Section 21. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

(1). In order to verify that the holder of a facilities siting permit and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, ordinances, laws and regulations, and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

(2). The City shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the City with respect to an inspection, or if violations of this ordinance are found to exist, in which case the holder, lessee or licensee shall reimburse the City for the cost of the inspection.

(3). Payment of such costs shall be made to the City within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this ordinance, said reimbursement payment must still be paid to the City and the reimbursement shall be placed in an escrow account established by the City specifically for this purpose, pending the final decision on appeal.

Section 22. Annual NIER Certification.

The holder of the facilities siting permit shall, annually, certify in writing to the City that NIER levels at the site are within the threshold levels adopted by the FCC.

Section 23. Liability Insurance.

(1). A holder of a facilities siting permit shall secure and at all times maintain public liability insurance for personal injuries, death and property damage for the duration of the facilities siting permit in amounts as set forth below:

(a). commercial general liability covering personal injuries, death and property damage: at least \$1,000,000.00 per occurrence / \$2,000,000.00 aggregate;

(b). automobile coverage: at least \$1,000,000.00 per occurrence / \$2,000,000.00 aggregate;

(c). workers compensation and disability: statutory amounts.

(2). The commercial general liability insurance policy shall specifically include the City and its officers, employees, committee members, attorneys, agents and consultants as additional insureds.

(3). The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and having an A.M. Best's rating of at least "A".

(4). The insurance company shall provide the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

(5). Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

(6). Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days after the grant of the facilities siting permit, the holder of the facilities siting permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 24. Penalty for Violation.

(1). A violation of this ordinance shall be a municipal violation and, in addition to any other requirements of this ordinance, punishable by a fine of not more than five hundred dollars (\$500) per each day of violation or by imprisonment for a period not to exceed three (3) months, or by both fine and imprisonment. Each occurrence and failure to conform to the requirements of this ordinance shall constitute a separate offense, and each and every day that such

violation shall continue shall be an additional violation with each violation being punishable by a separate fine and/or imprisonment. If the requirements of this section have been waived by the Council, as provided in this ordinance, failure to comply with the requirements so waived shall not constitute a municipal violation.

(2). In addition to the penalties herein above and authorized and established, the City Attorney shall take such other actions at law or in equity, as may be required to halt, terminate, remove or otherwise eliminate any violations of this section. (3). The City shall withhold facility siting permits until the fine is paid.

Section 25. Default and/or Revocation.

(1). If wireless telecommunications facilities are 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 facilities siting permit, then the Council shall notify the holder of the facilities siting permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this section or any other section of this ordinance, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within twenty-four (24) hours.

(2). If within the period set forth in subsection (1) above the wireless telecommunications facilities are not brought into compliance with the provisions of this ordinance, or of the facilities siting permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Council may revoke such facilities siting permit and shall notify the holder of the facilities siting permit within forty-eight (48) hours of such action.

Section 26. Removal of Wireless Telecommunications Facilities.

(1). Under the following circumstances, the Council may determine that the health, safety, and welfare interests of the City warrant and require the removal of wireless telecommunications facilities:

(a). wireless telecommunications facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) 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 commence within 90 days;

(b). permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;

(c). wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required facilities siting permit, or any other necessary authorization.

(2). If the Council makes such a determination as noted in subsection (1) of this section, then the Council shall notify the holder of the facilities siting permit within forty-eight (48) hours that said wireless telecommunications facilities are to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

(3). The holder of the facilities siting permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Council. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Council.

(4). If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the wireless telecommunications facilities at the sole expense of the owner or facilities siting permit holder.

(5). If the City removes or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

(6). Notwithstanding anything in this section to the contrary, the Council may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facility shall be developed by the holder of the facilities siting permit, subject to the approval of the Council, and an agreement

to such plan shall be executed by the holder of the facilities siting permit 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 wireless telecommunications facility in the manner provided in this section.

Section 27. Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this ordinance may request such from the Council via written statement at a pre-application meeting with City of Chesterfield staff, provided that the relief or exemption sought is contained in the submitted application for either a facilities siting permit, or in the case of an existing or previously granted facilities siting permit a request for material modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. The applicant shall have the burden of showing the need for the requested relief or exemption and shall bear all costs of the City's consultants / experts (if any) in considering the request for relief. No such relief shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 28. Periodic Regulatory Review by the Council.

(1). The Council will conduct a review and examination of this entire ordinance every five (5) years.

(2). If after such a periodic review and examination of this ordinance, the Council determines that one or more provisions of this ordinance should be amended, repealed, revised, clarified, or deleted then the Council may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the Council may repeal this entire ordinance at any time.

(3). Notwithstanding the provisions of subsections (1) and (2) of this section, the Council may at any time, and in any manner (to the extent permitted by Federal, State, or local ordinance), amend, add, repeal, and/or delete one or more provisions of this ordinance.

Section 29. Adherence to State and/or Federal Rules and Regulations.

(1). To the extent that the holder of a facilities siting permit has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a facilities siting 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.

(2). 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 facilities siting permit, then the holder of such a facilities siting permit shall conform the permitted wireless telecommunications facilities 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 30. Conflict with Other Laws or Ordinances.

Where this ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the City and the public shall apply.

Section 31. Severability.

(1). 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.

(2). Any facilities siting permit issued under this ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City Council.

Section 32. Effective Date.

This ordinance shall be effective immediately upon its publication, pursuant to applicable legal and procedural requirements.”

Section 33. Repeal.

On passage of this ordinance, ordinance 1214 shall be repealed.

Passed and approved this _____ day of _____, 2007.

MAYOR

ATTEST:

CITY CLERK

First Reading Held: _____
