



**VIII. B.**

---

690 Chesterfield Pkwy W • Chesterfield MO 63017-0760  
Phone: 636-537-4000 • Fax 636-537-4798 • [www.chesterfield.mo.us](http://www.chesterfield.mo.us)

---

## **Planning Commission Staff Report**

**Meeting Date:** July 9, 2007

**From:** Annissa G. McCaskill-Clay, AICP  
Assistant Director of Planning

**Subject:** Ordinance Amendment Vote Report

**Petition:** P.Z. 33-2007 City of Chesterfield (Telecommunications Ordinance)

### **Proposal Summary**

The City of Chesterfield has submitted a request for repeal of City of Chesterfield Ordinance 1214, and replacing it with a new ordinance establishing rules and regulations for the siting, construction and modification of wireless telecommunications facilities. Ordinance 1214 is also Section 1003.167.19 of the City of Chesterfield Zoning Ordinance

### Public Hearing Issues

Public Hearing was held on this item on June 25, 2007. No issues were raised at that time; however, the Commission requested that the attached table, which was a part of Staff's presentation, be included for their review.

Respectfully Submitted,

Annissa G. McCaskill-Clay, AICP  
Assistant Director of Planning

## DIFFERENCES BETWEEN PROPOSED TELECOMMUNICATIONS ORDINANCE AND CURRENT STANDARDS

Proposed Ordinance	Ordinance 1214
<ul style="list-style-type: none"> <li>▪ Public Hearing required for all request.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Public Hearing not always required.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Maximum height is 110 feet.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No maximum height. However, criteria is provided for structures under 120 feet.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Towers at maximum height must accommodate at least 3 users.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Towers over 100 feet in height must be able to accommodate at least 2 users.</li> </ul>
<ul style="list-style-type: none"> <li>▪ \$5000 application fee (\$2000 for collocators) and a minimum \$75000 performance security in the form of a bond.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No application fee or performance security.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Mandatory review of telecommunications ordinance every 5 years</li> </ul>	<ul style="list-style-type: none"> <li>▪ No review of telecommunications ordinance.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Up-to-date penalties and provisions for removal of abandoned, damaged or dangerous equipment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Penalties are outdated and no language for removal of abandoned, damaged or dangerous equipment.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Final approval of all applications is by the City Council.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Some applications may be approved administratively by staff.</li> </ul>

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**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 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, antenna, 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 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 for Wireless Telecommunications Facilities.

(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 for Wireless Telecommunications Facilities.

(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 transmission tower, 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 information and/or data necessary to enable the Council to evaluate the merits of the request and to make an informed decision with respect to the effect and impact of Wireless Telecommunications Facilities on the City in the context of the permitted land use for the particular location requested.

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

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

(20). *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.

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

(22). *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.

(23). *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.

(24). *Telecommunication facility*: A facility designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices including, but not limited to, transmission towers, antennas and ancillary facilities. It includes, without limit, the tower compound, lattice towers, guyed towers, monopoles, alternative support structures, fencing, enclosures, roads, parking areas, generators, required lighting, landscaping and similar structures that employ stealth design. It does not include home or office devices that are contained wholly within an existing home or office. For purposes of this section, amateur radio transmission facilities under 35 feet and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

(25). *"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, as well as antennas or any functional equivalent equipment used to

transmit or receive signals. It does not include home or office devices that are contained wholly within an existing home or office. However, it does include without limit, the tower compound, antenna, free standing Towers, guyed Towers, monopoles, and similar structures that employ camouflage technology or stealth design, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusively for Fire, Police, Public Works and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications.

#### **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, essential services, or public utilities as defined or used elsewhere in the City of Chesterfield's ordinances and regulations. Siting of telecommunications facilities is the use of land subject to the city's zoning ordinances and all other applicable ordinances and regulations.

