

CHAPTER 154: WIRELESS TELECOMMUNICATIONS FACILITIES

§ 154.01 SHORT TITLE.

This chapter shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the Town of Franklin.

§ 154.02 PURPOSE.

The Telecommunications Act of 1996 affirmed the town's authority concerning the placement, construction and modification of wireless telecommunications facilities. The town finds that wireless telecommunications facilities 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 insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the town's land use policies, the town is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this chapter is to minimize the negative impact of wireless telecommunications facilities, 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.

§ 154.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY FACILITY or **STRUCTURE**. An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

ALDERMEN. The Board of Aldermen of the Town of Franklin.

APPLICANT. Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

APPLICATION. All necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

ANTENNA. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave

telecommunications and services not licensed by the FCC, but not expressly exempt from the town's siting, building and permitting authority.

BASE STATION. A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

CO-LOCATION. The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

COMMERCIAL IMPRACTICABILITY or **COMMERCIALLY IMPRACTICABLE.** 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, shall not deem a situation to be **COMMERCIAL IMPRACTICABLE** and shall not render an act or the terms of an agreement **COMMERCIALLY IMPRACTICABLE**.

COMPLETED APPLICATION. An application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

ELIGIBLE FACILITIES REQUEST. A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

EQUIPMENT COMPOUND. An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

FAA. The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC. The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT. 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 lightning protection device.

NIER. Non-Ionizing Electromagnetic Radiation.

PERSON. Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY. See **WIRELESS TELECOMMUNICATIONS FACILITIES**.

PERSONAL WIRELESS SERVICES or **PWS** or **PERSONAL TELECOMMUNICATIONS SERVICE** or **PCS.** The same meaning as defined and used in the 1996 Telecommunications Act.

TELECOMMUNICATION SITE. See **WIRELESS TELECOMMUNICATIONS FACILITIES.**

TOWN. The Town of Franklin, North Carolina.

SEARCH RING. The area in which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

SPECIAL USE PERMIT. The official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the town.

STEALTH or STEALTH TECHNOLOGY. Minimal 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 using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,.

STATE. The State of North Carolina.

SUBSTANTIAL MODIFICATION. The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below:

- 1) Increasing the existing vertical height of the structure by the greater of i) more than ten percent (10%) or ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- 2) 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.
- 3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

The addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility shall be considered a substantial modification, including without limitation addition, removal or change in equipment shelters, landscaping, fencing, utility feeds, changing the color, materials, or stealth technology of any visually discernible components, vehicular access, and parking.

TELECOMMUNICATIONS. The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS STRUCTURE. A structure used in the provision of services described in the definition of **WIRELESS TELECOMMUNICATIONS FACILITIES**.

TEMPORARY. In relation to all aspects and components of this chapter, something intended to, or that does, exist for fewer than 90 days.

WIRELESS TELECOMMUNICATIONS FACILITIES, TELECOMMUNICATIONS TOWER, TOWER, TELECOMMUNICATIONS SITE and PERSONAL WIRELESS FACILITY. A structure, facility or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures that employ camouflage technology, including, but not limited to, structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the town's siting, building and permitting authority, excluding those used exclusively for the town's fire, police or exclusively for private, noncommercial radio and television reception and private citizen's bands, amateur radio and other similar non-commercial telecommunications where the height of the facility is below the height limits set forth in this chapter.

§ 154.04 SPECIAL USE PERMITS.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects 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 chapter, the town hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (A) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;
- (B) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
- (C) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;
- (D) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize 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 using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

§ 154.05 PERMIT APPLICATION; REQUIREMENTS.

(A) All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. The Town Board is the officially designated agency or body of the town to whom applications for a special use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The town may at its discretion delegate or designate other official agencies of the town to accept, review, analyze, evaluate and make recommendations to the Town Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for wireless telecommunications facilities.

(B) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the town, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

(C) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the town. The town's Land Use Administrator shall have the same discretion to determine whether special use applications are incomplete under this section as in the Unified Development Ordinance, § 152.053. The Land Use Administrator's determination that an application is incomplete may be appealed to the Board of Adjustment, in the same manner as in § 152.075.

(D) The applicant shall include a statement in writing:

(1) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the town in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable town, state and federal laws, rules and regulations;

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

(E) No wireless telecommunications facilities shall be installed or constructed until the application is reviewed and approved by the town, and the special use permit has been issued.

