




cityofhogansville.org

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Memorandum

To: City of Hogansville Mayor and City Council

From: Lynne Miller, Community Development Director 

Subject: Cell Tower Ordinance – City Planning & Zoning Commission Recommendation

Date: April 23, 2018

Please be advised that at its regular meeting held April 19, 2018, the Hogansville Planning and Zoning Commission considered the draft telecommunications ordinance provided by City Attorney Jeff Todd, dated February 8, 2018.

Upon motion by Planning & Zoning Commission member Mary Margaret Ware, seconded by P&Z Member Gayle Devereaux, and with a unanimous affirmative vote except for P&Z member Carol Smith who was absent from this meeting; the P&Z Commission voted to recommend to the City Council as follows:

That the draft telecommunications ordinance dated February 8, 2018 by City Attorney Jeff Todd be approved, with the following minor editorial clarification:

- That any references therein to “the governing authority” be changed to “the governing body” to match the Definitions Section.

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JOHN M. TAYLOR
JEFFREY M. TODD

February 8, 2018

VIA EMAIL

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Mr. David Milliron, City Manager
CITY OF HOGANSVILLE
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Hogansville, Georgia 30230
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RE: Telecommunications Ordinance

Dear David:

As you are aware, Lynne asked that I modify the Telecommunications Ordinance draft to provide that any industrial zones will allow for towers "as of right" with more stringent requirements as the zones become less intense.

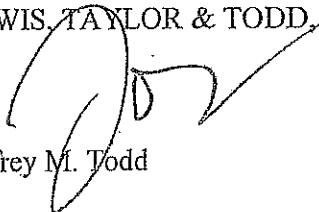
Enclosed herewith is a draft Ordinance which provides, through Section 102-603, for wireless support structures to be a use by right in the general industry district (GI). Applications to erect such structures in all remaining zoning classifications are subject to special use permit as per the outline in the Ordinance.

I hope this is helpful, but of course look forward to making any changes you may require.

With best regards, I am

Very truly yours,

LEWIS, TAYLOR & TODD, P.C.


Jeffrey M. Todd

JT/mcj

Enclosure

cc: Lisa E. Kelly (*via email*)
Lynne Miller (*via email*)

AN ORDINANCE

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF HOGANSVILLE TO AMEND THE CODE OF THE CITY; TO AMEND THE ZONING ORDINANCE OF THE CITY SO AS TO PROVIDE FOR THE SITING OF WIRELESS SUPPORT STRUCTURES WITHIN THE CITY; TO DO SO THROUGH APPROPRIATE ZONING AND LAND USE CONTROLS; TO PROVIDE DEFINITIONS; TO ALLOW FOR EXCEPTIONS; TO PROVIDE FOR INITIAL SITING OF WIRELESS SUPPORT STRUCTURES AND PREFERRED LOCATIONS; TO ESTABLISH REGULATORY COMPLIANCE; TO PROVIDE FOR AN APPLICATION AND APPLICATION PROCESS; TO PROVIDE FOR A PENALTY FOR VIOLATION; TO REPEAL CONFLICTING ORDINANCES; TO FIX AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

THE COUNCIL OF THE CITY OF HOGANSVILLE HEREBY ORDAINS:

SECTION 1:

That the Code of Ordinances of the City of Hogansville be amended by creating within Chapter 102, the Zoning Ordinance, a new Article VI to read as follows: "Telecommunications, Antennas and Tower Standards" and to read as follows:

**"ARTICLE VI. - TELECOMMUNICATIONS ANTENNAS
AND TOWER STANDARDS**

Sec. 102-600. - Purposes.

