

Table of Contents

Section. Wireless Telecommunications Facilities or Complexes	1
Purpose and Legislative Intent.....	1
Severability	1
Definitions.....	2
General Policies and Procedures for Applications under this Section.....	5
Responsible Party(s)	9
Application Fee.....	10
Existing Facilities and Complexes.....	10
Certificate of Completion	10
Exclusions	10
Application Requirements for a New Tower or Support Structure or For a Substantial Modification or Co-location	11
Application Requirements for Eligible Facility Co-locations or Modifications.....	15
Location of Wireless Telecommunications Facilities.....	18
Type and Height of Towers	20
Visibility and Aesthetics	21
Security	21
Signage	22
Setback and Fall Zone.....	22
Retention of Expert Assistance Cost to be Borne by Applicant	22
Procedural Requirements for a Granting a Special Use Permit.....	23
Action on an Application	23
Extent and Parameters of Special Use Permit or Administrative Authority for Wireless Telecommunications Facilities	24
Removal and Performance Security.....	25
Reservation of Authority to Inspect Wireless Telecommunications Facilities.....	25
Liability Insurance	25
Indemnification	26
Fines	27
Default and/or Revocation	27

Removal or Moving of Co-located Facilities and Equipment	27
RF Emissions	29
Relief	29
Adherence to State and/or Federal Rules and Regulations	30
Conflict with Other Laws.....	30
Effective Date	30
Authority	31

Section. Wireless Telecommunications Facilities or Complexes

Purpose and Legislative Intent

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

Severability

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Section 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 Section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
2. Any Special Use Permit issued pursuant to this Section 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 Town.

Definitions

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

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities or Complexes, including but not limited to utility or transmission equipment storage sheds or cabinets.
2. **“Amend”, “Amendment” and “Amended”** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
3. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
4. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
5. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. **“Commission”** means the Town Commission.
7. **Certificate of Completion or COC** means a required document issued by the Town that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.
8. **“Co-location”** means the use of an approved telecommunications structure to support Antenna for the provision of wireless services.
9. **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
10. **Commission** means the Town Commission of the Town of Red Oak.

11. **“Completed Application”** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application.
12. **Complex** means the entire site or Facility, including all structures and equipment located at the site.
13. **“DAS” or “Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
14. **Eligible Facility** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
15. **FAA** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
16. **Facility** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
17. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
18. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
19. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a Modification to the WTF.
20. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless Facility or Complex with identical components, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support structure or Tower as a co-location is a Modification, unless the height, profile or size of the compound is increased, in which case it is not a Modification.
21. **“Necessary” or “Necessity” or “Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the Application. Necessary or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a Need or a Necessity.

22. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
23. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
24. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
25. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
24. **"Repairs and Maintenance"** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible burdens of the Facility or Complex as originally permitted.
25. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Facility or Complex as granted or issued by the Town.
26. **“Stealth”** or **“Stealth Technology”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility and Complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such techniques as DAS or its functional equivalent or camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.
27. **“State”** means the State of North Carolina.
28. **“Structural Capability”** or **“Structural Capacity”** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
29. **Substantial Modification** means a change or Modification that
- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii)

more than the width of the wireless support structure at the level of the appurtenance; or

- c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
30. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
31. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
32. **“Telecommunications Structure”** means a structure used to support equipment used to provide wireless communications.
33. **“Temporary”** means not permanent in relation to all aspects and components of this Section, something intended to, and that does, exist for fewer than ninety (90) days.
34. **“Town”** means the Town of Red Oak, North Carolina.
35. **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
36. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs) or Complex”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility Site”**. It means a specific location at which a structure that is designed, or intended to be used to house or accommodate Antennas or other transmitting or receiving equipment is located. This includes without limit, Towers of all types and kinds and support structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the Complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

General Policies and Procedures for Applications under this Section

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In order to ensure that the placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the Town’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or Administratively granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:

