

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: May 3, 2021

Agenda Item: 7E	Prepared by: L. Suzanne Pritchard, PLA, AICP
Agenda Section: New Business: Ordinance. First Reading	Date: April 28, 2021
Subject: Proposed amendments to Chapter 23, Zoning, of the Code of Ordinances of North Myrtle Beach, South Carolina [ZTX-21-2]	Division: Planning and Development

**Background:**

Increasing proliferation of wireless communications facilities combined with new federal and state legislation regulating these facilities has created a need to revise the City’s Zoning Ordinance regarding small cell wireless facilities. A companion ordinance regulating wireless communications facilities in the public rights-of-way passed City Council at the April 5, 2021 meeting.

**Proposal:**

Staff is proposing a text amendment to the Zoning Ordinance specifying the standards and methodology for installation of wireless telecommunications facilities in the City of North Myrtle Beach. This ordinance has been prepared by national experts in the wireless communication industry with input and review by city staff to ensure safe small cell facilities that minimize negative impacts to the community. A proposed ordinance has been attached for Council’s review.

**Planning Commission Action:**

The Planning Commission conducted a public hearing on April 20, 2021 and voted unanimously to recommend approval to City Council as submitted. There was no public comment.

**Recommended Action:**

Approve the ordinance on first reading

Reviewed by Division Head

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**ORDINANCE**

**AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, BE AMENDED BY REVISING CHAPTER 23, ZONING, ARTICLE II. - ZONING DISTRICTS AND DEVELOPMENT REGULATIONS, ARTICLE VII. - GENERAL AND SUPPLEMENTAL REGULATIONS, AND BY ADDING ARTICLE XI. - WIRELESS TELECOMMUNICATIONS FACILITIES, OF SAID CODE.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED, THAT:**

**Section 1:**

That *Section 23-28.(4) – Development standards*., be amended to read as follows (*new matter underlined, deleted matter struck-through*):

Sec. 23-28.(4) - *Development standards*:

		Manufacturing	All Other <sup>‡</sup>
Minimum lot area (square feet)		2 acres	10,000
Minimum Yards	Front	50 feet	25 feet
	Side	20 feet	10 feet <sup>2 1</sup>
	Read	30 feet	20 feet
Maximum impervious surface ratio		75%	75%
Maximum height of buildings		45 feet	50 feet
Maximum height of signs		30 feet	30 feet

Notes:

~~<sup>‡</sup> Wireless personal telephone transmission towers subject to the following: A tower without an engineered breakpoint is to have a setback in all yards of one (1) foot for each foot in height of the entire structure; a tower with a designed breakpoint is to have a setback in all yards equal to the distance between the designed breakpoint and the top of the structure; screening around the entire compound shall be with a vegetative screen in accordance with planting requirements for vegetative screens described in the landscape requirements, and at least a six (6) foot high security fence.~~

~~<sup>2 1</sup> A five-foot side yard setback shall be required for substandard lots of record.~~

**Section 2:**

That *Section 23-110. – Certain public service uses exempt.*, be amended to read as follows (*new matter underlined, deleted matter struck-through*):

**Sec. 23-110. - Certain public service uses exempt.**

*Uses:* Due to the nature of certain public/private service uses and the need to locate such uses in certain areas of the city irrespective of prevailing district regulations, the following list of uses may be established in any zoning district, provided such uses meet all the

dimensional requirements of the district, except height and minimum lot size, within which they will be located:

- Post office.
- Police and fire stations.
- Sewerage treatment facilities.
- Water treatment and storage facilities.
- Telephone exchange and repeater stations.
- Radio and TV station masts.
- Electrical transformers.

~~Wireless personal telephone transmission antennae on public water storage facilities, and towers or monopoles located on city-owned public property, or new and existing vertical structures accommodating "micro-cell," "small cell," or "distributed antenna system" equipment, as those terms are commonly used by the Federal Communication Commission, located on city-owned public property or in the public rights-of-way, each of which is subject to engineering approval and a city lease or license agreement; and subject to the facility being capable of accommodating essential public communication equipment. All lease or license agreements entered into by the city for private use of these transmission tower facilities shall include provisions for extensive visual and noise buffering for all supporting equipment associated with the operation and maintenance of the facilities. The goal should be elimination of any potential negative impact to surrounding properties.~~

~~Wireless personal telephone transmission antennae and accessory equipment located atop flat-roofed buildings (that have a height of one hundred twenty (120) feet or greater), provided the antennae project no more than six (6) feet above and the accessory equipment does not protrude above the lowest parapet wall.~~

~~Wireless personal telephone transmission antennae located atop non single-family or duplex structures that are less than one hundred twenty (120) feet in height, provided antennae are constructed to utilize a stealth or concealment design that mimics architectural features consistent with the building design and/or is complementary to the building architecture. Any supporting equipment required at ground level shall also be screened from public view utilizing the following:~~

- ~~i. Color palette consistent with the building's architecture,~~
- ~~ii. Four-sided privacy fence or concealment wall one (1) foot above height of equipment, and~~
- ~~iii. Evergreen landscaping screen planted around the perimeter with minimum planting size of three (3) feet in height and a mature size capable of fully concealing enclosure.~~

Figure 1. Example of personal telephone transmission antenna mounted on building less than one hundred twenty (120) feet in height