(F) All applications for the construction or installation of new wireless telecommunications facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the applicant. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the state. The application shall include the following information:

- (1) The name, address and phone number of the person preparing the report;
- (2) The name, address, and phone number of the property owner, operator, and applicant, and to include the legal form of the applicant;
- (3) The postal address and tax map parcel number of the property;
- (4) The zoning district or designation in which the property is situated;
- (5) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- (6) The location of the nearest residential structure;
- (7) The location, size and height of all structures on the property which is the subject of the application;
- (8) The location, size and height of all proposed and existing antennae and all appurtenant structures;
- (9) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- (10) The number, type and design of the tower(s) and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
- (11) The make, model and manufacturer of the tower and antenna(s);
- (12) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- (13) The frequency, modulation and class of service of radio or other transmitting equipment;
- (14) The actual intended transmission and the maximum effective radiated power of the antenna(s);
- (15) Direction of maximum lobes and associated radiation of the antenna(s);
- (16) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- (17) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices;
- (18) A copy of the FCC license applicable for the intended use of the wireless Tele-communications facilities;
- (19) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed

drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site.

(20) In the case of an eligible facilities request, a statement that the applicant considers the request to be eligible as defined herein, with specific references to the plans and specifications that tend to support the statement.

(G) In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the town. Copies of written requests and responses for shared use shall be provided to the town in the application, along with any letters of rejection stating the reason for rejection.

(H) The applicant shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads.

(I) The applicant shall certify that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

(J) An applicant may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.

(K) The applicant shall furnish a visual impact assessment, which shall include:

(1) A “Zone of Visibility Map” which shall be provided in order to determine locations from which the tower may be seen;

(2) Pictorial representations of “before and after” views from key viewpoints both inside and outside of the town as may be appropriate, 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 sites at a pre-application meeting;

(3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(L) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.

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

(N) All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(O) All wireless telecommunications facilities shall contain a demonstration that the facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.

(P) Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may required by the town.

(Q) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

(R) A person who holds a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the town, county, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

(S) A holder of a special use permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, 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.

(T) An applicant shall submit to the town the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities and to the town administrator.

(U) The applicant shall examine the feasibility of designing a proposed tower to accommodate future demand for at least five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate at least five additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that

the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- (1) The foreseeable number of FCC licenses available for the area;
- (2) The kind of wireless telecommunications facilities site and structure proposed;
- (3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
- (4) Available space on existing and approved towers.

(V) (1) The owner of the proposed new tower, and his or her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

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

(b) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;

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

(2) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit for the tower.

(W) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

(X) The holder of a special use permit shall notify the town of any intended modification of a wireless telecommunication facility and shall apply to the town to modify, relocate or rebuild a wireless telecommunications facility.

(Y) In order to better inform the public, in the case of a new telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test." The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three foot in diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the town. The applicant shall inform the town, in writing,

of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

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

§ 154.06 LOCATION.

(A) Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, (1) being the highest priority and (5) being the lowest priority:

- (1) On existing towers or other structures without increasing the height of the tower or structure;
- (2) On town-owned properties or facilities;
- (3) On properties in areas zoned for Industrial use;
- (4) On properties in areas zoned for Commercial use;
- (5) On properties in areas zoned for Residential use.

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

(C) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the town why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

(D) Notwithstanding the above, 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.

(E) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

(F) 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;
- (2) Conflict with the historic nature or character of a neighborhood or historical district;
- (3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- (4) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the town, or employees of the service provider or other service providers;
- (5) Conflicts with the provisions of this chapter.

§ 154.07A SHARED USE.

(A) Locating on existing towers or other structures without increasing the height, shall be preferred by the town, as opposed to the construction of a new tower. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within the search ring of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.

(B) An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.

(C) Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the town, to the extent practicable, unless good cause is shown.

§ 154.07B ELIGIBLE FACILITIES REQUESTS.

(A) In the case of an application for an eligible facilities request, the town's Land Use Administrator shall review the preliminary application and determine whether the request is eligible. The Land Use Administrator may require from the applicant such other information, pursuant to this chapter, as is needed to make this determination; alternatively, if the Land Use

Administrator is given sufficient proof that the request is eligible, he or she may relax such requirements of a completed application described in § 154.05 as he or she shall deem unnecessary. If the Land Use Administrator determines that the application constitutes an eligible facilities request, he or she shall certify such eligibility to the Board of Aldermen, and the Board shall approve the special use permit, pursuant to 47 U.S.C. § 1455(a), and no hearing shall be required.

(B) If the Land Use Administrator determines, after reviewing the application pursuant to subsection (A) of this section, that there is substantial evidence that the application constitutes a substantial modification, then a hearing shall be required pursuant to this chapter. At the hearing, the Land Use Administrator shall first present the evidence of a substantial modification, which the applicant or any other interested party may cross examine. The applicant and any other interested party shall present evidence of an eligible facilities request, which may also be cross examined. The Board of Aldermen shall make findings of fact as to the question, and shall decide whether i) the application is for an eligible facilities request, in which case it shall approve the special use permit without further hearing, or ii) that the application is for a substantial modification, in which case it shall conduct the hearing pursuant to §§ 154.15-154.16.