This article is designed and intended to balance the interests of the residents of the city, telecommunications providers, and telecommunications customers in the siting of wireless support structures within the city so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carriers that does not unreasonably discriminate among providers of functionally equivalent personal wireless services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services, and so as to promote the city as a proactive city in the availability of personal wireless telecommunications service. To that end, this article shall:

- (1) Provide for the appropriate location and development of wireless facilities in the city;
- (2) Protect the city's built and natural environment by promoting compatible design standards for wireless facilities;
- (3) Minimize adverse visual impacts of wireless facilities through careful design, siting, landscape screening and innovative camouflaging techniques;
- (4) Avoid potential damage to adjacent properties from tower or antennae failure through engineering and careful siting of wireless support structures and antennas;
- (5) Maximize use of any new and existing wireless support structures so as to minimize the need to construct new structures and minimize the total number of structures throughout the city;

- (6) Maximize and encourage use of alternative wireless support structures as a primary option rather than construction of additional single-use towers; and
- (7) Encourage and promote the location of new wireless facilities in areas which are not zoned for residential use.

Sec. 102-601. - Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory equipment means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, equipment cabinets, storage sheds, shelters, or similar structures.

Antenna means any communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services. For the purposes of this article, the term "antenna" does not include any tower and antenna expressly excluded under section 102-602.

Application means a formal written request submitted to the local governing body to construct, collocate, or modify a wireless support structure or a wireless facility.

Base station means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Sec. 1.40001 or any equipment associated with a tower.

Building official means the building official of the city or his or her designee.

Collocate or *collocation* means the mounting or installation of transmission equipment on an eligible wireless support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Complete application means an application containing all documents, information, and fees specifically enumerated in this Article pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

Eligible wireless support structure means any tower or base station, as herein defined, existing at the time a request is filed with the city for: (a) collocation of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment.

Equipment compound means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is placed.

Governing body means the mayor and council of the city.

Macro telecommunications facilities means those which are located on existing buildings, poles or other existing wireless support structures and which project more than three feet above the top of the structure but no more than ten feet above the roof line, parapet or top of the structure. Macro telecommunication facilities may exceed the height limitation specified for the zoning district.

Micro telecommunications facilities means those which are located on existing buildings, poles or other existing wireless support structures where antennas do not project more than three feet above the top of the structure and there are no more than four antennas per site. Micro telecommunications facilities shall not exceed the maximum height limitations of the zoning district by more than three feet.

Modification or *modify* means the improvement, upgrade, expansion, removal, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound.

Monopole tower means a telecommunications tower consisting of a single pole, constructed without guy wires or ground anchors.

Personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as such terms are defined and used in 47 U.S.C. § 332.

Personal wireless service facilities means facilities for the provision of personal wireless services, as herein defined.

Substantial change means, for purposes of this article, such term as expressly defined in 47 C.F.R. Sec. 1.40001, which by reference is expressly made a part hereof.

Tower means any structure built for the sole or primary purpose of supporting any licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site.

Wireless facility means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power supplies, cabling, and accessory equipment, used to provide wireless data and wireless telecommunications services.

Wireless support structure means a freestanding structure, such as a monopole, tower (either guyed or self-supporting), or suitable existing or alternative structure designed to support or capable of supporting wireless facilities, such as an elevated water tank. Such term shall not include any telephone or electrical utility pole or any utility tower used for the distribution or transmission of electrical service.

Sec. 102-602. - Exclusions.

The following shall be exempt from this article:

- (1) Any wireless support structure and antenna under 70 feet in total height which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission;
- (2) Any device designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite service, of one meter or less in diameter;
- (3) Any telecommunications facilities located on property owned, leased or otherwise controlled by the city, provided a written lease authorizing the wireless facility has been approved by the governing body, the city did not mandate placement of a wireless support structure on proprietary property, and the rental charge is limited to fair market value for the rental or use of similarly situated property;
- (4) Any cable television headend or hub towers and antennas used solely for cable television services;

Sec. 102-603. - Initial siting of wireless support structures.

(a) Wireless support structures shall be allowed as a use by right in the General Industry district (GI), as shown on the official zoning map of the city. In all other zoning districts, wireless support structures shall be allowed by special use permit following the procedures in city code section 102-121 et. seq. No wireless support structure shall be sited at any location where it causes obstruction or interference with navigable air space.