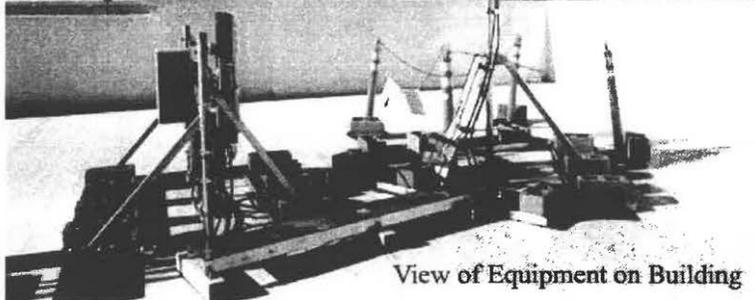
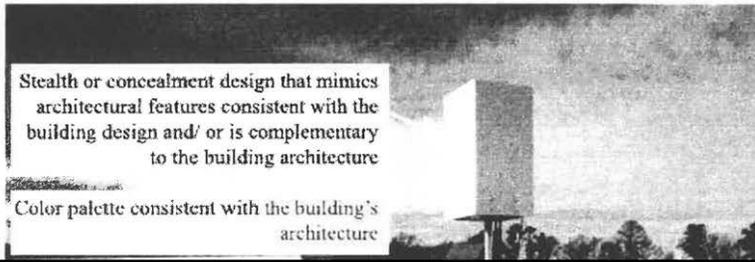


Figure 2. Example of personal telephone transmission antenna mounted on building less than one hundred twenty (120) feet in height, as viewed from the ground

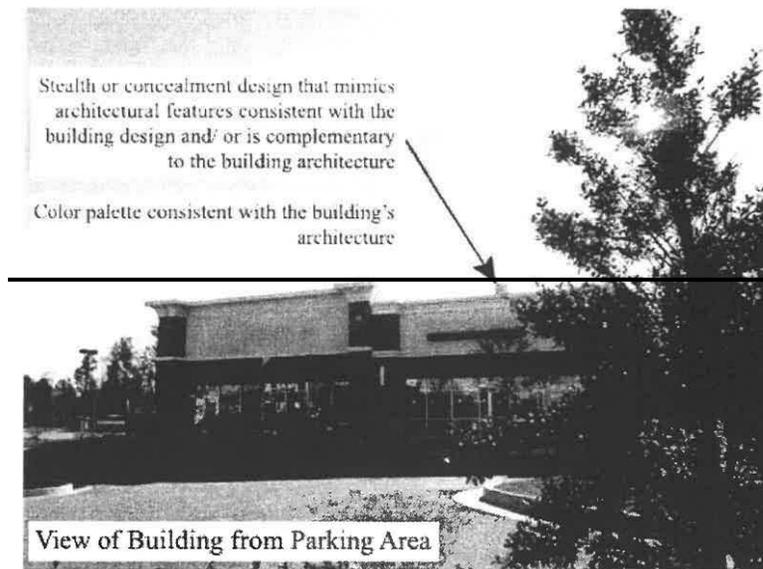
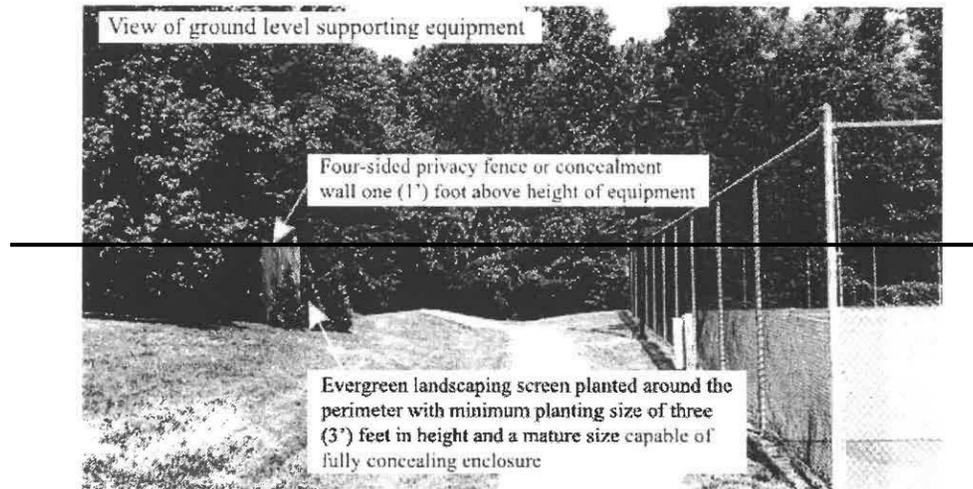


Figure 3. Example of ground level supporting equipment



~~Wireless personal telephone equipment for transmission when it is necessary to locate away from an existing water storage facility or monopole antennae. Spoilage easements and basins for deposition of dredged materials from area waterbodies.~~

### **Section 3:**

That *Article XI – WIRELESS TELECOMMUNICATIONS FACILITIES*, be added to read as follows (*new matter underlined*):

## **ARTICLE XI. - WIRELESS TELECOMMUNICATIONS FACILITIES**

### **Sec. 23-163. – Enactment and exceptions.**

- (1) Pursuant to the authority conferred by Chapter 29 of Title 6 of the South Carolina Code of Laws, 1976, as amended and supplanted by all applicable laws, and to balance the interests of the residents of the city, wireless telecommunications providers, and wireless telecommunications customers in the siting of wireless telecommunications facilities within the city so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carriers that does not unreasonably discriminate among providers of functionally equivalent wireless services and shall not prohibit or have the effect of prohibiting the provision of wireless services, and so as to promote the city as a proactive city in the availability of personal wireless telecommunications service, the city council does ordain and enact into law the following regulations to be incorporated as new Chapter 23, Article XI - Wireless Telecommunications Facilities, sections 23-163 to 23-193 of the city code.
- (2) These regulations shall apply to the siting of all wireless telecommunications facilities, including small wireless facilities, as both terms are defined in section 24-2, except that approval for the siting of small wireless facilities in public rights of way, specifically, shall be governed by the Small Cell Ordinance in Chapter 24 of the city code.

## **ARTICLE XI.1. – IN GENERAL**

### **Sec. 23-164. - Title and objectives.**

This Article XI shall be known and may be cited as the “Wireless Telecommunications Facilities Ordinance of the City of North Myrtle Beach, South Carolina.”