(C) The town shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the town shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

§ 154.08 HEIGHT OF TELECOMMUNICATIONS TOWERS.

(A) The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the town, to the extent practicable, unless good cause is shown.

(B) Notwithstanding the provisions of division (A), the maximum permitted height of a new tower shall be 140 feet, based on an ambient tree height of 80 feet and accommodating six co-located antenna arrays requiring six feet of vertical space each.

(C) Notwithstanding the provisions of division (A), no tower constructed after the effective date of this chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, county, state, and/or any federal statute, law, local law, town ordinance, code, rule or regulation.

§ 154.09 APPEARANCE AND VISIBILITY.

(A) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.

(B) Towers shall be galvanized or, if deemed necessary, 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 chapter.

(C) If lighting is required, applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, but in any event shall be shielded from view from the ground as may be permitted by controlling law, rules and regulations.

§ 154.10 SECURITY.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

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

(2) Transmitters and telecommunications control points shall be installed such a manner that they are readily accessible only to persons authorized to operate or service them.

§ 154.11 SIGNAGE.

Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

§ 154.12 LOT SIZE AND SETBACKS.

All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus 10% of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

§ 154.13 RETENTION OF EXPERT ASSISTANCE AND REIMBURSEMENT BY APPLICANT.

(A) The town may hire any consultant and/or expert necessary to assist the town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.

(B) Fees paid to the consultant shall be derived from the application fees set out in § 154.19 below, and shall be in an amount agreed upon by the town and the consultant. The town may, at its sole expense, employ expert assistance for consultations in excess of the fees paid by the applicant.

(C) Fees imposed upon applicants pursuant to this chapter may not be used i) for travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party; or ii) reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

§ 154.14 EXCEPTIONS FROM A SPECIAL USE PERMIT.

(A) No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those non-commercial exceptions noted in the definition of wireless telecommunications facilities.

(B) All wireless telecommunications facilities existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility must comply with this chapter.

§ 154.15 PROCEDURE.

(A) Except as specified in division (B) of this section, all special use applications under this chapter shall be reviewed and considered pursuant to the same procedures set forth in the Unified Development Ordinance, § 152.053.

(B) The procedures of § 152.053 of the Unified Development Ordinance will vary for special use applications under this section as follows:

(1) Applicants will supply a preliminary development plan as required by § 152.053(H); in addition to the contents specified in § 152.053(H)(3)(a), the preliminary development plan required under this chapter shall show that the requirements of §§ 154.05 - 154.12 have been or will be complied with.

(2) Instead of the findings of fact specified in § 152.053(M)(1)(a) through (e), the Board of Aldermen must make the findings of fact set out in § 154.16 before approving a special use application required by this chapter.

(3) The provisions of § 152.053(O) shall not apply to applications required by this chapter.

§ 154.16 FINDINGS OF FACT.

No special use permit under this chapter shall be approved by the Board of Aldermen unless each of the following findings is made.

(A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

(B) The special use application and supporting documentation attached thereto meet the requirements of the chapter, as supported by the recommendation of any consultant or expert retained by the town in accordance with § 154.13.

(C) The use or development complies with all required regulations and standards of this chapter or with relief therefrom, if any, granted pursuant to § 154.27, and with all other applicable regulations.

(D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

(E) The use or development conforms with the general plans for the physical development of the town as embodied in the Unified Development Ordinance, the Principles of Growth, the Thoroughfare Plan, and any other duly adopted plans of the town.

§ 154.17 RECERTIFICATION OF A SPECIAL USE PERMIT.

(A) Between 12 months and six months prior to the five year anniversary date after the effective date of the special use permit and all subsequent five year anniversaries of the effective date of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such wireless telecommunication facilities shall submit a signed written request to the town for recertification. In the written request for recertification, the holder of such special use permit shall note the following:

(1) The name of the holder of the special use permit for the wireless telecommunications facilities;

(2) If applicable, the number or title of the special use permit;

(3) The date of the original granting of the special use permit;

(4) Whether the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the special use permit and if so, in what manner;

(5) If the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;

(6) That the wireless telecommunications facilities are in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;

(7) The date of the last inspection of the tower or wireless telecommunications facilities;

(8) Recertification that the tower and attachments both are designed and constructed and continue to meet all local, town, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the state, the cost of which shall be borne by the applicant.

(B) If, after such review, the town determines that the permitted wireless telecommunications facilities are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the town may issue a recertification of the special use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted wireless telecommunications facilities are not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the town may refuse to issue a recertification special use permit for the wireless telecommunications facilities, and in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of the decision by the town until such time as the facility is brought into compliance. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the facility.

(C) If the applicant has submitted all of the information requested and required by this chapter, and if the review is not completed, as noted in division (B), prior to the five year anniversary date of the special use permit, or subsequent five year anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six months, in order for the completion of the review.

