

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS AMENDING CHAPTER 62, LAND AND SITE DEVELOPMENT, ARTICLE IX “WIRELESS TELECOMMUNICATIONS FACILITIES” TO RESPOND TO FCC’S WIRELESS FACILITY RULES IMPLEMENTING SECTION 6409(a) RULES; OUTLINING REQUIREMENTS FOR A REVISED REVIEW PROCESS FOR THE VARIOUS TYPES OF WIRELESS TELECOMMUNICATIONS FACILITIES APPLICATIONS; SPECIFYING GENERAL DESIGN AND AESTHETIC STANDARDS AND PREFERENCES FOR WIRELESS COMMUNICATIONS COLLATION FACILITIES; PROVIDE NEW DEFINITIONS OF TECHNICAL TERMS; AND PROVIDING FOR AN ADMINISTRATIVE REVIEW PROCESS FOR CERTAIN WIRELESS FACILITY IMPROVEMENT PROJECTS CONSISTENT WITH FEDERAL LAWS AND REGULATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which wireless communications facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted its zoning codes related to towers; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the FCC’s 2015 Report and Order clarifying Eligible Facility Request Rules, to adopt and implement local development regulations that are consistent with Section 6409 and the Order; and

WHEREAS, This Chapter also implements Section 6409(a) of the Spectrum Act and the FCC’s Report & Order, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

WHEREAS, the City Council of the City of Bryan desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the citizens of Bryan, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City’s unique character in a manner consistent with State and federal laws and regulations;

WHEREAS, the City Council finds that the proposed amendments are reasonable and necessary in order bring the City’s development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409(a) of the Spectrum Act and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

SECTION 1

The findings and recitations set out in the recitals to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes

SECTION 2

That Chapter 62, Land and Site Development, Article IX, "WIRELESS TELECOMMUNICATIONS" is hereby amended in its entirety to read as follows on the attached Exhibit "A".

SECTION 3

In the case of any conflict between the provisions of this ordinance and any existing ordinances of the City the provision of this ordinance will control during the moratorium period.

SECTION 4

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

SECTION 5

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, et seq., of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given, pursuant to all applicable law.

SECTION 6

That this ordinance shall take effect immediately upon second and final reading.

PRESENTED AND GIVEN first reading the ___ day of _____, 2017 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the ___ day of _____, 2017, by a vote of ___ ayes and ___ nays at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Andrew Nelson, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A"

Chapter 62 – "Land and Site Development Ordinance"

Article IX. "WIRELESS TELECOMMUNICATIONS FACILITIES (NOT IN THE PUBLIC RIGHTS-OF-WAY)"

Sec. 62-658 Applicability.

Every wireless communication facility located within the city limits, whether upon private or public lands, that is not located in public rights-of-way, is subject to this Article, except that the following facilities are exempt:

- A. Amateur Radio Station Operator/Receive-Only Antenna if owned and operated by a federally licensed amateur radio station operator or used exclusively for a receive only antenna;
- B. Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
- C. Emergency Services. Wireless communication facilities used exclusively for emergency services including police, fire, and operation of the water utility, when not located on a new freestanding antenna support structure (e.g. tower or dedicated pole); and
- D. A temporary, commercial WTF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WTF shall be exempt from the provisions of this Chapter for up to one week before and after the duration of the special event.

Sec. 62-659. Definitions applicable to this Article.

Array. One or more antennas mounted at approximately the same level above ground on tower or base station.

Antenna. Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Base station. A structure or equipment at a fixed location that enables licensed or authorized wireless communications between user equipment and a communications network. The term does not include a tower. The term includes, but is not limited to, a building, clock tower, bell steeple, sign, utility pole, water storage tank, silo and other similar mounting structures that may be used for the purpose of supporting and obscuring the presence of antennae.

City of Bryan. The City of Bryan, Texas, a home-rule municipal corporation.

Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Deemed approved. Means and refers to an eligible facilities modification application that has been deemed approved upon the City's failure to act, and has become effective, as provided pursuant the FCC Eligible Facilities Request Rules.

Director of Development Services. The Director of the Development Services Department of the City of Bryan or his designee.