As authorized in Title 6, Chapter 29 of the Code of Laws of South Carolina, the general purposes of this Article XI are to guide development in accordance with existing and future needs and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the community with reasonable consideration for the following specific purposes, where applicable:

- (a) To protect the city’s existing built and natural environment by promoting compatible design standards for wireless telecommunications facilities;
- (b) To protect residential areas and lands by minimizing adverse impacts of wireless telecommunications facilities;
- (c) To minimize the total number of vertical support structures including towers, in the community by encouraging the joint use of new and existing vertical support structures by multiple carriers;
- (d) To ensure that vertical support structures are located in areas that minimize adverse impacts;
- (e) To ensure telecommunication facilities are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
- (f) To enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;
- (g) To consider the public health and safety of our community;
- (h) To avoid damage to adjacent properties caused by a vertical support structure’s failure through careful engineering and locating of such structures, and;
- (i) To encourage the attachment of antennas to existing vertical support structures, wherever, and whenever possible.

As presented in the city’s 2018 comprehensive plan, the city’s economy is dependent on the retail and service industries supported by tourism. As such, it is a further objective of the city to ensure that tourists, residents, businesses, and public safety operations have reliable access to wireless communications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to the city’s zoning, planning, and design standards.

It is the further objective of this Article XI to ensure the continued compliance with existing city code, as well as applicable federal statutes and the rules and regulations of the FCC, including, but not limited to, the provisions of Title 47 U.S. Code Section 253—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services;

Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018 (the "small wireless facility order") and the Federal Communications Commission Final Rules attached to the Small wireless facility order as Appendix A, both as may be amended in the future (the "FCC final rules").

**Sec. 23-165. - Definitions.**

For the purpose of this Article XI, certain words and terms are herein defined. Words used in the present tense shall include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "shall" is mandatory and not directory. Any words not herein defined shall carry their customary dictionary definition.

*Accessory equipment:* Any equipment serving or being used in conjunction with a wireless facility or vertical support structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, electric meter, concealment elements, network demarcation equipment, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and cable, conduit, coax, vertical and horizontal runs for the provision of power, fiber, telephone, or other services.

*Administrative approval:* Approval granted by the administrator to an applicant after administrative review, which shall be demonstrated by the issuance of all applicable building permits.

*Administrative review:* An evaluation of an application by the designated administrator.

*Administrator:* This designated person that reviews an application under this Article XI as set forth in section 23-173 of this Article XI.

*Antenna:* Any exterior apparatus designed for the purpose of emitting, transmitting, or receiving radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services.

*Applicant:* The owner of, or any other person with a recognized interest in, the wireless facility to be sited, or its authorized agent, who submits an application under this Article XI. The applicant may be a wireless services provider or a wireless infrastructure provider.

*Application for a wireless facility:* An application submitted by an applicant, including all ancillary building permit applications, for the siting of a wireless facility or for the maintenance, modification, operation, or replacement of an existing wireless facility. In the proper context, an application for wireless facility may be referred to as an application.

*Applicable code:* FCC, FAA and such codes as, but not limited to, uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in S.C. Code 1976, Title 6, Chapter 9, as modified from time to time, local amendments to those

codes authorized by state law, and local codes or ordinances which impose requirements set forth in articles II and III of this Chapter, including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

*Backhaul or Backhaul Network:* The lines, or other network devices such as, but not limited to, microwave, that connect a provider's telecommunications facility to one or more applicant or carrier network elements, switching offices, long-distance providers, internet backbone, or the public switched telephone network.

*Base Station:* The equipment, including ancillary accessory equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass the vertical support structure.

(i) The term base station includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term also includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term also includes any vertical support structure other than those structures that, at the time the relevant application is filed with the city under this Chapter, supports or houses equipment described in items (i) through (ii) above, which have been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the vertical support structure was not built for the sole or primary purpose of providing such support.

(iv) The term base station does not include vertical support structures that, at the time the relevant application is filed with the city under this Chapter, does not support or house equipment described in items (i)-(ii) of this definition.

*Cable, communications, fiber or electric easement or encroachment:* An easement or encroachment, granted to a cable or video service provider, a communications service provider (including, without limitation, a telephone utility), a fiber optics cable services provider, or an electric services provider created or authorized by state law to provide such services, that runs parallel to and abuts or is within a rights of way and is occupied by existing utility poles or vertical support structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting municipal street lights, or security lights. The term cable, communications, fiber, or electric easement excludes easements for service drops or lines connecting the end user's premise to the cable, communications, fiber, or electrical provider.

*City:* City of North Myrtle Beach, South Carolina.

*City code:* The Code of Ordinances enacted by the City.

City-owned pole or vertical support structure: (i) a utility pole owned or operated by the city, including a utility pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, (ii) a pole or similar vertical support structure owned or operated by the city in a covered area that supports only wireless facilities, and/or (iii) decorative poles owned or operated by the city.

Collocate: The mounting or installation of transmission equipment, together with the associated base station equipment, on a vertical support structure that is existing at the time the relevant application is filed with the city under this Chapter, whether or not such vertical support structure is already in use for wireless services, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Concealment elements: Any design feature, including, but not limited to, painting to match existing landscaping or structures, landscaping, and/or shielding requirements and restrictions on proportions, or physical dimensions in relation to the surrounding area or existing vertical support structures that are intended to make a wireless facility or accessory equipment attached to any vertical support structure less visible or invisible to the casual observer.

County: Horry county.

Day: A calendar day unless the last day for the city or an applicant to act under this Article XI ends on a weekend, holiday, or time when all but city emergency services are closed.

Decorative pole: A pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed, according to nondiscriminatory municipal practices.

Deployable: A portable, self-contained wireless telecommunications facility that can be moved to a specified location or area and provide wireless services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.

Existing or pre-existing: In existence at the time an application is filed.

FCC: The federal communications commission.

FCC final rules: The Federal Communications Commission final rules attached as Appendix A to the small wireless facility order, as may be amended from time to time.