1. Requiring a Special Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or Complex or for a Co-located Facility;
2. Requiring Administrative approval and a properly issued Building Permit for any co-location or Modification of a Facility or Complex that is not a Substantial Modification or Co-location.
3. Implementing an Application process and requirements;
4. Establishing procedures for examining an Application and issuing a Special Use Permit or Administrative Approval that is both fair and consistent;
5. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
6. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of a Facility or Complex in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth technology.
7. Requiring that the Facility and Complex shall be the least visually intrusive among those options available in the Town given the facts and circumstances.
8. The Town Commission is the officially designated agency or body of the Town to whom applications for a Special Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Section. The Commission may at its discretion delegate or designate the Town Planning Board or other official agencies or officials of the Town or outside consultants to accept, review, analyze, evaluate and make recommendations to the Commission with respect to the granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities. However, the Commission shall possess the sole right to grant all Special Use Permits.
9. There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site, or telephonically as deemed appropriate by the Town or its designee. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review; and permitting process; and ii) certain issues or concerns the Town or the Applicant may have.
10. If there has not been a prior site visit for the requested Complex within the previous six (6) months a site visit shall be conducted. Costs of the Town's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the Town's Schedule of Fees, which shall have been paid to the Town prior to any site visit or pre-application meeting.
11. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete.

- 12.** If the proposed site is within two (2) miles of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
- 13.** The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record.
- 14.** All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.
- 15.** The Applicant shall be notified in writing of any deficiencies within forty-five days of the submission of an Application as regards any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.
- 16.** The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the Application complete has been afforded... Applications will deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.
- 17.** No work of any kind on a Facility or Complex shall be started until the Application is reviewed and approved by the Commission and the Special Use Permit or Conditional Use Permit , if applicable, has been issued, and a Building Permit has been issued.
- 18.** Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.
- 19.** Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Section shall be required to be brought into full compliance before any Permit of any kind will be issued.
- 20.** An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented
- 21.** The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or landlord or a signed letter of agency granting authorization. If the applicant owns the site or Complex, a copy of the ownership record is required.
- 22.** Applications shall include written commitment statements to the effect that:

- a. the applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Town, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission in writing;
 - b. the construction of the Facility or Complex is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- 23. Where a certification is called for in this Section, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
- 24. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technology as may be required by the Town.
- 25. All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to applicable electrical codes.
- 26. At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
- 27. All work at a Facility or Complex shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- 28. A holder of a Special Use Permit or Administratively granted authority granted under this Section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and

effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

29. Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Special Use Permit for an existing Facility or Complex. In instances not qualifying for the Streamlined process the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.
30. An Applicant intending to co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.
31. Co-located equipment shall consist only of the minimum Antenna array technologically Needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
32. DAS systems that are owned or operated by a commercial carrier and are part of a commercial wireless system, or are used for commercial purposes, are expressly included in the context of this Section, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.
33. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Section. An Applicant may not bypass sites of higher priority solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority is proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Section.

Responsible Party(s)

The owner(s) of a Facility or Complex, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure or Complex is located, shall at all times be jointly and severally responsible for: (1) the physical and safe condition of the Facility or Complex, support structure and all components on the site related to the Facility or Complex; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility or Complex, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility or Complex; and (3) assuring the proper permitting as required by this Article and other Town regulations by all lessees and users of the Facility or Complex, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility or Complex is operated in compliance with this Ordinance, other Town regulations, and any Special or Conditional Use Permit.

Application Fee

All fees and charges, including but not limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in herein and in the Town's Schedule of Fees and charges.

Existing Facilities and Complexes

- A.** Any legally permitted Facility, Tower or other support structure or Complex that exists on the effective date of this Section shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) a Certificate of Completion (COC) was issued for the most recent work performed;
- B.** Any work not properly previously permitted prior to the adoption of this Section must be permitted within ninety (90) days of the effective date of this Section.
- C.** Any Substantial Co-location or Modification of a Facility, Tower or other support structure or Complex, must be permitted under this Section and will require the entire Facility or Complex and any new Co-location or Modification to comply with this Section, including obtaining a valid COC.
- D.** Any proposed Eligible Facility shall not require a permit granted under this Section, but shall be required to obtain a Building Permit and a Certificate of Completion.

