

PLANNING COMMISSION REPORT

Regular Agenda -- Public Hearing Item

PC Staff Report
09/26/16

**ITEM NO. 3: TEXT AMENDMENT TO LAND DEVELOPMENT CODE;
TELECOMMUNICATIONS FACILITIES (BJP)**

TA-16-00335: Consider a Text Amendment, TA-16-00335, to the City of Lawrence Land Development Code, Chapter 20, Article 4, Article 5, Section 20-529 Telecommunications Facilities, and Article 17 to revise standards to align with new federal standards that take effect in October, 2016. *Initiated by City Commission on 8/16/16.*

RECOMMENDATION: Staff recommends that the Planning Commission forward the proposed amendment, TA-16-00335, amending Articles 4, 5, and 17 of the Lawrence Land Development Code to revise standards to align with the new Federal standards to the City Commission with a recommendation for approval.

Reason for Request: Amendment to code is required in response to changes to the Federal and State legislative requirements regarding wireless communications.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None received

ATTACHMENTS

Attachment A – Draft Language

OVERVIEW OF PROPOSED AMENDMENT

The following is a summary listing of the proposed changes:

1. Article 4: Use Table
The current terms 'Telecommunications Tower and Antenna' are replaced with the new terminology, Wireless Support Structure and Wireless Facility – Antenna.
2. Article 5: Use Regulations
3. Existing Section 20-529 is deleted and replaced with the new Use Regulations.
4. Article 17: Terminology
5. Existing Section 20-1768 terms are deleted and replaced with the new Wireless Facilities uses that are referenced in Section 20-529.

BACKGROUND

New Federal and State legislative requirements regarding wireless communications will take effect in October, 2016. The changes in the wireless communications regulations include:

- Federal regulations no longer permit municipalities to require proof and justification of need, propagation maps and studies as a determination for location of new wireless communication facilities.
- A waiver process for co-locations and setback requirements is established.

- The separation requirement between wireless facilities is reduced.
- Adds the Federal 'shot clock' requirements (specific processing timelines) for review and approval to the City Code.
- The proposed language adds standards for disguised wireless facilities.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

The purpose of this proposed text amendment is to align the City of Lawrence Land Development Code with new Federal and State legislative requirements that take effect in October, 2016. The proposed text amendment will bring City Code into compliance with the new laws.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).

The proposed text amendment is consistent with *Horizon 2020* and the stated purpose of this Development Code. The new Federal and State legislation will ensure that residents, businesses, and industry within the City of Lawrence have access to reliable wireless telecommunications networks, while also safeguarding the health, safety, welfare, and aesthetics of the community.

20-402 RESIDENTIAL DISTRICT USE TABLE

[illegible]

20-403NONRESIDENTIAL DISTRICT USE TABLE

[illegible]

20-529 **TELECOMMUNICATIONS FACILITIES**

In lieu of other Dimensional and **Density** standards, **Telecommunications Facilities** shall be subject to the following standards.

(1) Applicability of Regulations

In Districts where Telecommunications Towers are allowed as a Special use (S), if there is already a lawful Telecommunications Tower on the site, a **Telecommunication Antenna** may be allowed as an **Accessory Use** if installed on that **Telecommunication Tower**. In Districts where a Telecommunications Tower is allowed as an **Accessory Use** (A*), a Telecommunications **Antenna** is allowed as an **Accessory Use** affixed to an existing **Telecommunication Tower, Building** or other **Structure**, subject to the criteria set forth in this section and applicable dimensional requirements of this Development Code.

(2) Standards Applicable to Construction of All Telecommunications Facilities

The following standards shall apply to any Telecommunications Tower or Telecommunications **Antenna**:

- (i) No commercial advertising shall be allowed on a Telecommunications Facility, unless such Telecommunications **Antenna** is actually located on an existing, approved sign. Telecommunications Towers may have safety or warning signs in appropriate places;
- (ii) No signals, lights or illumination shall be permitted on a Telecommunications Facility, unless required by the FAA. Should lighting be required by State or Federal law, the lighting shall be placed on the Telecommunications Tower and designed in such a way as to minimize to the fullest extent possible glare onto adjacent residential properties;
- (iii) Light fixtures may be attached if it is part of the design incorporated into the Telecommunications Tower **Structure** to be used for the illumination of athletic fields, **Parking Lots**, Streets or other similar areas. Lighting of the accessory **Buildings** for basic security purposes is permissible but may not result in glare on adjacent properties;
- (iv) The **Height** of a Telecommunications Facility shall conform to the **Height** limitations of an applicable Airspace Control Overlay District as defined in Section 20-302;
- (v) All **Telecommunications Facilities** shall be sited to have the least adverse visual effect as is practical on the environment. Telecommunications Towers shall not be lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Telecommunications Towers shall be a galvanized finish or painted gray or light blue unless other standards are required by the FAA. Where possible, monopole Telecommunications Towers shall be preferable to guyed Telecommunications Towers. Telecommunications Towers shall be designed and sited to avoid, whenever possible, application of FAA lighting and painting requirements. For existing Tower sites, if redevelopment is considered, guyed Telecommunications Towers are the least desirable option and should be avoided where feasible;
- (vi) Subject to the requirements of this Chapter, more than one Telecommunication Facility may be attached to, or placed upon, the same **Structure**.