Eligible facilities request. The term means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

Eligible support structure. A tower or base station as defined in this section, provided it is existing at the time the application is filed with the local government, which is eligible for collocation.

Engineered Fall Zone. The area in which a support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Existing. The term has the same meaning as provided in 47 C.F.R. § 1.4001(b)(4), as may be amended, which provides that “[a] constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for the purposes of this definition.

Federal Communications Commission (“FCC”). An independent United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite, and cable.

Height, structure. Telecommunications support structure height shall be measured from ground level (finished grade) to the top of the structure. Measurement of tower structure height for the purpose of determining compliance with the requirements of this article shall include the structure, foundation, and any facilities attached thereto which extend above the top of the structure.

Personal wireless service. As used in this chapter, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as they may be amended now or in the future, and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications, services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless service facilities.

Section 6409(a). Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

Section 6409(a) Modification. Any eligible facilities request that does not cause a substantial change and submitted for approval pursuant to Section 6409(a) and the FCC’s regulations at 47 C.F.R. § 1.40001 et seq.

Site. The current boundaries and any access or utility easements of the leased or owned property surrounding the tower.

Spectrum Act. Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act, 47 U.S.C. § 1455(a) (providing, in part, “... a State or local government may not deny, and shall approve, any Eligible

Facilities Request for a modification of any existing wireless Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station.”).

Stealth technology or Stealth facility. As used in this Chapter, the term shall mean design technology that blends the WTF into the surrounding environment, so it is unrecognizable as a telecommunications facility; examples of stealth facilities include but are not limited to architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements such as church spires or window wall, and antenna structures designed to resemble light poles or flagpoles.

Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

A. For existing towers not in the public rights-of-way:

1. An increase in the height of the tower by more than 10% or by the height of one additional antenna array with the separation from the nearest existing antenna not to exceed twenty feet (20'), whichever is greater, or
2. The addition of any appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet (20'), or more than the width of the tower at the level of the appurtenance, whichever is greater, or
3. Any excavation or deployment outside the current site, or
4. It would defeat the concealment elements of the structure, or
5. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, however, this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in the Code of Federal Regulations CFR 47, Chapter 1, Subchapter A, Part 1, 1.40001(b)(7)(i) through (iv).

B. For base stations not in the public rights-of-way:

1. An increase in the height of the structure by more than 10% or more than ten feet (10'), whichever is greater, or
2. The addition of any appurtenance that would protrude from the edge of the structure by more than six feet (6'); or
3. The installation of more than four (4) new equipment cabinets; or
4. Any excavation or deployment outside the current site, or
5. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, however, this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified

in the Code of Federal Regulations CFR 47, Chapter 1, Subchapter A, Part 1, 1.40001(b)(7)(i) through (iv).

Support structure. Any tower or base station as defined in this section.

Tower. Any structure built for the sole or primary purpose of supporting any authorized antennas and their associated facilities, including structures that are constructed for wireless communication 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.”

Transmission equipment. Equipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

Wireless. Any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Wireless telecommunication facilities (WTF’s). Towers, base stations and other structures utilized to house or support antennae and related equipment for radio, television, microwave, cellular phone, digital phone, wireless internet, and other wireless communications services. Noncommercial television or internet antennae and amateur radio antennae are not governed by this section.

Sec. 62-660. Application Submittal Requirements.

A. Application contents. To make application for a wireless telecommunications facility, including co-locating on an eligible support structure or adding transmission equipment to an alternative structure, the following is required with the exception of Eligible Facilities Requests.