#### **Section 5. Facilities Siting Permit Application and Other Requirements.**

(1). All Applicants for a Facilities Siting Permit for Wireless Telecommunications Facilities or any 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 Permit for Wireless Telecommunications Facilities 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 for Wireless Telecommunications Facilities. 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 for Wireless Telecommunications Facilities.

(2). An Application for a Facilities Siting Permit for Wireless Telecommunications Facilities 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. 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 Facilities 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. 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) and the nearest ten residential structures;
- Location of nearest habitable structure;
- Location, size and height of all structures on the property which is the subject of the Application;
- Location, size and height of all proposed and existing antennae 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 and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;

(i). The make, model and manufacturer of the Tower and Antenna(s);

(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). Direction of maximum lobes and associated radiation of the Antenna(s);

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

(o). Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC;

(p). Certification that the proposed Antenna(s) will not cause interference with existing Telecommunications devices, which certification shall be reviewed by a licensed engineer approved by the City;

(q). A copy of the FCC license applicable for the use of Wireless Telecommunications Facilities;

(r). 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;

(s). Propagation studies, in a form approved by the City of Chesterfield, of the proposed site and all adjoining proposed, in-service or existing sites;

(t). 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.

(u). Certification and Statement that appropriate space has been reserved on the tower for public safety usage at no cost to the public safety entity. The City will provide the specific requirements for such public safety usage, if any, promptly after the pre-application meeting.

(7). In the case of a new Telecommunication 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 Facilities 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 have the least adverse 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 for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities 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 applicant shall submit to the Council a letter of intent committing the owner of the proposed new Tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed Tower by other Telecommunications providers in the future. This letter shall be filed with the Council. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the Facilities Siting Permit. The letter shall commit the new Tower owner and their successors in interest to:

(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 Tower by other Telecommunications providers;

(c). Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. 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, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

(23). There shall be a pre-application meeting with City of Chesterfield staff. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit if required. Where the Application is for the shared use of an existing Telecommunications Tower(s) or other high structure, the Applicant should seek to waive any section or sub-section of this Ordinance that may not be required. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the Council. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

(24). The holder of a Facilities Siting Permit shall notify the City of any intended modification of a Wireless Telecommunication Facility and shall apply to the City to 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 a written copy of an analysis, completed 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 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). Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the City and its police jurisdiction, to the extent practicable, unless good cause is shown.

### **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;
- (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). 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. 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). The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has been, or is, reviewing or planning for Wireless Telecommunications Facilities in the City, its police jurisdiction, and all municipalities adjoining the City, for a two year period following the date of the Application.

(6). 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.

(7) 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 use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- (e). The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
- (f). Conflicts with the provisions of this Ordinance.

**Section 8. Height of Telecommunications Tower(s).**

(1). The Applicant 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. Unless waived by the Council upon good cause shown, the maximum height shall be one hundred-ten (110) feet, based on three (3) co-located antenna arrays and ambient tree height of one hundred feet.

(3). The maximum height of any Telecommunications Tower and attached Antennas constructed after the effective date of this Ordinance shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with municipal, county, state, and/or any federal statute, code, rule or regulation.

#### **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.

(3). If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the Wireless Telecommunications Facilities are located.

#### **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 wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

(2). Transmitters and Telecommunications control points 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 a sign 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. The sign shall contain 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 law.

### **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. 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. Retention of Expert Assistance and Reimbursement by Applicant.**

(1). The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the Application and any requests for recertification.

(2). An Applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the Council in connection with the review of any Application. The initial deposit shall be \$7,500.00. These funds shall accompany the filing of an Application and the City will maintain a separate escrow account for all such funds. The City's consultants/experts shall bill or invoice the City no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately, upon

notification by the City, replenish said escrow account so that it has a balance of at least \$2,500.00. 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 billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the Applicant.

(3). The total amount of the funds 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 by the Council or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the City, shall be paid by the Applicant.