(3) Maintenance Standards Applicable to All Telecommunications Facilities

The following maintenance and operating standards shall apply to any Telecommunications Tower or Telecommunications **Antenna**:

- (i) ~~Any Telecommunications Facility that is not in use for a period of three full years or more shall be removed by the Owner at the Owner's expense. Failure to remove the Telecommunications Facility pursuant to non-use may result in removal and assessment of cost to the property pursuant to K.S.A. 12-6a17.~~
- (ii) ~~Any Owner of a Telecommunications Tower shall submit a letter to the Planning Director by July 1 of each year listing the current users and types of Telecommunications Antennas located on the Facility.~~
- (iii) ~~A sign shall be posted on every Telecommunications Facility, or on the exterior fence around the Telecommunications Facility, noting the name and telephone number of the Telecommunications Facility Owner and operator.~~
- (iv) ~~The Owner/operator shall at all times employ at least ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.~~

(4) Inspections

~~All Telecommunications Facilities shall be inspected annually at the Owner's expense and an inspection report shall be filed with the Director of Planning. All Telecommunications Facilities may be inspected at any time by the Codes Enforcement Officer in order to determine compliance with original construction standards. Deviation from the original construction for which a permit is obtained constitutes a violation of this Code.~~

~~Notice of violations will be sent by registered mail to the Telecommunications Facility operator who will have 30 days from the date the notification is issued to make adjustments or repairs. The operator shall notify the Codes Enforcement Officer in writing that the adjustments or repairs have been made, and, as soon as reasonably possible thereafter, another inspection will be made by the Codes Enforcement Officer to assess compliance. The operator shall then be notified of the results of the second inspection. An appeal of the decision of the Codes Enforcement Officer can be made to the Board of Zoning Appeals in accordance with Section 20-1311.~~

(5) Telecommunications Antennas Attached to Existing Structures

~~The following standards shall apply to any proposal to attach a Telecommunications Antenna to an existing Structure:~~

- (i) ~~Any Structure shall be at least 40 feet in Height before a Telecommunications Antenna may be erected upon, or attached to, it;~~
- (ii) ~~Said attachment Structure may not be one designated by the Historic Resources Commission as a historic Structure or be in a designated Historic Resources Overlay District unless the HRC approves such arrangement;~~
- (iii) ~~The addition of a Telecommunications Antenna to an existing Structure shall not cause the Height of said Structure to increase by more than 20% or to the maximum Height allowed in that Zoning District, whichever is less;~~
- (iv) ~~Telecommunications Antennas erected upon, or attached to, existing Structures shall not be subject to standard Setback requirements;~~
- (v) ~~When the arrangement is deemed safe by the Codes Enforcement Officer, all accessory Buildings and other Structures to be located on the same property as a Telecommunications Antenna under this Subsection shall be located on the roof of the Structure whenever possible. If the accessory equipment, Buildings~~

and other ~~Structures~~ are able to be safely located on the roof of the ~~Structure~~, the area of said equipment, accessory ~~Buildings~~ and other ~~Structures~~ shall not occupy more than 25 percent of the total roof area; and

- (vi) ~~The addition of any related equipment or accessory Building to an existing Structure shall not cause the Height of said Structure to increase by more than 20 percent or to the maximum Height allowed in that Zoning District, whichever is less.~~

(6) New Telecommunications Towers and Antennas – Review Fee

~~In addition to the Special Use Permit filing fee applicable to all requests for Special Use Permits, an applicant for a Telecommunications Tower and Antenna (other than an Amateur or Receive Only Antenna less than 75 feet in Height), shall make a deposit with the Planning Director of a fee sufficient to cover the cost of an independent study and shall sign a form authorizing the City to use those funds to hire consulting engineers to review the application and to advise the City on the extent to which the applicant has, or has not, met the Burden of Proof, required by the following sub-section (20-529(7)). The fee shall be set by the City Commission based upon: a list of city-approved consultants; and, the standard industry fee for the study required to make a determination. Upon the conclusion of the review process, any funds remaining unexpended shall be refunded to the applicant, and the applicant shall be provided with an accounting for the funds expended.~~

(7) New Telecommunications Towers – Burden of Proof

~~The following standards shall apply to a determination of whether Telecommunications Towers will be permitted. These standards are in addition to those in the next sub-section, Section 20-529(8): No new Telecommunications Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City that no existing Telecommunications Tower or other Structure can accommodate the applicant's proposed Telecommunications Antenna. Evidence submitted to demonstrate that no existing Telecommunications Tower or Structure can accommodate the applicant's proposed Telecommunications Antenna may consist of any of the following (the claimed "hardship" may not be created by the applicant):~~

- (i) ~~No existing Telecommunications Towers or Structures are located within the geographic area required to meet the applicant's engineering requirements;~~
- (ii) ~~Existing Telecommunications Towers or Structures are not of sufficient Height, and could not be extended to become sufficient in Height, to meet the applicant's engineering requirements;~~
- (iii) ~~Existing Telecommunications Towers or Structures do not have sufficient structural capacity to support the applicant's proposed Telecommunications Antenna and related equipment; and the existing or approved Telecommunications Tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;~~
- (iv) ~~The proposed Telecommunications Antenna would cause excessive electromagnetic interference with an existing Telecommunications Antenna on the Telecommunications Tower or Structure, or the Telecommunications Antenna on the existing Telecommunications Tower or Structure would cause interference with the proposed Telecommunications Antenna; and reconfiguration would not resolve the interference problem; or~~
- (v) ~~The applicant demonstrates that there are other limiting factors, not including the provisions of this Article, that render existing Telecommunications Towers or Structures unsuitable for its proposed Telecommunications Antenna.~~