- (1) Completed application for site review and application fee submitted to the Development Services department.
- (2) A drawing and any supporting documents that identifies:
 - (a) The location of existing applicant-owned wireless telecommunication facilities in the county;
 - (b) The type and height of each existing facility;
 - (c) The current proposed facility;
 - (d) The type and height of the proposed facility;
 - (e) At least three collocation alternatives to the applicant's own development along with proof of a genuine effort in collocating on or attaching to an existing support structure; a certified letter addressed to potential lessors is recommended in addition to evidence that demonstrates that no existing tower or support structure can accommodate the applicant's

proposed WTF. Any of the following may be submitted as evidence:

- (i) No existing structures are located within the geographic area required to meet applicant's engineering requirements.
- (ii) Existing structures are of insufficient height to meet applicant's engineering requirements.
- (iii) Existing structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures, or the antenna on the existing structures would cause interference with the applicant's proposed antenna.
- (v) The fees, costs, or contractual provisions required by the owner in order to share an existing structure or to adapt an existing support structure for sharing are unreasonable. Costs exceeding those for new tower development are presumed to be unreasonable.
- (vi) The applicant demonstrates that there are other limiting factors that render existing structures unsuitable. It is not necessary to reveal future plans or locations for additional proposed facilities. The plan will assist the city in understanding the need for any new wireless telecommunication facility, assess the land use impacts, and aid in comprehensive land use planning.

(3) Visual impact analysis; presented by one of two methods, photographs or drawings. In either case, four views or elevations shall be submitted looking toward the site (typically, north, south, east, and west) including site and the surrounding properties measured from the center point of the tower out to a distance equal to three times the height of the proposed tower. This drawing will depict a "skyline" view showing the entire height of the proposed tower and the surrounding structures, trees, or any other objects contributing to the skyline profile. The applicant shall draw the proposed tower directly on the photographs in black ink.

(4) Proof of compliance with FCC regulations.

(5) Notification of an impending environmental assessment required by the National Environmental Protection Agency (NEPA) and a copy when the assessment is completed (if applicable).

(6) A letter addressed to the city declaring an intent and willingness to build out a proposed tower to allow at least two other service providers.

(7) Copies of a site plan (the site plan is not the same as the WTF facility plan) as per site development review committee requirements; including signature lines for both the owner of the WTF and/or the owner of the property indicating an agreement to remove the entire WTF and any related equipment within 60 days of abandonment. Any information of an engineering nature

that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer. Upon receipt of the above items, the site development review committee will process the application and review the site plan. Upon SDRC approval, and where a conditional use permit is required, the site plan will be forwarded along with a planning and development services department staff recommendation to the planning and zoning commission for consideration.

B. Applications for Eligible Facilities Requests.

The Director of Development Services shall prepare and make publicly available an application form which shall require the information necessary for the director to consider whether an application is an Eligible Facilities Modification request.

Sec. 62-661 Review procedures

1. Eligible Facilities Request:

A. Purpose. This Section implements Section 6409(a) of the Spectrum Act, 47 U.S.C. Section 1455(a) as interpreted by the FCC in its Report and Order No. 14153, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this Section and Federal law.

B. Application Review.

1. Upon receipt of a complete application for an Eligible Facilities Request pursuant to this Section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

2. Within 60 days of the date on which an applicant submits a complete application seeking approval of an Eligible Facilities Request under this Section, the City will review and act upon the application, subject to the tolling provisions below.

3. The 60 day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

4. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. Deemed granted does not become effective until the applicant notifies the City in writing that the review period has expired.

C. Findings for Approval.

The Director of Development Services may approve a Section 6409(a) Modification when he/she finds that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change.

D. Grounds for Denial.

In addition to any other alternative recourse permitted under federal law, the Director of Development Services may deny a Section 6409(a) Permit when he/she finds that the proposed collocation or modification:

- (a) violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
- (b) involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification; or
- (c) involves the replacement of the entire support structure; or (d) does not qualify for mandatory approval under Section 6409(a) for any lawful reason.

E. Notice.

Before the Director of Development Services may approve any application for a Section 6409(a) Modification, notice of the application shall be provided in accordance with this subsection.

1. Required Notice Method. Notice shall be posted on the project site.
2. Notice Content. The notice shall include all of the following information:
 - (a) A general explanation of the proposed modification or collocation;
 - (b) The following statement: “Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement”; and
 - (c) A general description, in text or by diagram, of the location of the real property that is the subject of the application.
3. All Section 6409(a) Permit Denials Are Without Prejudice. Any denial of a Section 6409(a) Permit application shall be without prejudice to the applicant, the real property owner or the project. All Section 6409(a) Modifications are subject to review and approval or denial of a Section 6409(a) Permit by the Planning Director in accordance with this chapter. Section 6409(a) are exempt from

Historic Landmarks Commission review; provided, however that Section 6409(a) Modifications must comply with all prior conditions of approval related to concealment or reasonably related to public health and safety.