Governing body: The city council for the city.

Light pole: A pole upon which is installed a light standard or other illumination device designed to illuminate a limited specific area.

Monopole: A vertical support structure purpose-built for telecommunications purposes consisting of a single pole, that is self-supported and constructed without guy wires or ground anchors.

Permit: A written authorization, in electronic or hard copy format, required to be issued by an authority to initiate, continue, or complete (i) the siting of a vertical support structure upon which a wireless facility is to be collocated, or (ii) the collocation of a wireless facility on an existing vertical support structure, or (iii) the modification or replacement of an existing vertical support structure upon which a wireless facility is collocated, none of which is located within a public right of way.

Permittee: The responsible person, its' successors and assigns or approved authorized agent, who is required to comply with any administrative approval or permit issued under this Article XI. When the applicant is the authorized agent for the person who owns the federal license to broadcast from the wireless facility, then the permittee shall also be such owner.

Person: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the city.

Pole: A type of vertical support structure, such as a utility pole, light pole, traffic pole, decorative pole, flagpole, or other similar pole, made of wood, concrete, metal, or other material.

Planning director: The director of the department of Planning and Development for the City of North Myrtle Beach or his or her designee.

Planning department: The department of Planning and Development for the City of North Myrtle Beach.

Private Rights-of-way or ROW: That area on, below, or above a roadway, highway, street, sidewalk, or alley that is dedicated to, managed, or controlled by a private person.

Rights-of-way or ROW or city rights-of-way or public rights-of-way: That area on, below, or above a public roadway, highway, street, sidewalk, or alley that is dedicated to, managed, or controlled by the city, county, or the state, but not including a federal interstate highway that is located within the city limits but is not controlled or maintained by the city.

Site: An approved location, by permit, for the siting of a wireless telecommunication facility.

Site plan: A detailed proposal which includes detailed engineering drawings, construction drawings and other documentation as required by the administrator, from

time-to-time, of proposed improvements related to the siting, maintenance, modification, operation, or replacement of a wireless facility within the city limits.

*Small wireless facility or small cell:* A wireless facility that meets all of the following conditions: (i) the vertical support structure on which antenna facilities are mounted is 50' or less in height, or is no more than 10 percent taller than other adjacent existing vertical support structures of similar type and character, or is not extended to a height of more than 10 percent above its preexisting height as a result of the siting of new wireless facilities; and (ii) each antenna (excluding associated antenna equipment) is no more than 6 cubic feet in volume; and (iii) all electronic and ancillary equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and (iv) the wireless facility does not require vertical support structure registration; and (v) the facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b). The following types of associated accessory equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation equipment provided by third party interconnection networks that have been approved by the city under separate permit or license, approved ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

*Small wireless facility order:* The Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018, as may be amended from time to time.

*State:* State of South Carolina.

*Stealth facility:* A telecommunications tower employing concealment elements.

*Tower or telecommunications tower:* A specific type of vertical support structure, such as, but not limited to, a lattice tower, guyed tower, or monopole tower, built for the sole or primary purpose of supporting FCC-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that telecommunications tower. This definition is intended to be consistent with that definition set forth in 47 C.F.R. 1.40001(b)(9).

*Transmission equipment:* Equipment that facilitates transmission of FCC-licensed or authorized wireless communication services, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular or backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Transmission pole:* A pole that is used to carry high voltage electric transmission (as opposed to distribution) lines.

Utility pole: A wood pole or similar vertical support structure of any material that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including city-owned poles. Such term shall not include structures supporting only wireless facilities or decorative poles.

Vertical support structure: A pole, tower or telecommunications tower, base station, or other above-ground structure including, but not limited to, buildings, water tanks, light poles, flag poles, and utility poles, whether or not the structure has an existing wireless facility, that is used or will be used for the provision of wireless service (whether on its own or comingled with other types of services).

Wireless telecommunication facility or wireless facility or telecommunications facility: Any equipment and physical assets owned by a permittee or by a permittee's end-users and under the control of the permittee, at a fixed location, that enables wireless services between end-user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, antennas, satellite transmit and receive equipment, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities, accessory equipment, aboveground and underground fiber optic and coaxial cable, conduit, wires, and any vertical support structure whether existing, replacement or new, and whether referred to singly or collectively, that would not be sited under Chapter 24 of the code. The term does not include the wireline backhaul facilities, coaxial or fiber optic cable that is between wireless vertical support structures or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna. This term also shall exclude any tower and antenna under one hundred (100) feet in total height which is privately owned and operated by an amateur radio operator licensed by the federal communications commission.

Wireless services: Any services provided using licensed or unlicensed spectrum, including the use or provision of Wi-Fi, whether at a fixed location or mobile, delivered to the public using wireless facilities.

Wireless service(s) provider: A person who provides wireless services.

Writing: Any writing requirement under this Article XI shall be performed via electronic notice through the city's public website.

**Secs. 23-166—23-170. - Reserved.**

## **ARTICLE XI.2. - SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES**

**Sec. 23-171. - General.**

The siting of wireless communications facilities within the city limits, and the maintenance, modification, operation, and replacement of such facilities, shall be

considered either a permitted use, a conditional use, or a special exception as indicated in the table below. Uses not specifically listed below are prohibited.

<u>Installation Type</u>	<u>Zoning Districts</u>	<u>Administrative Review</u>
<u>Vertical Support Structures</u>	<u>LI</u>	<u>Permitted Use</u>
<u>Wireless facilities on rooftops</u>	<u>LI</u>	<u>Permitted Use</u>
<u>Eligible facilities requests that do not substantially change the physical dimensions of such facility</u>	<u>All zones</u>	<u>Permitted Use</u>
<u>Vertical support structures and wireless facilities on rooftops</u>	<u>All zoning districts that are not LI, R-1, R-1A, or R-1B</u>	<u>Conditional Use</u>
<u>Eligible facilities requests that substantially change the physical dimensions of such facility</u>	<u>All zones</u>	<u>Conditional Use</u>
<u>Vertical support structures and wireless facilities on rooftops</u>	<u>R-1, R-1A, R-1B</u>	<u>Special Exception</u>

**Sec. 23-172. – Administrative Approval Required**

No person shall install, modify, or remove a vertical support structure within the city limits, that is to be used for or is currently being used for the operation of a wireless telecommunications facility, without first obtaining administrative approval under this Article XI.