(8) New Telecommunications Facilities – Additional Criteria for Review

In addition to the standards and conditions listed in Sections 20-529(2) and 20-529(9), the City Commission shall consider the following factors in determining whether or not to issue a Special Use Permit:

- (i) Height of proposed Telecommunications Facility;
- (ii) proximity of Telecommunications Facility to residential Structures and residential district boundaries;
- (iii) technical or engineering requirements limiting placement of the Telecommunications Facility in other areas in order to provide coverage;
- (iv) nature of uses on adjacent and nearby properties;
- (v) surrounding topography, tree coverage and foliage;
- (vi) design of the Telecommunications Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness and making the proposed Telecommunications Tower or Telecommunications Antenna a stealth or disguised facility;
- (vii) availability of suitable existing Telecommunications Towers or other Structures for placement of proposed Telecommunications Antenna; and
- (viii) whether the character of the proposed site and the proposed Telecommunications Tower will facilitate maximum utilization of space for placement of Telecommunications Antennas serving multiple users.

(9) New Telecommunications Towers – Design Standards

The following standards shall apply to Telecommunications Tower to be used to hold or support one or more Telecommunications Antennas, in addition to the standards to be used in determining whether to permit such Telecommunications Tower under Sections 20-529(7) and 20-529(8).

- (i) No free-standing Telecommunications Tower shall exceed 180 feet in Height;
- (ii) **Setbacks**
 - a. The Telecommunications Towers shall be Setback from the property line in all directions a distance equal to at least one-half the Height of the Telecommunications Tower if the site is in or adjoins an R-Base District;
 - b. In any other Base District, the Telecommunications Tower shall be Setback from the property line in all directions the distance established by the fall zone of the tower;
- (iii) Telecommunication Towers shall not be located closer than one-half (1/2) mile from another Telecommunication Tower, except when the two are located on the same site and the second Telecommunications Tower is approved with a Special Use Permit.
- (iv) All Telecommunications Towers and the base of the Structure shall be designed and built to allow expansion at a later date to accommodate at least three two-way Telecommunications Antennas for every 150 feet of Telecommunications Tower Height, or at least one two-way Telecommunications Antenna and one microwave facility for every 150 feet of Telecommunications Tower Height. The

~~above requirements may be modified by the [Planning Director](#) to allow for the maximum number of compatible users within the radio frequency emission levels.~~

- ~~(v) With the exception of necessary electric and telephone service and connection lines approved by the City, no part of any Telecommunications Facility, nor any lines, cable, equipment, wires or braces in connection with the Facility, shall at any time extend across or over any part of the right of way, [Public Street](#), highway, sidewalk or property line.~~
- ~~(vi) All signal and remote control conductors of low energy between a Telecommunications Tower or Telecommunications [Antenna](#) and a [Structure](#), or between Telecommunications Towers, shall be hidden from plain view and shall be underground whenever possible. If impossible to bury underground, said conductor shall be at least eight feet above the ground at all points.~~
- ~~(vii) All Telecommunications Towers or Telecommunications [Antennas](#) shall conform to the requirements of the Occupational Safety and Health Administration (OSHA).~~
- ~~(viii) Telecommunications Towers shall be of a monopole design.~~
- ~~(ix) The use of guyed or lattice Telecommunications Towers is prohibited.~~
- ~~(x) Every Telecommunications Tower shall be protected from trespass by unauthorized persons to discourage the climbing of the Tower.~~
- ~~(xi) Telecommunications Towers shall be constructed so that if a failure does occur, the Telecommunications Tower will collapse into itself and will not fall onto [Structures](#) near the site.~~
- ~~(xii) Mobile or immobile equipment not used in direct support of a Telecommunications Tower facility shall not be stored or parked on the site, unless repairs to the Telecommunications Tower or Telecommunications [Antenna](#) are being made.~~
- ~~(xiii) No Telecommunications Tower shall have a platform, crow's nest or like [Structure](#) around it, or attached to it, except while under construction or repair.~~
- ~~(xiv) Lighting of the accessory [Buildings](#) for basic security purposes is permissible but may not result in unnecessary glare on adjacent properties.~~
- ~~(xv) All accessory [Buildings](#) or [Structures](#) shall meet all [Building](#) design standards as listed in this Chapter, shall require a [Building](#) Permit issued by the Codes Enforcement Officer and shall conform with the [Height](#) restrictions and Setbacks established for the site's district.~~
- ~~(xvi) All [Buildings](#), [Structure](#) and equipment accessory to a Telecommunications Tower or Telecommunications [Antenna](#) shall be designed to blend in with the surrounding environment through the use of color, camouflage and architecture.~~
- ~~(xvii) If located in or adjoining an R-[Base District](#), the Telecommunications Tower shall be surrounded by a Type 3 [Buffer Yard](#), Section 20-1005.~~
- ~~(xviii) The Telecommunications Tower site may not be situated in a designated Historic Resource Overlay District unless the [Historic Resources Commission](#) approves the location and design.~~

(10) City Commission Action

- (i) A request for the placement, construction, or modification to a Telecommunications ~~Antenna~~, Telecommunications Tower, or Telecommunications Facility shall be acted upon within a reasonable period of time from the receipt of a complete submittal of an application, site plan and supporting documentation as required in this section.
- (ii) Denial of a request or application to place, construct or modify a Telecommunications ~~Antenna~~, Telecommunications Tower, or Telecommunications Facility shall be supported by findings based on substantial evidence and shall be provided in written form to the applicant.