(b) Wireless support structures, other than monopole towers, designed and intended to accommodate at least one user are permitted up to a height of 100 feet following design review by and receipt of a building permit from the building official. Wireless support structures, other than

monopole towers, designed and intended to accommodate at least two users are permitted up to a height of 120 feet following design review by and receipt of a building permit from the building official. Wireless support structures designed and intended to accommodate at least three users are permitted up to a height of 140 feet following design review by and receipt of a building permit from the building official. No variance shall be granted for a wireless support structure of a height greater than 160 feet. The standard for granting a height variance for a wireless support structure, other than monopole towers, shall be the willingness of the owner to provide space on the structure for future collocation.

(c) Monopoles are permitted up to a height of 80 feet to accommodate single users. Monopoles are permitted up to a height of 100 feet if designed and intended to accommodate at least two users. No variance shall be granted for a monopole of a height greater than 120 feet. The standard for granting a height variance for a monopole tower shall be the willingness of the owner to provide space on the structure for future collocation.

(d) It is the intent of the city, in exercising its police power under this article, to streamline its procedures for initial siting of wireless facilities, not to unreasonably discriminate among providers of functionally equivalent services nor prohibit or have the effect of prohibiting the provision of personal wireless services. In considering an application for the initial siting of a wireless support structure, the city, its staff and governing body, shall not seek or require information about, evaluate, or consider the technical, business, or service characteristics of such proposed wireless facilities, the provider(s), nor the environmental effects of radio frequency emissions.

(e) All decisions as to the initial siting of wireless support structures shall be made within 150 calendar days of the initial filing of an application, as extended only by the tolling of such period if the application has been returned to the applicant, within 30 days from the date of initial filing, as incomplete in accordance with FCC regulations issued under 47 U.S.C. § 331(c)(7). Any decision to deny the application must be in writing, supported by substantial evidence, and served upon the applicant prior to expiration of said period (as calculated in the manner provided in said regulations); failure to timely notify the applicant of a denial, in writing, shall be deemed to be an approval of the application, as filed. Notice of incompleteness given under this section must specify the code provision or other requirement that is missing; following a resubmission by the applicant, any further notice of incompleteness shall be given within ten days and reference specifically only missing items noticed in the first notice of incompleteness.

Sec. 102-604. - Preferred and disfavored location sites.

(a) *Preferred location sites.* Preferred location sites are prioritized from highest to lowest as follows:

(1) *Collocation sites:* Any existing wireless support structure currently being used for transmitting or receiving electromagnetic radio signals used in the provision of all types of wireless communications services shall be the highest preferred location site regardless of the underlying zoning designation of the site; provided, however, that collocations which meet this criteria shall be subject to the design and siting components of this article and collocation sites shall not become an antenna farm or otherwise be deemed by the building official or the governing authority to be visually obtrusive.

(2) *Publicly owned structures:* Publicly owned structures are the next highest preferred locations throughout the city because they appear in virtually all neighborhoods, are dispersed throughout the city, and, due to their institutional or infrastructure uses, are generally similar in appearance to or readily adaptable for telecommunications facilities. Therefore, wireless support structures should be less noticeable when placed on publicly owned structures than when placed on industrial or commercial structures. Publicly owned structures include, but are not limited to, facilities such as police or fire stations, libraries, community centers, civic centers, courthouses, utility structures, water towers, elevated roadways, bridges, flag poles, schools, hospitals, clock or bell towers, light poles and churches.

(3) *Industrial and commercial structures:* Wholly industrial and commercial structures such as warehouses, factories, retail outlets, supermarkets, banks, garages, or service stations shall be preferred locations particularly where existing visual obstructions or clutter on the roof or along a roofline can and will be removed as part of the installation of the wireless support structure.

(b) *Disfavored location sites.* Any single-family residential district site or site adjoining a single-family residence, duplex, or multifamily housing complex shall be a disfavored site for the location of wireless facilities.

Sec. 102-605. - Requirements for all wireless support structures.

(a) *General requirements for all wireless support structures.* The requirements set forth in this section shall govern the design and construction of all wireless support structures governed by this article.