**Sec. 23-173. – Types of Administrative Review**

- (1) Conditional Use. Use shall be approved by the zoning administrator, subject to appeal to the board of zoning appeals, when the application is complete, meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited, and there is sufficient evidence that the siting of the wireless facility will meet the following conditions:
  - (a) That the use will be an enhancement to the character and sense of place of the area in which it is to be located;
  - (b) That the use has taken measures to not be injurious to adjoining property, including, but not limited to controlling of all elements that produce light and noise, so as not to create nuisance conditions off-site;
  - (c) That the use will contribute to the economic vitality and promote the general welfare of the community;
  - (d) That the use is compatible to the purpose of the district as set forth in Chapter 23, zoning; and
  - (e) That the use will not discourage or negate the use of surrounding property for use(s) permitted by right.

- (2) Permitted Use. Use shall be approved by the planning department when the application is complete and meets all applicable provisions of Article XI.3 of and all applicable development standards for the zoning district in which the facility is sought to be sited.
- (3) Special Exception. Owing to their potential negative impact on the community and surrounding areas, the siting of a wireless facility may be approved by the board of zoning appeals in accordance with the process set forth in section 23-160 when the application is complete, meets all applicable provisions of Article XI.3 and all applicable development standards for the district in which the facility is sought to be sited, and there is sufficient evidence that the siting of the wireless facility will meet the following conditions:
- (a) That the special exception will be in substantial harmony with the area in which it is to be located;
  - (b) That the special exception will not be injurious to adjoining property;
  - (c) That the special exception will contribute to the economic vitality and promote the general welfare of the community; and
  - (d) That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.

In approving a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgement, will enhance the siting of the telecommunications facility. In addition, the board of zoning appeals shall either approve the application for the special exception as presented, approve the application with specified modifications, or disapprove the application.

- (4) Variances. The board of zoning appeals may grant a variance from the requirements of this Article XI in accordance with and pursuant to section 23-161(2) when strict application of the provisions of this Wireless Telecommunications Facilities ordinance would result in unnecessary hardship and the board makes and explains in writing the following findings:
- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
  - (b) The conditions do not generally apply to other property in the vicinity;
  - (c) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
  - (d) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

### **Sec. 23-174. - Public/Private Use.**

Subject to the additional requirements below and following review by the planning department, the following wireless communication facilities used for public/private use shall be approved as a permitted use in all zoning districts when the application is complete and meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited:

- (a) Antennas on public water storage facilities, and other vertical support structures located on city-owned public property, subject to engineering approval and the entry into a city lease or license agreement and subject to the facility also being capable of accommodating essential public communication equipment; and
- (b) New and existing vertical support structures accommodating "micro-cell," "small cell," or "distributed antenna system" equipment located on city-owned public property, subject to engineering approval and a city lease or license agreement and subject to the facility also being capable of accommodating essential public communication equipment or services.

### **Sec. 23-175. – Small Cell in Private ROW.**

Following review and approval by the City's planning commission under code Chapter 20 – Land Development Regulations, small wireless communication facilities may be allowed in private ROWs when the application is complete and meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited.

## **ARTICLE XI.3. – REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS FACILITIES**

### **Sec. 23-176. – General.**

- (1) *General design for towers.* The height of the vertical support structure shall be no greater than the height limit for the zoning district for which it is sought to be sited and the following requirements shall apply:
  - (a) Except where inconsistent with other provisions of the city code, new telecommunication towers shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
    - (i) Telecommunications towers 60 to 100 feet shall support at least 2 wireless service providers;
    - (ii) Telecommunications towers greater than 100 feet but less than 150 feet shall support at least 3 wireless service providers; and
    - (iii) Telecommunications towers greater than 150 feet in height shall support at least 4 wireless service providers.
  - (b) Except where inconsistent with other provisions of this code, the equipment compound area surrounding the telecommunications tower must be of

sufficient size to accommodate base station and accessory equipment for the appropriate number of wireless service providers in accordance with section 24-20(1)(a), above.

(2) Visual Impact.

- (a) All telecommunications towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable federal or state agency, be painted a neutral color or painted and/or textured to match the existing vertical support structure so as to reduce visual clutter.
- (b) Where feasible, wireless telecommunications facilities shall be placed directly above, below or incorporated with existing vertical design elements of a building to help in camouflaging.
- (c) Wireless telecommunication facilities shall not substantially detract from the ocean view or from property listed in the National Register of Historic Places, or from a road or inlet, which has been officially designated as a scenic road or inlet, or areas designated as protected by any federal agency, state agency or the city.

(3) Base station and accessory equipment requirements.

- (a) When a stealth design is used, accessory equipment shall be incorporated into the stealth facility. Otherwise, accessory equipment shall be located, designed, and/or screened to blend with the existing natural or as-built surroundings to reduce the visual impact as much as technically feasible and shall be compatible with neighboring land uses and the character of the community.
- (b) In all instances, base station equipment shall be located, designed, and/or screened to blend with the existing natural or as-built surroundings to reduce the visual impact as much as technically feasible and shall be compatible with neighboring land uses and the character of the community.
- (c) Ground-based equipment shall be elevated at least 2 feet above the base-flood elevation.

(4) Fencing. Except where the requirement would defeat concealment elements, a telecommunications tower, and all accessory equipment or base station, shall be secured and enclosed within a fence that is between 6 and 10 feet in height. Fencing shall be screened in accordance with section 24-18(7) below.

