

## **ARTICLE 15**

### **WIRELESS TELECOMMUNICATIONS FACILITIES**

#### **SECTION 1500 - Purpose and Intent**

The purpose and intent of this Article is to regulate the placement, construction, and modification of Wireless Telecommunications Facilities in order to minimize its negative impact on the character and environment of the County and to protect the health, safety and welfare of the public. The provisions of this ordinance will establish a reasonable and efficient process for the review and approval of applications, and assure an integrated and comprehensive review of the environmental impacts of such facilities. The County recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to both the County and its residents. Therefore, it is not the County's intent to unreasonably interfere with the development of the competitive wireless telecommunications marketplace in Dearborn County. Specifically the purposes of these regulations are:

1. To regulate the location of Wireless and Cellular Telecommunications Towers and Facilities within the County;
2. To protect residential areas and land uses from potential adverse impacts of Wireless and Cellular Telecommunications Towers and Facilities;
3. To minimize adverse visual impacts of Wireless and Cellular Telecommunications Towers and Facilities through careful design, placement, landscaping, preservation of natural vegetation and innovative camouflaging techniques and a reduction of the need for new Towers;
4. To promote and encourage shared use and co-location of Wireless and Cellular Telecommunication Facilities as a primary option rather than encouraging the construction of additional single-use towers;
5. To avoid potential damage to adjacent properties caused by Wireless and Cellular Telecommunications Towers and facilities by ensuring such structures are soundly and carefully designed, constructed, screened, modified, maintained, and removed;
6. To the greatest extent feasible, ensure that Wireless and Cellular Telecommunications Towers and Facilities are compatible with surrounding land uses.

#### **SECTION 1502 - Definitions**

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number

and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, 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.
2. **“Applicant”** means any Wireless service provider submitting an Application for a permit for Wireless Telecommunications Facilities.
3. **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a permit for Wireless Telecommunications Facilities.
4. **“Antenna”** means 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 County’s siting, building and permitting authority.
5. **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services without increasing the height of the Tower or structure.
6. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
7. **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
8. **“County”** means the County of Dearborn, Indiana.
9. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
10. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
11. **“Free Fall Area”** means the area in the shape of a circle surrounding the tower whose radius is the height of the Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure.

12. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.
13. **“Modification”** means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
14. **“NIER”** means Non-Ionizing Electromagnetic Radiation
15. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
16. **“Personal Wireless Facility”** - See definition for ‘Wireless Telecommunications Facilities’.
17. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
18. **“Conditional Use Permit”** means a permit granted by the Board of Zoning Appeals permitting Wireless Telecommunications Facilities as required by this ordinance.
19. **“State”** means the State of Indiana.
20. **“Stealth”** or **“Stealth Technology”** means 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.
21. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
22. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.

23. **“Temporary”** means, temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
24. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Tower”** and **“Tower”** and **“Telecommunications Site”** and **“Personal Wireless Facility”** means 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 County’s siting, building and permitting authority, excluding those used exclusively for the County’s fire, police or exclusively for private, non-commercial 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 ordinance.

#### **SECTION 1504 - Telecommunications Facilities Not Requiring A Permit**

Wireless Telecommunications Facilities which are exempt from the regulations of this Chapter include the following listed below. If a proposed facility exceeds the provisions listed below the facility will no longer be deemed exempt from the provisions of these regulations and will become subject to all requirements of this Article. The location of all structures permitted below shall be regulated according to the requirements of accessory structures within this Ordinance.

1. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the occupant of a residential parcel on which the radio or television antenna is located with an antenna height not exceeding seventy-five (75) feet;
2. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed fifty (50) feet;
3. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed fifty (50) feet;
4. A ground or building receive-only radio or television satellite dish antenna, which does not exceed eight (8) feet in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridge line of the primary structure on said parcel;
5. Citizen band radio antennas operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of adoption of these regulations;

6. Mobile Services providing public information coverage of a news event of a temporary nature;
7. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless phones, garage door openers. Similar exempt devices shall be determined by the Plan Commission;
8. Government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems and similar uses, with heights not exceeding fifty (50) feet;

### **Section 1506 - General Requirements for all Wireless Telecommunication Facilities**

The design and construction of all Wireless Telecommunications Facilities shall meet the following standards:

1. All 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 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.
2. All Wireless Telecommunications Facilities 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 County or other governmental entity or agency having jurisdiction over the applicant.
3. All Wireless Telecommunications Facilities shall notify the County of any intended modification of a Wireless Telecommunication Facility and shall apply to the County to modify the height, relocate or rebuild a Wireless Telecommunications Facility.
4. The owner, and his/her successors in interest, of a Tower shall negotiate in good faith for the shared use of the 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.

Failure to abide by the conditions outlined above may be grounds for revocation of the permit for the Tower.

5. In order to better inform the public, in the case of a new Telecommunication Tower requiring a Conditional Use Permit, 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 (3) 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 seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM 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. The balloon test is not required if the Telecommunication Tower is a Permitted Use as defined by the specific zoning district of this ordinance.