Certificate of Completion

- A.** No work shall be allowed to be done at or on any Facility or Complex, excepting normal repair and maintenance work as defined in this Section, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent inspection prior to the inspection being conducted. A passing final inspection is required prior to the issuance of a COC.
- B.** If no COC can be produced for previously done work, at the discretion of either the Planning Director or the Building Director, fines and other penalties as allowed by law maybe imposed until the Facility or Complex is compliant and the required COC has been issued.

Exclusions

The following shall be exempt from this Section:

- A. Any facilities expressly exempt from the Town's zoning, land use, siting, building and permitting authority.
- B. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- C. A Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 100' above ground.
- D. Facilities used exclusively for providing unlicensed spread spectrum technologies where
 - i) there is no charge for the use of the wireless service;
 - ii) the Facility or Complex does not require a new Tower or increase the height of the structure being attached to; and
 - iii) the service is not intended to be useable more than one-hundred feet (100') from the Antenna(s).

Application Requirements for a New Tower or Support Structure or For a Substantial Modification or Co-location

- A. All Applicants for a Special Use Permit for a new Wireless Facility or Complex, including for a new Tower or other support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of new Facility or Complex shall contain the information hereinafter set forth prior to the issuance of a Building Permit.

Ownership and Management

1. The Name, address and phone number of the person preparing the Application;
2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands;
5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs or has constructed for it;

Zoning and Planning

6. The Zoning District or designation in which the property is situated;
7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
8. The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;

9. A site plan to scale, not a hand drawn sketch, showing the footprint of the Support Structure and the type, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;
10. Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
11. The type and design of the Tower or support structure, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Tower's or support structure's capacity to accommodate the required number of antenna arrays for which the structure must be designed;
12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

Safety

14. the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;
16. the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State and proving the Tower or support Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification .
17. if a Substantial Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed;
18. a complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design;
19. if Substantially Modifying or Co-locating on an existing Tower or other support structure, a complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department or Inspections and Permits Department;
20. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be ten (10)

meters or more above ground level and not within 100 feet of areas to which the public has or could reasonably have or gain access to, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;

- 21.** In certain instances the Town may deem it appropriate to have an on-site RF survey of the Facility or Complex done after the construction or Modification and activation of the Facility or Complex, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
 - 22.** If not previously submitted, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
- B. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting. Unless already lighted, this requirement shall also be for any Facility or Complex where the application proposes to increase the height of the Tower or support structure. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- C. New Towers or other support structures shall be prohibited in Residential Districts, Historic Districts, Renaissance Districts and areas officially deemed to be visual or scenic sensitive areas, unless the Applicant provides clear and convincing technical evidence demonstrating that i) a new Tower as proposed is Necessary, ii) that the intended area cannot be served from outside the District or sensitive area; iii) that no existing or previously approved Facility or Complex can reasonably be used for antenna placement; and iv) that not to permit a new Tower would result in or would preclude eliminating a significant gap in service.
- D. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the nature and character of the community in the area of the Facility or Complex. To achieve this goal the Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System technology) or its functional equivalent and such shall be subject to approval by the Commission.
- E. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within one-half (1/2) mile of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service.

- F. In order to better inform the public, in the case of a new Tower, the applicant shall hold a “balloon test” prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon at the maximum height of the proposed new Tower.
- G. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4’) by eight feet (8’) in size and shall be readable from the road by a person with 20/20 vision.
1. Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 2. Such sign shall contain the times and date(s) of the balloon test and contact information.
 3. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
 4. The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility or Complex and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail.
 5. The Wireless Telecommunications Facility or Complex shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.
- H. The Applicant shall provide certified documentation in the form of a structural analysis and report, including all calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- I. All Applications for a proposed Facility or Complex submitted under this section shall contain clear and convincing evidence that the Facility or Complex-is sited and designed so

as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the Facility or Complex. The Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System technology) or its functional equivalent to achieve this goal and such shall be subject to approval by the Commission.