(1) *Building codes and safety standards.* To ensure the structural integrity of wireless support structures, the owner shall ensure that proposed facilities are designed, constructed, and maintained in compliance with standards contained in applicable building codes and any applicable standards for such wireless support structures, as amended from time to time. Compliance shall be shown by the seal and signature of a registered engineer licensed in the State of Georgia on the design plans. Owners of wireless facilities shall conduct periodic inspections of such facilities at least once every year to ensure structural integrity. Inspections shall be conducted by a qualified, independent engineer licensed to practice in this state. The results of such inspection shall be provided, in writing, to the building official.

(2) *Regulatory compliance.*

a. All wireless support structures must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communication Commission and any other agency of the state or federal government with the authority to regulate telecommunications facilities. If such standards and regulations are changed, then the owners of the telecommunications facilities governed by this article shall bring such telecommunications facilities into compliance with such revised standards and regulations within the date established by the agency promulgating the standards or regulations.

b. Owners of wireless support structures shall provide documentation to the building official, upon written request, showing that each wireless facility is in compliance with all applicable federal and state requirements. Evidence of compliance may be requested every 12 months.

(3) *Security.* All wireless support structures shall be fenced and equipped with an appropriate security system, including, if applicable, an anticleimbing device or other similar protective device, to prevent unauthorized access to the structure.

(4) *Lighting.* No illumination is permitted on telecommunications facilities unless required by the Federal Communication Commission, the Federal Aviation Administration, or other state or federal agency of competent jurisdiction or unless necessary for air traffic safety. If lighting is required or necessary, the building official may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding uses and views.

(5) *Advertising.* No advertising is permitted on wireless facilities. However, a whip antenna may be allowed on any legally permitted permanent billboard or outdoor advertising sign as long as the other requirements of this article are met.

(6) *Visual impact.*

a. Wireless facilities shall either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration or other applicable federal or state agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.

b. If an antenna is installed on a structure other than a tower, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Roof-mounted antennas shall be made visually

b. For antennas attached to the roof or a supporting structure on a rooftop, a 1:1 setback ratio (example: ten-foot-high antenna and supporting structure requires ten-foot setback from edge of roof) shall be maintained unless an alternative placement is shown to reduce visual impact.

(b) *Additional requirements for towers.*

(1) Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zoning district as much as possible. Personal wireless telecommunication towers shall be integrated through location and design to blend in with existing characteristics of the site to the extent practical. Concealment elements, or "stealth-design", may be a reasonable condition of permit approval.

(2) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(3) At a tower site the design of the buildings and related structures shall to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower and related facilities to the natural setting and built environment.

(4) Towers shall not be located any closer than 1,500 feet from an existing tower unless technologically required or visually preferable.

(5) When a tower is adjacent to a residential use, it must be set back from the nearest residence a distance at least equal to its total height.

(6) In no case shall a tower be located in the required front yard, back yard or side yard in a residential district.

(7) Towers shall not be sited where they will negatively affect historic or scenic view corridors as designated by the governing body, or any state or federal agency, or where they will create visual clutter.

(8) Towers shall be enclosed by decay-resistant security fencing not less than six feet in height and shall be equipped with an appropriate anticleimbing device or other similar protective device designed to prevent tower access.

(9) Placement of more than one tower on a lot may be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site will not lead to multiple failures in the event that one fails.

Sec. 102-606. - Application procedures.

(a) *General application requirements for all building and special use permits.* Application for a building permit or special use permit for any wireless facility shall be made to the building official by the person, company, or organization that will own and operate the wireless facility. An application will not be considered until it is complete. The following information shall be submitted when applying for any building permit, special use permit, or variance included in this article and must be submitted for an application to be considered complete:

(1) *Basic information.*

a. Site plan or plans to scale specifying the location of wireless facilities, base station and/or other accessory uses, access, parking, fences, landscaped areas, drainage, and adjacent land uses. Applicants shall submit both a paper location map and a digitized location map in a format compatible with the GIS software currently utilized by the city.

b. Evidence of legal ownership or interest, such as a deed to the property or a lease between the legal owner(s) and applicant for the building permit.

unobtrusive by screening to match existing air conditioning units, stairs, elevator towers or other background.

c. Where feasible, wireless facilities should be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.

d. Any equipment cabinet that supports wireless facilities must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. Equipment compounds or cabinets shall be screened from public view by using landscaping or materials and colors consistent with the surrounding backdrop. The compound or cabinet must be regularly maintained.