4. Section 6409(a) Permit Appeals. Subject to applicable federal timeframes for local review, any person or entity may file a written appeal to the City Council to reverse the Planning Director's final decision to approve or deny without prejudice a Section 6409(a) Permit application. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed.

2. **Collocation Applications:**

A. Purpose. This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

B. Application Review.

1. Upon receipt of a complete application for a collocation request pursuant to this Section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

2. Within 90 days of the date on which an applicant submits a complete application seeking approval of a collocation request under this Section, the City will review and act upon the application, subject to the tolling provisions below.

3. The 90 day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

4. In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

3. **New Site or Tower Applications:**

A. Purpose. This Section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

B. Application Review.

(1) Upon receipt of a complete application for a request for a new site or tower pursuant to this Section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within 150 days of the date on which an applicant submits a complete application seeking approval of a request for a new site or tower under this Section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The 150 day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this Section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Sec. 62-662. - General Standards and Design Requirements.

The site development requirements for WTFs follow the normal standards for any other type of development according to the city's local code and ordinances. However, some additional standards apply to these sites as follows:

- (1) Additional setbacks and separation requirements. WTFs are not required to comply with the standard setbacks for each zoning district but shall comply with the landscaping and screening requirements of [section 62-661\(d\)](#). Some additional setbacks or separation shall be required depending on the type of WTF and the potential location of that facility. Refer to the WTF siting matrix in zoning ordinance [section 130-35\(b\)\(2\)](#). However the following standards are applicable to all telecommunications facilities:
 - a. To protect citizens in their homes, towers shall be placed a tower height distance away from any residential structure or residential zone boundary.
 - b. To minimize the number of towers per square mile, a tower shall be placed a minimum distance from all other towers.

- c. To protect city thoroughfares and gateways, a WTF shall be placed a specified distance from the centerline of such designated areas.
- d. To protect the architectural beauty and significance of certain overlay districts, towers shall be placed at or behind the imaginary front line of the most major (largest gfa) structure on site.

(2) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anticlimbing device.

(3) Special aesthetic and lighting standards.

- a. New transmission towers shall maintain a galvanized steel finish or be painted in accordance with any applicable standards of the FAA.
- b. The design of the related buildings and equipment shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the facility to the natural setting and built environment.
- c. If an antenna is installed on a support structure other than a tower, the antenna and supporting 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 unobtrusiveness as possible.
- d. WTFs shall not be artificially lighted with the exception of motion detectors as security lighting, unless required by the FAA or other applicable authority. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties.

(4) Landscaping and screening requirements. The following requirements shall govern the landscaping and screening for a transmission tower or any parabolic antenna larger than two meters.

- a. Tower compounds shall be landscaped with a buffer of plant materials that effectively screens the base of the WTF site from view of public right-of-way. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound. A screening fence may be used in part to screen a WTF, but must be in addition to the required landscaping.
- b. Certain parabolic dishes attached to the ground shall be screened from public right-of-way by a combination of siting at or behind the imaginary front line of the most major structure on site (largest in gross floor area) and landscaping a four feet wide strip between the dish and right-of-way. Refer to the WTF siting matrix in Zoning Ordinance [section 130-35\(b\)\(2\)](#).

- c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, where towers are sited on large, wooded parcels, natural growth around the site perimeter may be a sufficient buffer.
- d. It is the responsibility of the WTF owner to maintain any required landscaping.

(5) Parking and access. All proposed transmission towers shall provide a point of access from right-of-way which is in conformance with city driveway standards. No off-street parking is required.

Sec. 62-663. Use of consultant. The City reserves the right to employ the services of a telecommunications consultant and/or expert to review any application or information supplement to an application when the Director of Development Services, in his or her discretion, determines that the information provided by the applicant is beyond the technical capacity of the city staff to review. The personal wireless service providers use various methodologies and analysis tools, including geographically based computer software, to determine the specific technical parameters of personal wireless services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, there may be a need for expert review by a third party of the technical data submitted by the applicant.