J. The Applicant shall furnish a Visual Impact Assessment, which shall include:

1. a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
2. Pictorial representations (photo simulations) of “before and after” views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

K. The Applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen feet (15’) of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.

L. A Building Permit shall not be issued for construction of a new Tower or other support structure until there is an Application for or by a specific carrier that documents that the Facility or Complex is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible.

M. Co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impractical or the owner of the Structure is unwilling to enter into a contract for such use at fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an Application for the first carrier in order to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Application Requirements for Eligible Facility Co-locations or Modifications

A. No Special Use Permit shall be required for an Eligible Facility. However, a Building Permit, a COC and all other applicable permits and authorizations shall be required.

- B. Attachments to Buildings:** To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be flush-mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
- C. Attachments to Towers:** So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible so as to create the smallest profile reasonably possible under the facts and circumstances, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- D. Attachments to Water Tanks:** If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service. The provisions of Subsection (9) of this section shall also apply to any attachment to a water tank.
- E. Structural Analysis and Report:** The Applicant shall provide a certification by a Professional Engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all local, Town, State, Federal and TIA ANSI 222 structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new equipment.
- F. ANSI Inspection:** A complete, unredacted TIA ANSI 222 Report regarding the physical condition of the Facility or Complex and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department.
- G. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued for any work related to an Eligible Facility where the Facility and Complex are not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility and Complex not in full compliance shall be required to be brought into full compliance before a Building Permit will be issued for work related to an Eligible Facility request or application.**
- H. The following information shall be required for an application specific to this Subsection.**

1. A detailed narrative description and explanation of the specific objective(s) of the new equipment, expressly including and explaining the purpose of such, such as coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage;
2. Technical documentation that shows by clear and convincing technical evidence that the service will be to serve primarily and essentially within the Town.
3. All of the modeling information (i.e. data) inputted into the software used to produce the evidence required under the immediately preceding Subsection shall include all modeling information used to produce the evidence and any assumptions made such as ambient tree height;
4. A copy of the FCC license for each frequency band applicable for the intended use of the Wireless Telecommunications Facility;
5. The frequency, modulation and class of service of radios or other transmitting equipment;
6. The maximum transmission power capability at which all of the radios are designed to operate, or the maximum transmission power capability, as designed, of all transmission facilities;
7. The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
8. The number, type and model of the Antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;
9. A statement from the owner of the Complex certifying that the Complex and all components thereof are currently in compliance with the conditions of the approved Special Use Permit or setting forth any non-compliant situation.

Ownership and Management

10. The Name, address and phone number of the person preparing the Application;
11. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
12. The Postal address and tax map parcel number of the property;
13. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Safety

14. the age of the Tower or other Non-Building support structure in years, including the date of the grant of the original permit;
15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of the other type of support structure;
16. a structural design analysis and report, including the supporting calculations, certified by a Professional Engineer licensed in the State and proving the Tower or other support structure's capability to safely accommodate the equipment of the Applicant. For the purposes of determining structural adequacy, no support structure of any kind may exceed a literal one hundred percent (100%) of its designed loading and stress capability;
17. if a change or Modification of a Facility or Complex is needed whereby the height, profile or size of the Facility or Complex is increased, a detailed narrative

- explaining what changes are Needed and why they are Needed, along with clear and convincing technical evidence of the Need;
18. a copy of the installed foundation design, including a geotechnical sub-surface soils investigation report and foundation As-Built design for the Tower or other Non-Building structure;
 19. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower, where the antennas will be ten (10) meters or more above ground level and not within 100 feet of areas to which the public has or could reasonably have or gain access to, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Facility and the Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
 20. In certain instances the Town may deem it appropriate to have an on-site RF survey of the Facility and Complex done after the construction or Modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
 21. A signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
 22. A written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed Wireless Telecommunications Facility and Complex are in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any Facility or Complex where the application proposes to increase the height of the Facility or Complex. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
 23. A complete, unredacted TIA ANSI 222 Report regarding the physical condition of the Complex and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department.