(7) *Landscaping.*

a. Landscaping shall be used to effectively screen the view of the wireless facility from adjacent public ways, public property and residential property.

b. Native vegetation on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed and vegetation to be replanted to replace that lost.

c. The governing authority may waive or modify the landscaping requirement where lesser requirements are desirable for adequate visibility for security purposes, for continued operation of existing bona fide agricultural or forest uses such as farms, nurseries and tree farms, or where an antenna is placed on an existing structure. In certain locations where the visual impact of the tower would be minimal, such as remote agricultural or rural locations or developed heavy industrial areas, the landscaping requirement may be modified or waived by the governing authority.

(8) *Maintenance impacts.* Equipment at a wireless facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.

(9) *Principal, accessory and joint uses.*

a. Accessory structures used in direct support of a wireless facility shall be allowed but not be used for offices, vehicle storage or other outdoor storage. Mobile or immobile equipment not used in direct support of a wireless facility shall not be stored or parked on the site of the wireless facility.

b. Wireless facilities may be located on sites containing another principal use in the same buildable area.

(10) *Lot size and setbacks.*

a. The following setback requirements shall apply to wireless facilities, provided, however, that the building official may reduce the standard setback requirements of this section if the goals of this article would be better served thereby:

1. Wireless support structures must be set back a distance equal to the height of the tower from any off-site residential structure.
2. Towers, guy wires and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Wireless facilities must be set back from any property line a sufficient distance to protect adjoining property from the potential impact of wireless facility failure by being large enough to accommodate such failure on the site, based on the engineer's analysis required in this article.

- d. Landscape plan to scale indicating size, spacing and type of plantings required in subsection 102-605(a)(7).
- e. A full description of the immediate area surrounding the proposed wireless facility, including any adjacent residential structures and districts, structures and sites of historic significance, streetscapes or scenic view corridors.
- f. Report from a qualified professional engineer licensed in this state, documenting the following:
 - 1. Height of the proposed wireless facility, width at base, and design, including any pertinent design factors governing the proposed facility;
 - 2. Total anticipated capacity of the telecommunications facility, including number and types of antenna which can be accommodated;
 - 3. Evidence of structural integrity of the tower structure; and
 - 4. Structural failure characteristics of the wireless support structure and demonstration that site and setbacks are of adequate size to contain debris.
- f. The identity of a community liaison officer appointed by the applicant to resolve issues of concern to neighbors and residents relating to the construction and operation of the facility. Include name, address, telephone number, facsimile number and email address, if applicable.
- g. Identification of the geographic service area for the subject installation, including a map showing the proposed site and the nearest wireless facilities to the proposed site. Describe the distance between the proposed wireless facility site and existing sites.
- h. Designation of which location preference, identified in section 102-604, the proposed facility is meeting. If the proposed location is not a preferred location one through four or is a disfavored site, describe: (i) what collocation site, publicly owned facility, or other preferred location site(s) are located within the geographic service area; (ii) what good faith efforts and measures were taken to secure each of these preferred location sites; (iii) why each such site was not feasible and/or why such efforts were unsuccessful; and (iv) why the proposed site is essential to meet service demands for the geographic service area.

(2) *Additional information requirements for towers.*

- a. If the proposed site is zoned for residential use, applicants must justify why any alternate sites in commercial or industrial zones have not been proposed. The governing authority will not consider justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The building official shall not deny a building permit if the applicant refuses to site its wireless facility on public property; otherwise, it shall be ground for denial if collocation space on an existing tower is available and the applicant refuses to collocate.
- b. The applicant must provide a utilities inventory showing the locations of all water, sewage, drainage, gas and power lines impacting the proposed tower site.