The selection of the third party consultant shall be at the sole discretion of the City, with a provision for the applicant and interested parties to review its qualifications. The applicant shall pay the cost for any consultant fees, through a deposit, estimated by the City, but not to exceed five thousand dollars (\$5,000) per WTF, which is to be paid within ten (10) days of the City's written request. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City Council, Planning Commission, City Staff, or interested parties.

Based on the results of the third party consultant's review, the Director of Development Services may determine the application to be incomplete and may require supplemental submissions. The expert review of the technical submission shall address the following:

1. The accuracy and completeness of submissions;
2. The applicability of analysis techniques and methodologies;
3. The validity of conclusions reached;
4. Any specific technical issues designated by the City; and
5. Recommendations of the consultant.

The report and recommendations of the consultant will be considered by the City Council, Planning and Zoning Commission and the Zoning Board of Adjustment, as is applicable, when considering whether to grant a Conditional Use Permit, a rezoning, an exception or variance for any wireless communications facility, and by the Director of Development Services for compliance with all applicable ordinances.

Sec. 62-664. Bonding. Prior to the issuance of a building permit for a wireless telecommunications facility, the applicant shall:

A. Submit to the Planning Director an itemized cost estimate of the work to be done to completely remove the entire telecommunications facility including the concrete pad plus twenty-five percent (25%) of said estimated costs as a reasonable allowance for administrative costs, inflation, and potential damage to existing roads or utilities.

B. Submit a bond, irrevocable Letter of Credit, or other appropriate surety acceptable to the City in the amount of the estimate as approved by the Planning Director which shall: 1. Secure the cost of removing the facility and restoring the site to its original condition to the extent reasonably possible. 2. Include a mechanism for a Cost of Living Adjustment after ten (10) and fifteen (15) years.

C. The applicant will ensure the bond shall remain in effect until the Building Official has inspected the site and verified that the wireless telecommunications facility and equipment has been removed and the site restored. At which time the Planning Director shall promptly release the bond.

Sec. 62-665. Removal, maintenance and safety.

A. The applicant shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the foundation and tower or base station structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping if present. The project owner shall be responsible for the cost of maintaining the wireless telecommunications facility and access road if present, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

B. Any wireless telecommunications facility that is found to be unsafe by the building official shall be repaired by the owner to meet federal, state, and local safety standards or disassembled and completely removed, including the concrete pad, within sixty (60) days.

C. Any wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the system shall completely remove the wireless telecommunications facility within sixty (60) days of receipt of notice from the City instructing the owner to remove the facility. If there are two or more users of a single wireless telecommunications facility then this provision shall not become effective until all users cease operations on the facility.

D. The applicant shall notify the Planning Director within thirty (30) days of the date the wireless telecommunications facility is no longer used for telecommunications purposes. The tower or base station shall be disassembled and completely removed, including the concrete pad and all equipment, from the site within one hundred eighty (180) days of the date the facility is no longer used for telecommunications purposes.

Sec. 62-666. Federal and state requirements.

All wireless telecommunications facilities shall meet or exceed all applicable federal and state standards and regulations set forth by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC) and other agencies with the authority to regulate such facilities. If

such standards and regulations are changed, then the owners and operators of the wireless telecommunications facilities governed by this division shall bring such telecommunications facilities into compliance as required. Failure to comply with federal and state standards and regulations shall constitute grounds for condemnation and removal of the noncompliant facilities by the City at the owner's or operator's expense.

Sec. 62-667. Revocation of Conditional Use Permits. All Conditional Use Permits for wireless communications facilities are subject to and conditioned upon compliance with all conditions of approval and all applicable federal, state, or local licensing or regulatory requirements, and may be revoked upon failure to so comply.

Sec. 62-668. - Violation deemed nuisance.

In addition to the penalties and other relief provided in this Code, any violation of this article is hereby declared to be a nuisance and may be abated as provided in Chapter 50, Article IV of this Code.

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