(11) Telecommunications ~~Antennas~~ — Site Plan Review

- (i) Telecommunications ~~Antennas~~, wherever located, shall be reviewed as a permitted use through the Site Plan Review provision, Section 20-1305.
- (ii) Telecommunications ~~Antennas~~ to be attached to an existing ~~Structure~~ in any ~~Zoning Districts~~ permitting a Telecommunications ~~Antenna~~ as an ~~Accessory Use~~ shall be reviewed as an amendment to the site plan, through the Site Plan Review provision, Section 20-1305.

(12) Plan and Application

At the time of application for a Special Use or Site Plan Review for a Telecommunications Facility, the applicant shall submit a site plan in sufficient detail, as determined by the ~~Planning Director~~, to evaluate its conformance with applicable standards and guidelines. The development plan shall include:

- (i) written authorization from the ~~Landowner~~ of the proposed Telecommunications Facility site.
- (ii) a site plan drawn to scale showing the property boundaries, Telecommunications Tower, guy wire anchors and other apparatus, existing and proposed ~~Structures~~, proposed transmission ~~Buildings~~ and/or other ~~Accessory Uses~~, ~~Access~~ road(s) location, ~~Access~~ road surface material, ~~Parking Area~~, fences, location and content of warning signs, exterior lighting specifications, a ~~Landscaping~~ plan, land elevation contours, and existing land uses surrounding the site. If any ~~Accessory Structure~~ is proposed, details of the ~~Structure~~, including elevations and proposed use of the ~~Structure~~, shall be included.
- (iii) A signed and sealed report from a qualified professional structural or electrical engineer, licensed to practice in Kansas, that:
- (iv) describes Telecommunications Tower ~~Height~~ and design, including cross section and elevation;
- (v) describes ~~Height~~ for all potential mounting positions for Telecommunications ~~Antennas~~ and minimum separation distances between Telecommunications ~~Antennas~~;
- (vi) describes the Telecommunications Tower's capacity, including number and type of Telecommunications ~~Antennas~~ that can be accommodated; and
- (vii) includes other information necessary to evaluate the request.
- (viii) The site plan/area map included in the application shall also contain a drawing and a description of the lease area for the proposed Telecommunications ~~Antenna~~ including, but not limited to, colors and ~~Screening~~ devices;

- (ix) ~~An affidavit of intent committing the site **Owner**, his successors and assigns and the operator and his successors and assigns to allow the shared use of the Telecommunications Tower and to offer a potential additional user reasonable terms and conditions for co-location. Failure to follow through with this commitment constitutes a violation of this Chapter and may result in the revocation of the permit associated with the site in violation hereof; and~~
- (x) ~~Proof of bonding, as required by Section 20-529(13).~~

(13) Bonding Required

(i) Safety

~~Before a Telecommunications Facility is erected, the operator of the Telecommunications Facility must file with the City Clerk a written indemnification of the City and proof of liability insurance sufficient to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of **Telecommunications Facilities** within the City, both subject to the approval of the Director of Legal Services.~~

(ii) Removal

~~Before a permit is issued, the applicant shall present a bond to the Director of Legal Services in the amount of \$20,000 which shall be available for use by the City for the removal of the Telecommunications Facility should said Telecommunications Tower ever be abandoned. The bond shall contain the following endorsement: "It is hereby understood and agreed that this instrument may not be canceled nor any intention not to renew be exercised until 60 days after receipt by the City, by registered mail, of written notice of such intent."~~

(14) Amateur and **Receive-Only Antennas**

~~This Section shall not govern any Telecommunications Facility that is:~~

- (i) ~~less than 75 feet in **Height**;~~
- (ii) ~~located in the **Rear Yard** of a residentially zoned **Parcel**; and~~
- (iii) ~~Owned and operated by a federally licensed amateur radio operator.~~

~~Telecommunications Towers covered under this Paragraph shall not be available for co-location.~~

20-529 TELECOMMUNICATIONS WIRELESS FACILITIES

(1) Purpose

The Governing Body recognizes that facilitating the development of wireless service technology benefits both the residents and the economic development of the City of Lawrence. The purpose of these standards is to ensure that residents, businesses, and industry within the City enjoy reliable access to wireless telecommunications networks, while, at the same time, safeguarding the health, safety, welfare, and aesthetics of the community. Accordingly, these standards are intended to ensure that the location, installation, construction, and modification of Wireless Facilities within the City comply with all Federal and State laws and regulations and are consistent with the City's Land Development Code.

(2) Definitions

The following words, terms, and phrases, when used in this Section, shall, except where the context clearly indicates otherwise, have the following meanings:

(A) Accessory Equipment means any equipment serving or being used in conjunction with Wireless Facilities or Wireless Support Structures, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables equipment buildings, cabinets and storage sheds, shelters, or similar structures.

(B) Antenna means telecommunications equipment that transmits or receives radio waves necessary for the provision of Wireless Services.

(C) Co-location means the mounting or installation of Wireless Facilities, including Antennas, on a building, structure, Wireless Support Structure, utility pole, or other existing structure for the purposes of transmitting or receiving radio waves for telecommunications purposes.