Location of Wireless Telecommunications Facilities

- A. Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order: **Note: The following can be changed to any order of priority desired.**
 1. No tower or other new support structure taller than existing surrounding structures shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of such.
 2. On existing structures without increasing the height of the Tower or structure.
 3. On Town-owned properties or facilities.

4. On existing structures without increasing the height of the structure by more than is Technically Needed.
 5. On properties in areas zoned for Business use.
 6. On properties in areas zoned for Rural use.
 7. On properties in designated Historic Districts without increasing the height of the support structure and only if Camouflaged or Stealthed to the satisfaction of the Planning Director.
 8. On properties in areas zoned for Residential use without increasing the height of the support structure and only if Camouflaged or stealthed to the satisfaction of the Planning Director.
 9. In Renaissance Districts without increasing the height of the support structure and only if Camouflaged or stealthed to the satisfaction of the Planning Director.
- B.** If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation must be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why a Special Use Permit or Administrative Authorization should be granted for the proposed site.
- C.** Notwithstanding anything else to the contrary, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the Town may direct that the proposed location be changed to another location that is more in keeping with the goals of this Section and the public interest as determined by the Town and that serves the intent of the Applicant.
- D.** Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
 2. Non-Compliance with zoning or land use regulations;
 3. The placement and location of Facilities which would create an unacceptable safety risk to residents or the general public, employees and agents of the Town or employees of the service provider or other service providers, physical or financial damage to or trespass on private property, or the reasonable possibility of such;
 4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area, and expressly including but not limited to loss in value as measured from the end of calendar year prior to the Application having been filed;
 5. Conflicts with the provisions of this Section;
 6. Failure to submit a complete Application as required under this Section, after proper notice and opportunity to make the Application complete.

- F. Notwithstanding anything to the contrary in this Section, for good cause shown such as the ability to utilize a shorter, smaller or less intrusive Facility or Complex elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) site to provide substantially the same service if the relocation could result in a less intrusive Facility or Complex, singly or in combination with other locations.

Type and Height of Towers

- A. All new Towers shall be of the monopole type. No new Towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- B. The Applicant for a new Tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed Tower or other support structure requested and the basis therefore. If the Applicant chooses to provide evidence in the form of propagation studies, such must include all modeling information and support data used to produce the studies at the requested height and a minimum of ten feet (10') lower to enable verification of the Need for the requested height.
- C. The Need for a tower or support structure, as opposed to attaching to an existing structure, need not be based on the desire of the applicant to meet its objectives from a single location or facility.
- D. The Town reserves the right to require a drive test to be conducted under the supervision of the Town or its delegate as evidence of the technical Need for what is requested.
- E. As the Town has made the policy decision that more Facilities of a shorter height is in the public interest, as opposed to fewer taller Facilities, spacing or the distance between Facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- F. The maximum permitted total height of a new tower or other proposed support structure shall be one hundred feet (100') above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the Town.
- G. At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.
- H. Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure and that can be increased in height or replaced with a taller support structure if Needed.

Visibility and Aesthetics

- A. No Tower or support structure that is not a building and is constructed after the effective date of this Section shall be tall enough to require lighting by the FAA.
- B. Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques, unless such can be shown to be either Commercially or Technologically Impracticable.
- C. Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section.
- D. Lighting: Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- E. Retrofitting: In the event a Tower or other support structure that is lighted as of the effective date of this Section is modified, at the time of the Modification, the Town may require that the Tower be retrofitted so as to comply with the lighting requirements of this Section or be reduced to a height that does not require lighting.
- F. Flush Mounting: Except for omni-directional whip antennas, all new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.
- G. Placement on Building: If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B. Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Setback and Fall Zone

- A. All proposed Towers and any other proposed Wireless support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent (10%) of the height of the Tower or other structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the fenced compound area as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone shall be measured from the center-line of the Tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. Further, the nearest portion of any access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.
- B. There shall be no development of habitable buildings within the Setback area or Fall Zone.