**Section 14. Exceptions from a Facilities Siting Permit for Wireless Telecommunications Facilities.**

(1). No Person shall be permitted to site, place, build, construct or 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 for Wireless Telecommunications Facilities. 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, renovations and expansions, including routine maintenance on 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 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 for Wireless Telecommunications Facilities, 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 (1500) 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 Council or Planning Commission at any stage prior to issuing a Facilities Siting Permit, may require such additional information as it deems necessary.

(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 for Wireless Telecommunications Facilities.**

(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 for Wireless Telecommunications Facilities, 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 for Wireless Telecommunications Facilities, 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 for Wireless Telecommunications Facilities.**

(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 for Wireless Telecommunications Facilities, the holder of a Facilities Siting Permit for such Wireless Telecommunication Facilities 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 for the Wireless Telecommunications Facilities;

(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.

(1). 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 for the Wireless Telecommunications Facilities, 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 for the Wireless Telecommunications Facilities, 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 requested by the Council and 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 for Wireless Telecommunications Facilities 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 for Wireless Telecommunications Facilities.**

The extent and parameters of a Facilities Siting Permit for Wireless Telecommunications Facilities 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 the express prior written consent of the Council, and such consent shall not be unreasonably withheld or delayed;

(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 for Wireless Telecommunications Facilities, 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 \$5000.00 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 \$2000.00. These fees shall include the cost of any applicable permits.

(2). No Application fee is required in order recertify a Facilities Siting 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 Facilities Siting Permit for which the conditions of the Facilities Siting Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (1) shall apply.

**Section 20. Performance Security.**

(1) The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Council 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. 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 Applicant and holder of



the permit and after a hearing upon due prior notice to the Applicant and 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 Chesterifeld Code.

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

(1). In order to verify that the holder of a Facilities Siting Permit for Wireless Telecommunications Facilities 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 for Wireless Telecommunications Facilities 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 Facilities Siting Permit in amounts as set forth below:

(a). Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

(b). Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 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 named 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 with a Best's rating of at least A.

(4). 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.

(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 Facilities 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. Indemnification.**

(1). Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to the extent permitted by the Ordinance, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, 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 Wireless Telecommunications Facilities. 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.

(2). Notwithstanding the requirements noted in subsection (1) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Facilities Siting Permit for Wireless Telecommunications Facilities.

**Section 25. Fines.**

(1). In the event of a violation of this Ordinance or any Facilities Siting Permit issued pursuant to this Ordinance, the Council may impose and collect, and the holder of the Facilities Siting Permit for Wireless Telecommunications Facilities shall pay to the City, fines or penalties as set forth below.

(2). A violation of this Ordinance is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty (\$350) dollars nor more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than one thousands dollars (\$1,000) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed

misdemeanors and for such purpose only all of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional offense.

(3). Notwithstanding anything in this Ordinance, the holder of the Facilities Siting Permit for Wireless Telecommunications Facilities 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 Facilities Siting Permit to termination and revocation of the Facilities Siting Permit. The City may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the City.

### **Section 26. 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 subsection 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 for Wireless Telecommunications Facilities, and shall notify the holder of the Facilities Siting Permit within forty-eight (48) hours of such action.

### **Section 27. 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 (A) of this section, then the Council shall notify the holder of the Facilities Siting Permit for the Wireless Telecommunications Facilities 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 Facilities 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 Facilities in the manner provided in this Section.

**Section 28. 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 is contained in the original Application for either a Facilities Siting Permit, or in the case of an existing or previously granted Facilities Siting Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Council. However, the burden of proving the need for the requested relief or exemption is solely on the Applicant to prove to the satisfaction of the Council. The Applicant shall bear all costs of the Council or the City in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Council. Such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief or exemption will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.

**Section 29. 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 30. Adherence to State and/or Federal Rules and Regulations.**

(1). To the extent that the holder of a Facilities Siting Permit for Wireless Telecommunications Facilities 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 for Wireless Telecommunications Facilities , 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 31. 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 32. 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 33. Effective Date.**

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

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

First Reading Held: \_\_\_\_\_