(5) Lighting. No illumination is permitted on wireless telecommunications towers unless required by the FCC, FAA or state or federal agency of competent jurisdiction or unless necessary for air traffic safety. If lighting is required or necessary, the planning director may review the available lighting alternatives within the appropriate regulatory guidelines and approve the design that would cause the least disturbance to the surrounding uses and views. All lighting shall

- comply with those requirements for lighting on buildings set forth in section 123 of Chapter 23 of the code.
- (6) *Advertising.* No advertising is permitted on wireless telecommunications facilities.
- (7) *Screening.* Landscaping or screening shall be used to screen the view of the wireless telecommunications facility from adjacent public ways, public property, or residential property. Ground-level landscaping shall be at least 6 feet in height and meet those requirements set forth in article V of Chapter 23, zoning.
- (8) *Maintenance impacts.* Equipment at a wireless communications facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector of local street traffic, access for maintenance vehicles shall be exclusively by means of the collector or local street.
- (9) *Principal, accessory and joint uses.*
- (a) Accessory equipment or base stations that are used in direct support of a wireless telecommunications facility shall be allowed but shall not be used for offices, vehicle storage or other outdoor storage. Mobile or immobile equipment that is not used in direct support of a wireless telecommunications facility shall not be stored or parked on the site of such facility.
- (b) Wireless telecommunications facilities may be located on sites containing another principal use in the same buildable area provided that such facilities do not reduce parking or landscaping requirements for the principal use.
- (10) *Setbacks.* New vertical support structures, and their associated ground-based equipment, must comply with existing setback requirements for the zoning district in which the new vertical support structure is sought to be sited. Setbacks are required on all sides of the vertical support structure to prevent its fall zone or collapse from encroaching onto adjoining properties. The fall zone shall be determined by an engineer certified by the state in a letter which includes the engineer's signature and seal, provided that the city shall reserve the right to obtain independent review of such engineering.
- (11) *Nuisances.* Wireless telecommunications facilities, including, without limitation, their power source, ventilation and cooling systems, shall be operated at all times within the city noise ordinance in section 12-72 of Chapter 12, health and sanitation.
- (12) *Underground utility zones.* Wireless telecommunications facilities may collocate on existing transmission poles subject to those requirements set forth in section 19-13 of Chapter 19, streets, sidewalks and other public ways.
- (13) *Building codes and safety standards.* To ensure the structural integrity of a vertical support structure, the owner of such structure shall ensure that the structure is maintained in compliance with standards contained in the applicable,

local building codes and the applicable standards for such structures, as amended, from time to time. Upon the request of the director of public works, and within 90 days of such request, owners of vertical support structures shall have an inspection of its vertical support structure and shall provide the findings of such inspection to the director of public works. Inspections shall be conducted by a qualified, independent engineer licensed to practice in the state and the results of such inspection shall be provided to the director of public works. Failure to comply with this section 23-176(13) shall result in a fine of up to \$1,000 per day and will cause all outstanding and future permit requests related to the vertical support structure to be temporarily frozen until compliance has been met.

- (14) Regulatory compliance. All wireless telecommunications facilities must meet or exceed current standards, guidelines, and regulations of the Federal Aviation Administration, the FCC and any other agency of the state or federal government with the authority to regulate wireless telecommunications facilities. If such standards and regulations are changed, then the owners of the wireless telecommunications facilities governed by this ordinance shall bring such facilities into compliance with such revised standards and regulations by the dates established by the agency promulgating the standards or regulations.

**Sec. 23-177. - Additional requirements for new vertical support structures.**

- (1) New vertical support structures that are proposed in those zoning districts other than LI, must be self-supported and incorporate stealth or camouflaging components, to the maximum extent feasible so as to completely shield the wireless facility's antenna, radio, and cables from a casual observer. Self-supported lattice towers shall be permitted in zoning district LI.
- (2) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
- (3) At new vertical support structure locations, the design of the base station and any related structures shall, to the extent possible, be located to, and use materials, colors, textures, screening, and landscaping that will, blend the vertical support structure and related facilities to the natural setting and as-built environment.
- (4) A permit for a new vertical support structure to be located within 1,000 feet of an existing telecommunications facility that is not a small wireless facility, shall not be issued until the applicant supplies documentation showing that the existing telecommunications facility will not meet applicant's structural specifications and technical design requirements, or that a co-location agreement could not be obtained at a reasonable market rate. The applicant shall be required to provide evidence to the administrator to support applicant's claims regarding reasonable market rates.
- (5) Excluding small wireless facilities, no more than 1 vertical support structure may be sited per acre of any lot.

- (6) Permittee shall allow future wireless service providers, including public and quasi-public agencies, using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a new vertical support structure (i) unless specific technical or structural constraints prohibit said co-location, or (ii) if future wireless service providers, or other potential future users refuse to pay reasonable compensation for collocation. Permittee and future collocating wireless service providers, and other potential users, shall provide a mechanism for the construction and maintenance of shared facilities and vertical support structures and shall provide for equitable sharing of costs and expenses in accordance with industry standards.
- (7) All telecommunication towers shall be designed and constructed so as to withstand winds in accordance with ANSI/EIA/TIA 222 (latest revision) standards as have been adopted by the city.