(D) Disguised Wireless Facility means any Wireless Facility that is integrated as an architectural feature of a structure so that the existence of the Wireless Facility is not readily apparent to the casual observer, or any Wireless Support Structure that is disguised to resemble a tree, flag pole, steeple, clock tower, or other similar building element.

(E) Major Modification means any improvement that results in a substantial change to a Wireless Facility or to a Wireless Support Structure. Major modifications include, but are not limited to increasing the height of the Wireless Support Structure by more than ten feet or ten percent, whichever is greater, expansion of the area of Accessory Equipment, and any similar improvement. Co-location of new Wireless Facilities, including Antennas, on an existing Wireless Support Structure shall not be deemed a Major Modification.

(F) Minor Modification means any improvement that results in some material change to a Wireless Facility or a Wireless Support Structure, but of a level, quantity, or intensity that is less than a Major Modification.

(G) Monopole means a single, free-standing, pole-type structure supporting Wireless Facilities, including Antennas.

(H) Ordinary Maintenance means maintenance to ensure that Wireless Facilities, Wireless Support Structures, and Accessory Equipment are maintained in safe operating condition. Ordinary Maintenance shall include, but not be limited to inspections, modifications of Wireless Facilities and Wireless Support Structures to ensure structural integrity, exchanging Antennas or Accessory Equipment on a like-for-like basis, relocating Antennas already in place, or other similar actions that fall short of being a Minor Modification.

(I) Wireless Facility means any equipment at a fixed location that enables wireless telecommunications between user telecommunications devices and telecommunications networks.

(J) Wireless Service Provider means a provider of Wireless Services.

(K) Wireless Service means “personal wireless services,” “personal wireless service facilities,” and “commercial mobile services” as those terms are defined at 47 U.S.C. § 332(c)(7)(C) and (d), as amended, which are provided to telecommunications devices through the implementation and use of Wireless Facilities.

(L) Wireless Support Structure means any freestanding structure, such as a Monopole, or other self-supporting tower, or other suitable structure designed to support or capable of supporting Wireless Facilities, including Antennas. Wireless Support Structures do not

include telephone poles, electrical utility poles, or any towers used for the distribution or transmission of electrical services.

(3) Approvals Required

(A) Special Use Permit. No new Wireless Facility, no new Wireless Support Structure, no Co-location that results in a Major Modification of an existing Wireless Facility or Wireless Support Structure, and no Major Modification of an existing Wireless Facility or Wireless Support Structure shall be allowed in any zoning district of the City absent the issuance, upon application, of a Special Use Permit in accordance with the procedures established at Section 20-1306 of this Chapter, as amended.

(B) Site Plan Approval. No Co-location that is a Minor Modification of an existing Wireless Facility or Wireless Support Structure and no Minor Modification of an existing Wireless Facility or Wireless Support Structure shall be allowed in any zoning district of the City absent approval, upon application, of a Site Plan in accordance with the procedures established at 20-1305 of this Chapter, as amended.

(4) Terms of Approval; Renewal; Limits

(A) Term. Any Special Use Permit or Site Plan Approval issued hereunder, assuming all conditions of approval are met and maintained, shall be valid for a period of ten years. Any renewal thereof, which shall be subject to administrative approval, shall be for a period of five years. At the time of renewal, the Owner/Applicant shall demonstrate to the Planning Director that the Wireless Facility or Wireless Support Structure remains in compliance with the original conditions of approval.

(B) Limits. Commencing on the date of issuance of any Special Use Permit or Site Plan Approval hereunder, the Owner/Applicant shall have a period of one year in which to commence construction or installation of the Wireless Facility or Wireless Support Structure and shall thereafter diligently pursue construction or installation to its completion. Failure to commence construction or installation within one year of receiving a permit or approval or failure to diligently pursue construction or installation to its completion shall cause the Special Use Permit or Site Plan Approval to lapse and to be deemed null and void.

(5) Application

At the time of application for a Special Use Permit or for Site Plan Review for any Wireless Facility or Wireless Support Structure, the Owner/Applicant shall submit the following:

(A) A completed Application, on a form supplied by the Planning Director, signed by the Owner(s) of the subject property or signed by an Applicant if accompanied by written authorization of the Owner(s) granting to the Applicant the authority to submit the Application in behalf of the Owner.

(B) Elevation drawings showing the height of the proposed Wireless Facility including Antennas (and any lightning rod or lightning arrester), and all Accessory Equipment, including any buildings and structures.

(C) A Site Plan, drawn to scale, including:

(i) the information required by Section 20-1305(f) of the City Code, as amended;

(ii) the location of existing or proposed Wireless Facilities or Wireless Facility Support Structures;

(iii) other existing or proposed structures;

(iv) the location of Accessory Equipment and/or other Accessory Uses;

- (v) the location of access road(s), access road surface materials, and any parking area;
- (vi) the height, location, and construction materials of fences or other barriers;
- (vii) a Landscape Plan, in accordance with Section 20-1001(d) of the City Code, as amended;
- (viii) land elevation contours; and
- (ix) zoning and uses of properties neighboring the subject property.

(D) If the project involves a new Wireless Support Structure, a signed and sealed report from a qualified professional engineer, licensed to practice in the State of Kansas, that includes:

- (i) the height and design of the proposed Wireless Support Structure;
- (ii) the height for all potential mounting positions for Antennas and the minimum separation distances between Antennas;
- (iii) the capacity of the Wireless Support Structure, including the number and types of Antennas that can be accommodated;
- (iv) a statement that the Wireless Support Structure is designed, in accordance with this Section, to collapse upon itself in the event of failure, including the projected fall zone of any such Wireless Support Structure; and
- (v) any other information that may be necessary or requested by the Planning Director to evaluate the Application.