(3) *Applicant required to provide information.* The applicant must provide any other information which may be reasonably requested by the city to fully evaluate and review the application and the potential impact of a proposed wireless facility.

(b) *Expedited review for building permits only.* When a wireless facility will be a use of right pursuant to section 86-134 and requires only a building permit and design review before it may be erected, the building official will expedite review of the application and render a decision on the application within 30 days after receipt of a complete application.

(c) *Special use permits.*

(1) A request for a special use permit shall be initiated by application to the zoning administrator and handled in accordance with the special use permit procedures of city code section 102-121 et. seq. The governing authority may issue a special use permit under this section, provided it shall have determined that all of the requirements of section 102-605 have been satisfied and, further, that the benefits of and need for the proposed tower are greater than any possible depreciating effects and damage to the neighboring properties.

(2) In granting a special use permit, the governing body may impose additional reasonable conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed tower or antenna on surrounding properties.

Sec. 102-607. - Appeals.

Any decision by the city denying a request to site or construct a wireless facility shall be in writing and specifically stating the reason(s) for denial. Applicants who are aggrieved by a final decision of the mayor and council may, within 30 days of the date of written notice of denial, elect to: (a) seek judicial review in the U.S. District Court for the Northern District of Georgia, Newnan Division, or (b) make application for writ of certiorari to the Superior Court of Troup County, Georgia.

Sec. 102-608. - Modification—Colocation, removal or replacement of antennae.

(a) The owner of all existing wireless facilities, including future towers permitted under this article, shall allow other future personal wireless service companies, including public and quasi-public agencies, using functionally equivalent personal wireless technology to collocate antennas, equipment and facilities on an existing telecommunications facility unless specific technical constraints prohibit such collocation. Personal wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for equitable sharing of cost in accordance with industry standards.

(b) Review of applications to modify eligible support structures. All modifications (colocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment) of an eligible support structure shall be made by written application to the building official. Section 6409 of the Spectrum Act, codified at 47 U.S.C. § 1455, requires the city to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station. Where the application and supporting documentation submitted by the applicant demonstrates the modification has been designed and will be constructed to observe all building and safety codes, maintain any concealment element or "stealth" condition, and extends less than 10' vertically and 6' horizontally, the application shall be approved and permit issued; provided, however, the owner of the facility shall submit modified "as-built" plans and drawings to the building inspector reflecting the modification(s) made.

(c) All other applications for modifications which substantially change the physical dimensions of an existing tower or base station shall follow the format of section 102-606 and be supported by documentation or information reasonably demonstrating the modification will meet the criteria of this article. Within 60 days of the date on which an applicant submits an application seeking approval of a substantial modification, the city shall approve, deny, or approve with reasonable conditions the application, in writing. If denied, the letter of denial shall contain a statement of the specific grounds for denial. The 60-day period begins to run on the date the application is filed with the building official and may be tolled only if the city, within 30 days of

receipt of the application, notifies the applicant, in writing, that the application is not complete, clearly and specifically delineating all missing documents or information (such delineated documents or information limited to the requirements of this section).

(d) In the event the city fails to approve or deny a request for substantial modification within the timeframe for review (accounting for any tolling), the request shall be deemed granted; provided, however, the request shall not become effective until the applicant notifies the city's building official, in writing, served upon the building official by either personal service, or certified mail (return receipt requested) that the review period (accounting for any tolling) has expired and that the application has been deemed granted.

(e) If a building permit is not forthcoming from the city, the applicant may bring a claim related to 47 U.S.C. § 1455 in any federal district court of competent jurisdiction.

Sec. 102-608. - Nuisances.

Wireless facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times so as not to cause unreasonable noise or the generation of heat that adversely affects a building's occupants and shall be maintained or operated in such a manner as to not become a nuisance.

Sec. 102-609. - Maintenance of antennas and towers.