Retention of Expert Assistance Cost to be Borne by Applicant

- A. To prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating Wireless Telecommunications Facilities, an Applicant shall pay to the Town a fee as set forth in the Town's Fee Schedule. The fee is intended to cover all reasonable costs of the consultant in connection with the review of any Application or the permitting, inspection, construction or Modification requested under this Ordinance, Application pre-approval evaluation requested by the Applicant and, when applicable, any lease negotiations. The payment of the Expert Assistance

or Consultant fee to the Town shall precede any work being done that is related to the intended Application or lease, including a pre-application meeting or site visit.

- B.** The Town may hire any consultant of its choice to assist the Town in reviewing and evaluating Applications, provided the consultant has at least five (5) years experience working exclusively for the public sector regulating Towers and Wireless Facilities.
- C.** The total amount of the funds needed for expert assistance as set forth in the Town's Fee schedule may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or Modification or the amount of time spent responding to an Applicant's arguments as regards its Application or the requirements of this Section.
- D.** The Town will maintain accounting for the expenditure of all such funds.
- E.** Pursuant to N.C. 160A-400.52(f), if an Application is Amended at any time prior to the grant of the permit or authorization required under this Ordinance, the Town reserves the right to require additional payment for review and analysis equal to, but not exceeding, the cost created for the Town by the Amendment of the Application. Such amount shall be paid to the Town prior to the issuance of the Special Use Permit or Administrative Authorization.

Procedural Requirements for a Granting a Special Use Permit

- A.** The following procedures shall apply where a Special Use Permit is requested
- B.** The Town shall schedule any required public hearing(s) once it finds the Application is complete and there are no issues of non-compliance with applicable law, rule or regulation. The Town is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The Town may, at any stage prior to issuing a Special Use Permit or administrative authority, require such additional information as it deems Necessary and is not prohibited from requiring by applicable law as relates to the issue of the siting, construction or Modification of or at a Wireless Telecommunications Facility or Complex.
- C.** Upon Commission review and approval, a Special Use Permit shall be issued for a new or Substantially Modified Wireless Support Structure or Substantial Co-location. Notwithstanding the preceding, the Building Permit for a new Tower or other proposed support structure shall not be issued until an Applicant has provided clear and convincing substantiating documentation under Section ____ of this Ordinance governing the placement of the first antenna array prior to construction of a new Wireless Telecommunications Facility.

Action on an Application

- A.** The Town will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.

- B. The Town may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- C. Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the Application, the Town may i) approve; ii) approve with conditions; or iii) deny a Permit or Administrative Authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the Application and permitting process, the burden of proof for compliance with this ordinance or the need for something not allowed, shall always be upon the Applicant.
- D. An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal shall result in denial of the Application.
- E. Approval Notification: If the Town approves the Special Use Permit or Administrative Authority for the Facility or Complex, then the Applicant shall be notified of approval of its Application, including any conditions, within 30 calendar days of the Town's action. The Special use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.
- F. Denial Notification: The Applicant shall be notified of a denial of its Application at the Commission Meeting, and in writing within 30 calendar days of the Commission's action, which notice shall set forth in writing the reason or reasons for the denial.

Extent and Parameters of Special Use Permit or Administrative Authority for Wireless Telecommunications Facilities

The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

- A. Such Special Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Town, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- B. A transfer, assignment or other conveyance of the Special Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Special Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.
- C. Following notice and an opportunity to cure, a Special Use Permit granted under this Ordinance may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.

- D. If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon due prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.
- E. Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Removal and Performance Security

- A. Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure or Complex shall, at its sole cost and expense, be required to execute and file with the Town a bond or other form of security that is acceptable to the Town as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the Town to assure the faithful performance of the terms and conditions of this Section and conditions of any Special Use Permit issued pursuant to this Section. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.
- B. Performance: The owner of any equipment attached to a support structure or located in a Complex shall be required to execute and file with the Town a performance bond or other form of performance security that is acceptable to the Town as to the type of security and the form and manner of execution, in the amount of \$25,000.

Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A. In order to verify that the holder of a Special Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the Town or its designee shall have the right to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, Modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.
- B. Refusal to allow or grant access to the Town's representative upon reasonable notice shall be deemed a violation of this ordinance.

Liability Insurance

- A. A holder of a Special Use Permit for a Wireless Telecommunications Support Structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:
 - 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$3,000,000 aggregate; and
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
 - 3. A \$3,000,000 Umbrella coverage; and
 - 4. Workers Compensation and Disability: Statutory amounts.
- B. For a Facility or Complex located on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an AM Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.
- G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.

Indemnification

- A. Any application for Wireless Telecommunication Facilities that is proposed to be located on Town property shall contain a provision with respect to indemnification of the Town. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification , location, products performance, use, operation, maintenance,

repair, installation, replacement, removal, or restoration of said Facility or Complex, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for a Wireless Telecommunications Facility or Complex.

Fines

- A. In the event of a violation of this Section, or any Special Use Permit or Administrative Authorization issued pursuant to this Section, the Town may impose and collect, and the holder of the Special Use Permit or Administrative Authorization for a Wireless Telecommunications Facility or Complex shall pay to the Town, fines or penalties as set allowed by State law or as otherwise established by the Town.
- B. Notwithstanding anything in this Section, the holder of the Special Use Permit or Administrative Authorization for a Facility or Complex may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit in addition to the payment of fines. The Town may also seek injunctive relief to prevent the continued violation of this Section without limiting other remedies available to the Town.

Default and/or Revocation

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

Removal or Moving of Co-located Facilities and Equipment

- A. If attached to an existing tower or other support structure, unless the Town Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for

technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.

- B.** If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Town Commission of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Town Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a lessee shall not be deemed a permissible reason for relocating.

- C.** The owner of any Facility or Complex shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Facility or Complex.

- D.** Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Facilities.
 - 1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 - 2. A Support Structure or Facility or Complex falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3. A Support Structure or Facility or Complex has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or Administrative Authorization, and the Special Permit or Administrative Authorization may be revoked.
 - 4. If the Town makes such a determination as noted in subsections (2) or (3) of this section, then the Town shall notify the holder of the Permit or Administrative Authorization for the Facility or Complex within forty-eight (48) hours that said Facility or Complex is to be removed.
 - 5. The holder of the Special Use Permit or Administrative Authorization, or its successors or assigns, shall dismantle and remove such Facility or Complex and all associated structures and equipment 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. Restoration shall be completed within ninety (90) days of receipt of written notice from the Town. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the Town.

6. If a Facility or Complex has not been removed, or substantial progress has not been made to remove the Facility or Complex, within ninety (90) days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the Facility or Complex at the sole expense of the owner or Special Use Permit holder.
7. If the Town removes, or causes Facilities to be removed, and the owner of the Facility or Complex does not claim and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to declare the Facility or Complex abandoned, and sell them and their components.
8. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Facility or Complex for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex shall be developed by the holder of the Special Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Administrative Authorization and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Facility or Complex in the manner provided in this Section and utilize the bond in Section (BB).

RF Emissions

- A. To assure the protection of the public health and safety the Town expressly reserves the right to require that an Applicant, a user of a Facility or Complex or the owner of the Facility or Complex verify compliance with the FCC's regulations regarding RF emissions as may be deemed appropriate from time to time, and that all users of the Facility or Complex cooperate with the party responsible for such verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all fines and other remedies at law or tort.
- B. With respect to Support Structures other than Towers, if any section or portion of the structure to be attached to or area within 100' of such, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger.

Relief

- A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Section shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Special Use Permit or Administrative Authorization, or in the case of an existing or previously

granted Special Use Permit or Administrative Authorization, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.

- B. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.
- C. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption.
- D. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Special Use Permit or administrative authorization for a Wireless Telecommunications Facility or Complex has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit or Administrative Authorization for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit or Administrative Authorization shall conform the permitted Facility or Complex 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.

Conflict with Other Laws

Where this Section differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, this Section shall apply.

Effective Date

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

Authority

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

Approved as to Form