(E) If the project involves a new Wireless Support Structure, the application shall include:

- (i) line-of-sight diagrams or photo simulations showing the proposed Wireless Support Structure against the skyline and viewed from at least three different vantage points within the surrounding area;
- (ii) a statement that the Owner/Applicant considered Co-location, where it considered Co-location, and why Co-location would not meet the Owner/Applicant's needs; and
- (iii) a statement that the proposed Wireless Support Structure will be made available to other Wireless Service Providers for Co-location at commercially reasonable rates, or a statement that the Owner/Applicant is seeking a waiver of the Co-location requirement and why such waiver is being sought.

(F) If the project involves Co-location on an existing structure, a signed and sealed report from a qualified professional engineer, licensed to practice in the State of Kansas, that establishes that the existing building or structure is structurally sound and can safely accommodate the proposed Co-location.

(F) If the project involves a new Wireless Support Structure or a Major Modification of an existing Wireless Support Structure, a fee, not to exceed \$2,000, as established by the Governing Body, which amount shall recapture the City's costs of processing the application.

(G) If the project involves a Co-location or anything else that is not a Major Modification, a fee, not to exceed \$500, as established by the Governing Body, which amount shall recapture the City's costs of processing the application.

(6) General Standards

(A) Co-location:

(i) Wireless Support Structures shall be designed to accommodate at least three Wireless Service Providers. The compound area supporting the Wireless Support Structure likewise shall be of adequate size to accommodate Accessory Equipment for at least three Wireless Service Providers.

(ii) Whenever it is economically and technically feasible, and it is aesthetically appropriate, as determined by the Governing Body, the Planning Commission, or the Planning Director, Disguised Wireless Facilities shall be designed to accommodate the Co-location of other Wireless Service Providers.

(iii) Upon written request of the Owner/Applicant, the Governing Body, the Planning Commission, or the Planning Director may waive the City's Co-location requirements if it is determined, as demonstrated by technical evidence presented by the Owner/ Applicant, that Co-location at the site is non-essential to the public interest, that construction of a shorter Wireless Support Structure with fewer Wireless Facilities, including Antennas, will promote community compatibility or interests, or that Co-location would cause interference with other existing Wireless Facilities.

(B) Building Permits: All new Wireless Support Structures, all Major Modifications of existing Wireless Facilities, and all Accessory Equipment shall not be installed or constructed without the issuance of a Building Permit in accordance with Chapter V, Article 1 of the City Code.

(C) Replacement of Existing Wireless Facilities: The replacement of any existing Wireless Facility or Wireless Support Structure shall require compliance with the terms of this Section and shall require, as may be pertinent, either approval and issuance of a Special Use Permit in accordance with the procedures established at Section 20-1306 of this Chapter, as amended, or approval of a Site Plan in accordance with the procedures established at Section 20-1305 of this Chapter, as amended.

(D) Setbacks:

(i) **Non-residential Zoning Districts.** Unless otherwise provided herein, Wireless Support Structures shall be set back from all property lines a distance equal to fifty percent of the height of the proposed Wireless Support Structure, as measured from its base to its highest point (excluding the height of any lightning rod or lightning arrester). In addition, where the Wireless Support Structure is located on property zoned for non-residential use that is adjacent to property zoned for residential use, the Wireless Support Structure must be setback from any such residential property line a distance equal to the height of the Wireless Support Structure, as measured from its base to its highest point (excluding the height of any lightning rod or lightning arrester). Setbacks for Accessory Equipment and other structures shall be governed by the underlying zoning district.

(ii) **Residential and Mixed-use Zoning Districts.** Unless otherwise provided herein, Wireless Support Structures shall be set back from all property lines a distance equal to the height of the Wireless Support Structure, as measured from its base to its highest point (excluding the height of any lightning rod or lightning arrester). Setbacks for Accessory Equipment and other structures shall be governed by the underlying zoning district.

(iii) **Waiver.** The Planning Commission may recommend and the Governing Body may approve a waiver from these setback requirements if it finds that all of the following conditions are met: **(a)** that the waiver will not adversely affect the

public health, safety, or general welfare of the community; **(b)** that the waiver will not adversely affect the rights of adjacent property owners or residents; **(c)** that strict application of the provisions of this section would constitute unnecessary hardship on the Owner/Applicant; and **(d)** that waiver is appropriate under the circumstances.

(E) Height:

(i) Non-residential Zoning Districts. Unless otherwise provided herein, Wireless Support Structures shall have a maximum height of one hundred fifty feet, measured from the base of the Wireless Support Structure to its highest point (excluding the height of any lightning rod or lightning arrester).

(ii) Residential and Mixed-used Zoning Districts. Unless otherwise provided herein, Wireless Support Structures shall have a maximum height of one hundred twenty feet, measured from the base of the Wireless Support Structure to its highest point (excluding the height of any lightning rod or lightning arrester).

(F) Separation Requirements:

(i) All new Wireless Facilities, except Disguised Wireless Facilities, shall be located a minimum of 1,000 feet from existing Wireless Support Structures. The distance shall be measured from the base of the existing Wireless Support Structure to the base of the proposed Wireless Facility.