(D) If the holder of a special use permit for wireless telecommunications facilities does not submit a request for recertification of such special use permit within the time frame noted in division (A), then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five year anniversaries, unless the holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the town agrees that there were legitimately extenuating circumstances, then the

holder of the special use permit may submit a late recertification request or application for a new special use permit.

§ 154.18 EXTENT AND PARAMETERS OF SPECIAL USE PERMIT.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

- (A) Such special use permit shall be non-exclusive;
- (B) Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the town;
- (C) Such special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this chapter after prior written notice to the holder of the special use permit.

§ 154.19 APPLICATION FEE.

(A) At the time that a person submits an application for a special use permit for a new tower or a substantial modification of an existing facility, such person shall pay a non-refundable application fee of \$5,000 to the town. If the application is for a special use permit for an eligible facilities request, the nonrefundable fee shall be \$1,000. Fees for expert consultations, if any are desired by the town, shall be derived from the application fee.

(B) No application fee is required in order to recertify a special use permit for wireless telecommunications facilities, unless there has been a visible modification of the wireless telecommunications facility since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in division (A) shall apply.

§ 154.20 PERFORMANCE SECURITY.

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the town a bond, or other form of security acceptable to the town as to type of security and the form and manner of execution, in an amount of at least \$75,000 and with such sureties as are deemed sufficient by the town to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit issued pursuant to this chapter. For co-locations that do not increase the height of the structure attached to, the bond or other security shall be \$25,000. 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.

§ 154.21 RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES.

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

§ 154.22 ANNUAL NIER CERTIFICATION.

The holder of the special use permit shall, annually, certify to the town that NIER levels at the site are within the threshold levels adopted by the FCC.

§ 154.23 LIABILITY INSURANCE.

(A) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the 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/\$2,000,000 aggregate;
- (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (3) Workers compensation and disability: statutory amounts.

(B) The commercial general liability insurance policy shall specifically include the town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named 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 a 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 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 15 days before the expiration of the insurance that such policies are to renew or replace.

(F) Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the grant of the special use 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.

§ 154.24 INDEMNIFICATION.

(A) Any application for wireless telecommunication facilities that is proposed for town property, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the 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 therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, 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 division (A), an indemnification provision will not be required in those instances where the town itself applies for and secures a special use permit for wireless telecommunications facilities.

§ 154.25 DEFAULT AND/OR REVOCATION.

(A) If wireless telecommunications facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the special use permit, then the town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the town may, at its sole discretion, order the violation remedied within 24 hours.

(B) If within the period set forth in division (A) above the wireless telecommunications facilities are not brought into compliance with the provisions of this chapter, or of the special use permit, or substantial steps are not taken in order to bring the affected

wireless telecommunications facilities into compliance, then the town may revoke such special use permit for wireless telecommunications facilities, and shall notify the holder of the special use permit within 48 hours of such action.

§ 154.26 REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES.

(A) Under the following circumstances, the town may determine that the health, safety, and welfare interests of the town warrant and require the removal of wireless telecommunications facilities.

(1) Wireless telecommunications facilities with a permit that have been abandoned (not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;

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

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

(B) If the town makes such a determination as noted in division (A), then the town shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed, the town may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

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

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

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

(F) Notwithstanding anything in this section to the contrary, the town may approve a temporary use permit/agreement for the wireless tele-communications facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the 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 and the town. If such a plan is not developed, approved and executed within the 90 day time period, then the town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

§ 154.27 RELIEF.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the town in considering the request and the relief, waiver or exemption. No such 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.

§ 154.28 PERIODIC REGULATORY REVIEW.

(A) The town may at any time conduct a review and examination of this entire chapter.

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

(C) Notwithstanding the provisions of divisions (A) and (B), the town may at any time, and in any manner (to the extent permitted by federal, state, or local law), amend, add, repeal, and/or delete one or more provisions of this chapter.

§ 154.29 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS.

(A) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a 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 for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 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.

§ 154.30 COMPLIANCE WITH STATE AND FEDERAL LAW.

This chapter shall be administered in accordance with applicable law, including but not limited to the federal Telecommunications Act of 1996, and with G.S. Ch. 160A, Art. 19, Part 3E. If any portion of this chapter currently is in conflict with existing law, or due to amendment comes into conflict with existing law, it shall be interpreted and enforced so as to conform with such federal or state law as necessary.

§ 154.99 PENALTY.

(A) In the event of a violation of this chapter or any special use permit issued pursuant to this chapter, the town may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the town, fines or penalties as set forth below.

(B) A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 per day per occurrence or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

(C) Notwithstanding anything in this chapter, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this chapter or any section of this chapter. An

attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The town may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the town.