**Sec. 23-178. - Roof-mounted wireless communication facilities.**

- (1) Wireless communications facilities sited atop flat-roofed buildings shall not project more than 8 feet in height above the lowest parapet wall, except that wireless facilities may be mounted on the side of roof-top structures such as elevator shafts and mechanical buildings provided that the top of such facilities do not extend above such structure.
- (2) With every rooftop installation, the wireless facility must be screened or constructed to utilize a stealth or concealment design that mimics architectural features consistent with the building design and/or is complimentary to the building architecture so that the wireless facilities are not readily apparent to the casual observer from ground level.
- (3) Base station or accessory equipment required at ground level shall comply with yard set-back requirements and shall be screened from public view utilizing the following:
- (a) Color palette consistent with the building's architecture; and either
  - (b) Four-sided privacy fence or concealment wall 1-foot above height of equipment; or
  - (c) Evergreen landscaping screen planted around the perimeter with minimum planting size of 3 feet in height and a mature size capable of fully concealing enclosure.
- (4) All roof-mounted antenna installations shall be designed, engineered and installed in accordance with ANSI/EIA/TIA 222 (latest revision) standards as have been adopted by the city. Antenna and equipment mounting hardware and platforms shall be physically attached to the roof or building structure, designed, and engineered, as if the wireless facility was part of the floor immediately below the roof level. Structural loading calculations must include all current existing roof loading, including but not limited to, HVAC equipment (as modified over time), additional existing carriers (if any), and other mechanical

or ancillary equipment. Ballast or skid mounting of wireless facilities will not be allowed on a permanent basis.

**Sec. 23-179. - Building, utility pole and light pole mounted wireless communications facilities.**

(1) *Stealth techniques preferred.*

- (a) Unless this requirement is not technologically feasible, wireless facilities mounted to new or modified vertical support structures must incorporate the wireless facility's antenna, radio, and cables inside the vertical support structure so that these items are not visible to the casual observer.
- (b) When the requirements of subsection (a) above cannot be met, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the vertical support structure so as to make the antenna and related equipment as visually unobtrusive, or invisible, as possible.

(2) *Placement on existing utility poles.*

- (a) This section applies to utility poles that are located outside of public rights of way.
- (b) Antennas associated with a wireless telecommunications facility may be placed on an existing utility pole, colored to match or complement the color of the utility pole, and mounted in as unobtrusive a manner as technically feasible and incorporating concealment elements where possible. Except where the utility or owner of the pole prohibits it, the antenna shall be placed in a shroud at the top of the utility pole, with the shroud of the same circumference as the utility pole at the point of attachment. Except for such designs as may be included in any pre-approved design catalogue, pole-top antennas (including attachment hardware) shall not extend more than 6 feet above the existing utility pole. Where the antenna cannot be placed at the top of the utility pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on utility poles in the same corridor and with antennas and cross-arms sized and mounted as close to the centerline of the pole to minimize visual clutter. The volume of the antennas on any utility pole shall, not exceed 6 cubic feet in size.
- (c) Only accessory equipment required to operate the wireless facility may be attached to the utility pole, or ground-mounted in compliance with this code. If requested, permittee must show that such equipment is required to operate the wireless facility and that no other placement is feasible or less intrusive.
- (d) Other base station and permitted, utility pole-mounted accessory equipment shall be mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Equipment shall be flush mounted to the pole, with all required cabling neat and concealed in vertical conduits. In no event shall any portion of the telecommunications facility be ground-mounted without the city's express approval, which approval may be

conditioned on concealing the facilities in a manner appropriate to the location. Unless base station equipment is within the utility pole to maximize concealment elements, the equipment must be designed so that it is not readily apparent from all angles of view and, mounted at a height such that it is out of pedestrian sight lines and placed on the pole in such a way as to minimize the impact on adjoining property.

- (e) Neither the wireless communications facility, nor the vertical support structure, shall interfere with pedestrian or vehicular movement or storage.
- (f) All attachments to new or modified utility poles must have a clearance of at least 7 feet above ground level for all sidewalks and a clearance of at least 18 feet above ground level for all roads.

(3) *Mounted on light poles.*

- (a) This section applies to light poles that are located outside of public rights of way.
- (b) Wireless communications facilities may be placed on existing light poles subject to the conditions that:
  - (i) The design and placement of all elements of the telecommunications facility is consistent with the design of the light pole to which it will be attached;
  - (ii) The design and placement of all elements of the telecommunications facility will not adversely affect the overall design of the area within which the light pole is located; and
  - (iii) The city must know who will own and control the light pole, and who is responsible for emergency response, maintenance, and ensuring public safety, including NEIR radiation standards as outlined in OET bulletin 65.
- (c) All attachments to new or modified light poles must have a clearance of at least 7 feet above ground level for all sidewalks and a clearance of at least 18 feet above ground level for all parking areas and roads.

(4) *Replacement.* For purposes of this section, if an existing utility or light pole must be replaced it may be replaced provided that the replacement pole meets all applicable development standards for the zoning district in which the facility is sought to be sited, it meets other applicable requirements of this section and:

- (a) In the case of the utility pole, the overall height of the pole, measured from ground level to the highest point on the wireless communications facility, does not increase by more than 6 feet, and the diameter measured at 6 feet from the butt, does not increase by more than 2 inches; and
- (b) In the case of the light pole, its overall height, measured from ground level to the highest point on the wireless communications facility, does not increase by more than 6 feet, and the design, height and proportions remain consistent with design of the light pole that is being replaced. In addition, all lighting shall comply with section 21-15 – Lighting, of the city code.

**Sec. 23-180. – Temporary and emergency installations.**

- (1) A deployable may be operated in any zoning district for a period of not more than 120 days, when operated in connection with a special event after issuance of a permit based upon an administrative review under this Article XI. A deployable, operated in conjunction with a special event, shall meet reasonable setback requirements determined by stated permit conditions, shall meet uniform fire code requirements, and shall be removed within 72 hours of completion of the event.
- (2) A deployable may be operated in any zoning district after a declaration of an emergency or a disaster by the city and after issuance of a permit based upon administrative review under this Article XI.