#### **SECTION 1508 - Required Permit**

Any new Wireless Telecommunications Facility, or existing Wireless Telecommunications Facility that is making a visible modification, is required to obtain the proper permit that is in accordance with the requirements of this Article. The individual zoning district articles indicate whether a Wireless Telecommunications Facility is a Principally Permitted Use or Conditional Use, which determines the required process. All Principally Permitted Uses shall follow the Site Plan Review procedure as detailed in Article 23 of this Ordinance. A Conditional Use shall follow the Conditional Use procedure as detailed in Article 3. Applications for the modification of an existing structure that does not increase the overall height shall be considered a Principally Permitted Use. If it is determined that the application meets the purpose and intent of this Article, the application shall be approved. If it is determined that the application does not meet the purpose and intent of this Article, the application shall be denied with the specific reasons detailed. No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the County, and a Permit has been issued. The County may at its discretion delegate or designate other official agencies to accept, review, analyze, evaluate and make recommendations with respect to the approval, or denial, of proposed Wireless Telecommunications Facilities. Any permit issued for Wireless Telecommunications Facilities shall not be assigned, transferred or conveyed without the express prior written notification to the County.

## **SECTION 1510 - Pre-Application Meeting**

Prior to the submittal of an application, it is required that a pre-application meeting take place between the Applicant and the County, or agency designated by the County that will review the application. The purpose of this meeting is to address potential issues, which will help expedite the review and permitting process. The pre-application meeting shall include a site visit, if there has not been a prior site visit for the proposed site. It shall also be determined at the pre-application meeting, the number of copies necessary for the applicant to submit a completed application. The applicant shall pay all costs that are associated with the preparation and attendance of the pre-application meeting.

## **SECTION 1512 - Application Requirements**

All Applications for Wireless Telecommunications Facilities, or any modification of such facility that increases the overall height of the tower, shall comply with the requirements set forth in this section. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the County. The Applicant shall be required to perform the following actions:

- ◆ Sign the application with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. Any individual signing the application shall be an authorized individual of the Applicant. The landowner, if different than the Applicant, shall also sign the Application.
- ◆ Submit the following statements in writing:
  - "The proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations."
  - "The construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State."
- ◆ With any Application for a new tower, the Applicant must submit written documentation that a commitment has been made by commercial service provider to occupy space on the proposed tower. Any application for a new tower that does not have such a commitment shall not be accepted.

All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. Where a certification is called for, such certification shall bear the signature and seal of a ***Professional Engineer licensed in the State of Indiana***. At the discretion of the County, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction. The Application shall include the following information:

1. Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
2. The Name, address and phone number of the person preparing the report;
3. The Name, address, and phone number of the property owner, operator, and Applicant, and to include the legal form of the Applicant;
4. The Postal address and tax map parcel number of the property;
5. The Zoning District or designation in which the property is situated;
6. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
7. The Location of nearest residential structure;
8. The Location, size and height of all structures on the property which is the subject of the Application;
9. The Location, size and height of all proposed and existing antennae and all appurtenant structures;
10. The Type, locations and dimensions of all proposed and existing landscaping, and fencing;
11. 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;
12. The make, model and manufacturer of the Tower and Antenna(s);
13. 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;
14. The frequency, modulation and class of service of radio or other transmitting equipment;
15. The actual intended transmission and the maximum effective radiated power of the Antenna(s);
16. Direction of maximum lobes and associated radiation of the Antenna(s);
17. Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
18. Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
19. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
20. 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.

21. 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 County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection.
22. The Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum, in cases where the proposed location may not be consistent with the surrounding area. Based on the results of the Analysis, including the Visual addendum, the County 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.
23. The Applicant shall furnish a Visual Impact Assessment, which shall include the following:
  - a. A “ Zone of Visibility Map” which shall be provided in order to determine locations from which the Tower may be seen.
  - b. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the County 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.
  - c. An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as it relates to the need or appropriateness of screening.
24. The Applicant shall submit a written report demonstrating that the proposed site of the Wireless Telecommunications Facilities complies with the priorities as described in Section 1514.
25. An Application for a new tower shall require the Applicant to submit a written report of the existing Towers and other suitable structures as described in Section 1528.
26. Certification that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
27. The Applicant shall demonstrate and provide in writing that the facility is sited to be in the least visually intrusive location reasonably possible, and thereby having the least adverse visual effect on the environment, its character, the existing vegetation, and on the residences in the area. It shall also be demonstrated that all areas and related structures located at the base of the proposed Wireless Telecommunications Facilities are effectively screened from all public right-of-ways and adjoining property lines.
28. 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.

29. Any and all representations made by the Applicant to the County 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 County.

The Applicant shall submit to the County 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 within ten (10) miles of the proposed site.

### **SECTION 1514 - Location of Wireless Telecommunications Facilities**

Wireless Telecommunications Facilities shall be located, sited and erected in accordance with the following priorities, with one (1) being the highest priority and nine (9) being the lowest priority.