All wireless facilities shall be maintained in compliance with standards contained in applicable building and technical codes so as to ensure the structural integrity of such facilities. If upon inspection by the building official any such telecommunications facility is determined not to comply with the code standards or to constitute a danger to persons or property, then, upon notice being provided to the owner of the facility and the owner of the property, if such owner is different, such owners shall have 30 days to bring such facility into compliance. In the event such wireless facility is not brought into compliance within 30 days, the city may provide notice to the owners requiring the wireless facility to be removed. In the event such wireless facility is not removed within 30 days of receipt of such notice, the city may remove such facility and place a lien upon the property for the costs of removal. Delay by the city in taking action shall not in any way waive the city's right to take action. The city may pursue all legal remedies available to it to ensure that wireless facilities not in compliance with the code standards or which constitute a danger to persons or property are brought into compliance or removed. The city may seek to have the wireless facility removed regardless of the owner's or operator's future intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

Sec. 102-610. - Abandoned towers.

(a) Any wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned, whether or not the owner or operator intends to make future use of it or any part of it. The owner of a wireless facility and the owner of the property where the facility is located shall be under a duty to remove the abandoned wireless facility. If such antenna and/or tower is not removed within 60 days of receipt of notice from the city notifying the owner of such abandonment, the city may remove such tower and/or antenna and place a lien upon the property for the costs of removal. The city may pursue all legal remedies available to it to ensure that abandoned wireless facilities are removed. Delay by the city in taking action shall not in any way waive the city's right to take action. The city may seek to have the wireless facility removed regardless of the owner's or operator's future intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

(b) If the owner of an abandoned tower or antenna wishes to use such abandoned tower or antenna, the owner first must apply for and receive all applicable permits and meet all of the conditions of this article as if such tower or antenna were a new tower or antenna.

Sec. 102-611. - Preexisting towers/nonconforming uses.

(a) All wireless facilities operative on _____, shall be allowed to continue their present usage as a nonconforming use and shall be treated as a nonconforming use in accordance with this article. Routine maintenance, including replacement with a new tower or antenna of like

construction and height, shall be permitted on such existing telecommunications facilities. New construction other than routine maintenance shall comply with the requirements of this article.

(b) A telecommunications facility that has received city approval as of _____, in the form of either a building permit or special use permit, but has not yet been constructed or placed in operation shall be considered an existing wireless facility so long as such approval is current and not expired.

(c) Placement of an antenna on a nonconforming structure shall not be considered an expansion of the nonconforming structure.

Sec. 102-612. - Penalty for violation of article.

(a) Any person who attempts to erect or erects a wireless facility covered by this article without having first obtained the necessary building permit, special use permit, or variance in the manner provided in this article shall be deemed in violation of this article. Any responsible party or other persons convicted in the municipal court of the city of violating any provision of this article shall be guilty of violating a duly adopted ordinance of the city and shall be punished as provided in section 1-07.

(b) If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this article or without obtaining the required permits, or if any building, structure or land is used in violation of this article, the building official, in addition to any other remedies, may institute proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate such violations. Each and every day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues may be deemed a separate offense.

Sec. 102-613. - Coordination with federal law.

Whenever the governing authority finds that the application of this article would unreasonably discriminate among providers of functionally equivalent personal wireless services or prohibit or have the effect of prohibiting the provision of personal wireless services, a waiver of the offending provisions of this article shall be granted. Whenever the provisions of this article are found in conflict with applicable federal law, the provisions of the federal law shall prevail."

SECTION 2:

All ordinances or parts of ordinances in conflict with the provisions of this ordinance shall be and the same are hereby repealed.

SECTION 3:

This ordinance, after adoption by the Council and upon approval by the Mayor, shall become effective immediately.

INTRODUCED AND FIRST READING _____

SECOND READING AND ADOPTED/REJECTED _____

SUBMITTED TO MAYOR AND APPROVED/DISAPPROVED _____

BY: _____
Mayor

ATTEST: _____
Clerk