(ii) The Planning Commission may recommend and the Governing Body may grant a waiver from the 1,000-foot separation requirement if the Owner/Applicant demonstrates that a waiver will not adversely affect the public health, safety, or general welfare of the community and that strict application of this section would constitute unnecessary hardship.

(7) Design Standards

(A) Access: Paved access shall be provided to all Wireless Facilities, Wireless Support Structures, and Accessory Equipment. The Governing Body, the Planning Commission, or the Planning Director may, upon a finding that it constitutes an unnecessary hardship, waive this requirement. Paved access shall not be required for Co-locations.

(B) Accessory Equipment:

(i) All Accessory Equipment that are buildings, cabinets, storage sheds, and shelters shall be used only to store equipment and other supplies necessary for the operation of the Wireless Facility or Wireless Support Structure. Equipment not used in direct support of such operation shall not be stored on the site.

(ii) All Accessory Equipment that are buildings or structures shall meet all Building design standards, as listed in this Chapter, shall require a Building Permit, and shall conform to Height and Setback restrictions established for the zoning district in which the site is located.

(iii) All Accessory Equipment shall be designed to be compatible with and to blend into its surrounding environment through the use of color, camouflage, screening, landscaping, and architecture.

(iv) Lighting of Accessory Equipment for basic security purposes is permitted. However, such lighting shall be shielded and shall be directed downward. Floodlights are prohibited.

(v) The addition of related equipment to any building or structure that is Accessory Equipment shall not increase the height of said building or structure

(a) more than 20% of the height of the existing building or structure or

(b) more than the maximum height allowed in the zoning district in which the site is located, whichever is less.

(C) Antennas:

(i) No Antenna may be attached to any Wireless Support Structure or Co-located on any other structure, unless the Wireless Support Structure or other structure is at least forty feet in height.

(ii) The addition or Co-location of any Antenna on a Wireless Support Structure or any other structure shall not increase the height of said building or structure

(a) more than 20% or

(b) more than the maximum height allowed in the zoning district in which the site is located, whichever is less.

(iii) Antennas Co-located on existing structures shall not be subject to Setback requirements.

(iv) No Antenna may be Co-located on any structure designated by the City as an historic structure, or on any structure located within an Historic District Overlay District or an Urban Conservation Overlay District unless the Historic Resources Commission first approves the location and the design.

(v) To the extent that it is feasible and the engineer's report demonstrates that the roof is structurally sound and can safely accommodate it, any Accessory Equipment to an Antenna Co-located on an existing structure shall be located on the roof of the existing building or structure. However, said Accessory Equipment shall not occupy more than 25% of the total roof area. Such Accessory Equipment shall be shielded from view from neighboring properties and rights of way.

(D) Cables/Conduit: All cable runs should be through portals and maintained within the Wireless Support Structure. Where cable or conduit is required to be located on the outside of any Wireless Support Structure, the cable or conduit shall be painted or covered by material to match the color of the Wireless Support Structure.

(E) Color: Unless otherwise required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or the City, Wireless Support Structures, excluding Disguised Wireless Facilities, shall have a galvanized gray or light blue finish.

(F) Disguised Wireless Facilities:

(i) A Disguised Wireless Facility must be enclosed, camouflaged, screened, obscured, or otherwise not apparent to the casual observer. A Disguised

Wireless Facility must be integrated into another structure as an architectural facility or must be designed to resemble an object or structure that does not have the appearance of a monopole or other Wireless Facility.

(ii) The Disguised Wireless Facility must meet the requirements of the underlying zoning district, including, but not limited to height, setback, and use restrictions.

(G) Landscaping: The Wireless Facility shall comply with all landscaping requirements of Article 10 of this Chapter and shall be maintained by the Owner/ Applicant. In cases where the property is not visible from adjacent properties or rights of way or where landscaping is not necessary, appropriate, or feasible, the Governing Body, the Planning Commission, or the Planning Director may waive this requirement.

(H) Lighting and Marking: Wireless Facilities and Wireless Support Structures shall not be lighted or marked unless required by the FCC, the FAA, or the City.

(I) Security and Fencing: Ground-mounted Accessory Equipment and related structures shall be secured and enclosed within fencing not less than six feet in height. Fencing shall be constructed with materials that are designed to be compatible with and to blend in to the surrounding areas. Every Wireless Facility shall be protected from trespass by unauthorized persons to discourage climbing of structures.

(J) Signage: No advertising or other display shall be permitted on any Wireless Facility or Wireless Support Structure, unless such is required by the FCC, the FAA , or the City.

(K) Wireless Support Structures:

(i) All new Wireless Support Structures shall be of monopole design. Guyed and lattice towers are prohibited.

(ii) All new Wireless Support Structures located in districts zoned residential or mixed use, or located within 500 feet of any property or district zoned residential or mixed use, shall be Disguised Wireless Facilities as defined in this Section.

(iii) All Wireless Support Structures shall be designed and constructed such that if a failure does occur, the Wireless Support Structure will collapse on itself and will not collapse on structures at or near the site.

(iv) No Wireless Support Structure shall, except during construction, have a platform, crow's nest, or like structure surrounding it or attached to it.

(v) No Wireless Support Structure may be located in a designated Historic District Overlay District or Urban Conservation Overlay District unless the Historic Resources Commission first approves the location and the design.