1. On existing Towers or other structures without increasing the height of the tower or structure;
2. On property zoned Manufacturing Three (M-3)
3. On property zoned Manufacturing Two (M-2)
4. On property zoned Manufacturing One (M-1)
5. On property zoned Highway Interchange (H-1)
6. On property zoned General Business (B-2)
7. On property zoned Restricted Business (B-1)
8. On property zoned Agricultural (A)
9. On property zoned Residential (R)

If the proposed site is not 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 explanations shall include the reason or reasons why such a permit should be granted for the proposed site and a description of the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

Sites of higher priority may not be by-passed by stating the proposed location is the only site leased or selected. Co-location on an existing structure must be presented as an option for all requests. If such option is not proposed, it must be explained to the reasonable satisfaction of the County 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.

Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a harmful effect on the nature and character of the community and neighborhood.

Notwithstanding that a potential site may be situated in an area of highest priority, or highest available priority, the County 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 County, or employees of the service provider or other service providers;
5. Conflicts with the provisions of this Ordinance.

### **SECTION 1516 - Tower Design and Construction**

The design and construction of all Wireless Telecommunications Facilities shall meet the following standards:

1. The foundation and attachments shall meet all local, County, State and Federal structural requirements for loads, including wind and ice loads.
2. All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
3. 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 be required by the County.
4. 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.
5. The Applicant shall examine the feasibility of designing a proposed Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least five (5) 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:

- a. The foreseeable number of FCC licenses available for the area;
- b. The kind of Wireless Telecommunications Facilities site and structure proposed;
- c. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- d. Available space on existing and approved Towers.

### **SECTION 1518 - Height of Telecommunications Tower(s)**

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 County, to the extent practicable, unless good cause is shown.

No Tower constructed after the effective date of this Ordinance, 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, County ordinance, code, rule or regulation.

### **SECTION 1520 - Appearance and Visibility of Wireless Telecommunications Facilities**

All Wireless Telecommunications Facilities and Antennas shall be designed to minimize the adverse visual impacts of its surroundings. Specifically:

1. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
2. Towers shall be galvanized and 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 Ordinance.
3. If lighting is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

### **SECTION 1522 - Security of Wireless Telecommunications Facilities**

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.

### **SECTION 1524 - Signage**

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) 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.

### **SECTION 1526 - 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 ten percent (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. Structures that are not being used in conjunction with the Wireless Telecommunications Facilities, with the exception of accessory structures, shall not be located within the Free Fall Area unless otherwise approved by the Board of Zoning Appeals.

### **SECTION 1528 - Shared use of Wireless Telecommunications Facilities**

Locating on existing Towers or others structures without increasing the height, shall be preferred by the County, as opposed to the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within four (4) miles of the location 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 can not be used.

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

## **SECTION 1530 - Retention of Expert Assistance and Reimbursement by Applicant**

The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted.

An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant.

The total amount of the funds needed for consulting purposes may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

## **Section 1532 - Annual NIER Certification**

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

## **Section 1534 - Liability Insurance**

The holder of a Permit for Wireless Telecommunications Facilities shall secure and at all times public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Permit in amounts as set forth below:

- Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
- Workers Compensation and Disability: Statutory amounts.

All insurance policies are subject to the following requirements:

1. The Commercial General liability insurance policy shall specifically include the County and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insured.
2. 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.
3. The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
4. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Permit, the holder of the Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.
5. Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

### **Section 1536 - Indemnification**

Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, 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 County, 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 County, 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 County. An indemnification provision will not be required in those instances where the County itself applies for and secures a permit for Wireless Telecommunications Facilities.

### **Section 1538 - Removal of Wireless Telecommunications Facilities**

The holder of a permit for a Wireless Telecommunications Facility, or its successors or assigns, shall dismantle and remove such facilities, and all associated structures, from the site and restore

the site to as close to its original condition as is possible, if at any time any of the following apply:

1. Wireless Telecommunications Facilities that have been abandoned for a period of ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period.
2. 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 permit, or any other necessary authorization.
4. Board of Zoning Appeals determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.

#### **Section 1540 - Waiver of Requirements**

Any requirement of this Article may reasonably be waived by the Board of Zoning Appeals if it is determined that such action is warranted given the nature of an individual project and such action will serve to preserve the purpose and intent of these regulations. The Planning Director, or designee, may grant a waiver for Principally Permitted Uses, if the waiver does not affect the location, height or appearance of the Wireless Telecommunications Facilities. Any waiver related to the location, height or appearance must be approved by the Board of Zoning Appeals, which must follow the Variance procedure as defined in Article 3 of this Ordinance.

#### **Section 1542 - Adherence to State and/or Federal Rules and Regulations**

The holder of a permit for a Wireless Telecommunications Facility 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, unless specific relief has been granted by the proper agency. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

In the event 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 an issued permit for Wireless Telecommunications Facilities, the holder of such permit shall conform to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.