(8) Final Decision

(A) Time Limits. Within 150 calendar days of receiving an application for a new Wireless Support Structure or within 90 calendar days of receiving any other application hereunder, the City shall:

(i) review the application in light of the standards of this Section and applicable provisions of the Land Development Code;

(ii) make a final decision to approve or disapprove the application;

(iii) advise the Owner/Applicant by written notice of the City's final decision, which final decision shall be supported by written substantial evidence in the record. Such final decision shall be deemed effective on the date of the written notice.

(B) Commencement of Time. The time limits for final decision shall commence upon the City's acceptance of a complete application. If an application is incomplete, the City shall notify the Owner/Applicant within thirty days of its deficiencies and, in such case, the time limits shall not commence until a complete application has been submitted and accepted by the City. Alternatively, the time limits may commence upon a date agreed upon in writing by the City and the Owner/Applicant.

(C) Effect of Lapse of Time. Unless otherwise agreed upon by the Owner/Applicant and the City, an application shall be deemed approved if (i) the City fails to issue a final decision with the time limits established at subsection 7(A) and (ii) the Owner/Applicant provides to the City written notice that the applicable time limits have lapsed.

(D) Appeal. Any party aggrieved by the City's final decision approving or disapproving an application or any party aggrieved by the Owner/Applicant's written notice that the time limits have lapsed may appeal said result to the District Court of Douglas County, Kansas, in accordance with K.S.A. 60-2101(d), as amended.

(9) Miscellaneous Provisions

(A) Abandonment and Removal. Any Wireless Facility or Wireless Support Structure that is not operated for a period of one year shall be deemed abandoned. The Owner/Applicant shall remove any abandoned Wireless Facility or Wireless Support Structure at his, her, or its expense within 180 days after abandonment. If the structure is not removed within that time frame, then the City may remove the structure and, to the extent allowed by law, assess the costs of removal against the property.

(B) Interference. All Wireless Facilities shall be constructed, installed, operated, and maintained in accordance with all applicable federal, state, and local laws, ordinances, and regulations so as not to interfere or cause interference with existing telecommunications, including but not limited to radios, televisions, computers, and City and/or County emergency broadcast systems.

(C) Nonconforming Wireless Facilities. Wireless Facilities and Wireless Support Structures that were legally permitted on or before the effective date of this Ordinance shall be considered lawful nonconforming structures. Major Modifications and Minor Modifications to nonconforming structures shall be permitted in accordance with the provisions of this Section. Replacement of any nonconforming structure shall be with a structure that complies with the provisions of this Section. If any nonconforming facility or structure is damaged by more than 60% of its fair market value, it shall only be replaced by a conforming facility or structure if it is legal to do so.

(D) Ordinary Maintenance. Ordinary Maintenance, as defined herein, shall be exempt from the permitting and approval requirements of this Section.

(10) Exemptions

(A) The provisions of this Section shall not apply to the following:

(i) Any Wireless Facility, including Amateur and Receive-only Antennas, that are:

(a) less than 75 feet in height;

(b) located in the Rear Yard of a residentially zoned Parcel; and

(c) Owned and operated by a federally licensed amateur radio operator.

(d) Wireless Facilities that are exempt under this Subsection shall not be considered, be deemed available, or be used for Co-location.

(ii) Broadcast Towers; and

(iii) Satellite Dishes.

20-1768 TELECOMMUNICATIONS FACILITIES

~~The fixed or permanent site, **Structure**, equipment, and appurtenances used to send radio frequency transmissions. Such facilities include, but are not limited to: **Antennas**, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, **Buildings**, electronics and switching equipment.~~

(1) Telecommunications **Antenna**

~~A Telecommunications Facility for such services as cellular telephone, personal communication services, enhanced/specialized mobile radio, and commercial paging services, that is attached to a pole, tower, or other **Structure** including, but not limited to, a **Structure** that can accommodate the future installation of two or more **Antenna** systems.~~

(2) Telecommunications **Tower**

~~A Telecommunications Facility for such services as cellular telephone, personal communication services, enhanced/specialized mobile radio, and commercial paging services, that consists of a new tower, monopole, or other unattached **Structure** erected to support wireless communication **Antennas** and connecting appurtenances.~~

20-1768 WIRELESS FACILITIES

Any equipment at a fixed location that enables wireless telecommunications between user telecommunications devices and telecommunications networks. This can include Disguised Wireless Facilities, Monopoles, accessory equipment, antenna and co-location.

(1) Wireless Facility – Antenna means telecommunications equipment that transmits or receives radio waves necessary for the provision of Wireless Services.

(i) Co-location means the mounting or installation of Wireless Facilities, including Antennas, on a building, structure, Wireless Support Structure, utility pole, or other existing structure for the purposes of transmitting or receiving radio waves for telecommunications purposes.

(2) Wireless Support Structure means any freestanding structure, such as a Monopole, or other self-supporting tower, or other suitable structure designed to support or capable of supporting Wireless Facilities, including Antennas. Wireless Support Structures do not include telephone poles, electrical utility poles, or any towers used for the distribution or transmission of electrical services.

(i) Monopole means a single, free-standing, pole-type structure supporting Wireless Facilities, including Antennas.

(ii) Disguised Wireless Facility means any Wireless Facility that is integrated as an architectural feature of a structure so that the existence of the Wireless Facility is not readily apparent to the casual observer, or any Wireless Support Structure that is disguised to resemble a tree, flag pole, steeple, clock tower, or other similar building element.

(3) Accessory Equipment means any equipment serving or being used in conjunction with Wireless Facilities or Wireless Support Structures, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables equipment buildings, cabinets and storage sheds, shelters, or similar structures.