**Sec. 23-181. – Modifications to pre-existing wireless telecommunication facilities.**

- (1) Collocations and Modifications (Eligible Facilities Request per 47 C.F.R. §1.6100).
  - (a) Notwithstanding any other provisions of this article, the administrator shall grant administrative approval and may not deny applications for any modifications to a pre-existing wireless telecommunications facility that does not substantially change the physical dimensions of such facility.
  - (b) A modification shall be determined to be a substantial change to the physical dimensions of the subject wireless communications facility if the modification meets any of the following criteria:
    - (i) For vertical support structures that are not located in the public rights of way, it increases the height of the vertical support structure by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, or, for other existing wireless telecommunications facilities, it increases the height of such facilities by more than 10% or more than 10 feet, whichever is greater;
      - a. Changes in height should be measured from the original vertical support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the telecommunications tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act, Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).
    - (ii) For wireless telecommunications facilities that are not located in the public rights of way, it involves adding an appurtenance to the body of such facility that would protrude from the edge of the wireless telecommunications facility by more than 20 feet, or more than the width of the vertical support structure at the level of the appurtenance, whichever is greater; for other wireless telecommunications facilities, it involves adding an appurtenance to the body of such facility that would protrude

from the edge of such facility by more than 6 feet;

(iii) For any existing wireless telecommunications facility, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets;

(iv) It entails any excavation or deployment outside the site;

(v) It would defeat the concealment elements of the pre-existing wireless telecommunications facility; or

(vi) It does not comply with restrictions associated with initial approval of the wireless facility such as, but not limited to, number of antenna or volume of equipment when initially approved.

(2) *Collocation on and modifications to pre-existing wireless telecommunications facilities that are physically substantial.*

(a) Modifications not defined in section 24-23(1), above, shall be considered physically substantial.

(b) A pre-existing vertical support structure may be substantially modified or reconstructed to accommodate the collocation of additional antennas under the following conditions:

(i) A telecommunications tower shall be the same type as the existing telecommunications tower, unless the telecommunications tower is replaced by a monopole not more than 48 inches in diameter; and

(ii) When an existing vertical support structure is not over 50 feet in height, it may only be replaced by another alternative vertical support structure that does not exceed 50 feet in height;

(iii) When a vertical support structure that is not a telecommunication tower is replaced with a telecommunication tower to accommodate a physically substantial collocation, only 1 vertical support structure may remain on the zone lot; and

(iv) Antennas may be attached to an existing vertical support structure that is accessory to a police station, fire station or hospital, and said structure may be substantially modified to allow this attachment without increasing the height of the vertical support structure.

(3) *Substantial modifications to vertical support structures that are not in conformance.* Antennas may be attached to an existing vertical support structure that is not in conformance, and such vertical support structure may be substantially modified with the following limitations:

(a) The vertical support structure is a telecommunications tower, and is of the same type as the existing telecommunications tower, unless the telecommunications tower is replaced by a monopole or other stealth facility not more than 48 inches in diameter; and

(b) The telecommunications tower, with the attached additional antenna as substantially modified, must meet the requirements of article III of this

Chapter.

**Sec. 23-182. - Pre-existing telecommunications facilities/non-conforming uses.**

- (1) All wireless telecommunications facilities operative on the date this ordinance was enacted that do not already comply with the provisions of this Article XI, shall be allowed to continue their present usage as a non-conforming use and shall be treated as a non-conforming use in accordance with article VIII of the city zoning code. Routine maintenance, including replacement of structural elements such as diagonal bracing or antenna and equipment of like construction and height, shall be permitted on such existing wireless telecommunications facilities. New construction, including the addition of new antenna and equipment other than routine maintenance shall comply with the requirements of this ordinance.
- (2) A wireless telecommunications facility that has received city approval as of the date this ordinance was enacted, in the form of either a building permit or special use exception but has not yet been constructed or placed in operation shall be considered an existing telecommunications facility so long as such approval is current and not expired.

**ARTICLE XI.4. APPLICATION PROCESS FOR TELECOMMUNICATION FACILITIES**

**Sec. 23-183. - Application procedures.**

All applications for a building permit or special use permit for any wireless telecommunications facility filed pursuant to this article IV shall be in an electronic form, as it may be amended from time to time by the planning director. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly and the city will honor such designation to the extent permitted by law.

**Sec. 23-184. – Application requirements.**

Each applicant must provide all information requested in the application materials when applying for a building permit, special use permit or other permit or variance pursuant to this Chapter, and all required information and certifications must be submitted for an application to be considered complete.

**Sec. 23-185. - Timelines for review of applications for wireless telecommunication towers.**

- (1) Initial review/notification of incompleteness. The planning director must determine whether an application for the siting of a new wireless telecommunications tower is complete within 30 days of receiving such application. If an application is incomplete, the planning and development department must notify the applicant, in writing, that the application is incomplete and specifically identify the missing documents or information that the applicant

- must submit to render the application complete. An application is incomplete if it omits or withholds any required information or fails to provide information in sufficient detail to determine whether the work will be performed in accordance with and will result in a vertical support structure that complies with all applicable code, and other applicable laws. The applicant shall have 30 days to respond to a notice of an incomplete application. If the applicant responds, but the resubmission remains incomplete, the planning director shall notify the applicant in writing that the application remains incomplete within 30 days of the resubmission, and also identify the missing documents or information that the applicant must submit to render the application complete. Any resubmission that remains incomplete after 10 days of this second notice by the planning director will be deemed withdrawn.
- (2) *The timing of a final decision.* Once an application is deemed complete, the administrator shall have 90 days for applications for collocations (regardless of whether the vertical support structure has previously been zoned for wireless facilities) and 150 days for new construction in which to render a decision. These timeframes commence once an application is submitted; however, a notice of an incomplete application and an incomplete resubmission tolls the clock on that date that such notice is provided to the applicant until that date upon which the application is resubmitted.
- (3) *Tolling agreement.* Notwithstanding the time requirements set forth herein, the planning director may enter into an agreement with any applicant extending the time for action on any application, where such an extension is permitted under applicable law.

#### **Sec. 23-186. - Approval or denial of applications.**

- (1) The administrator shall approve any application for a new wireless telecommunications facility when the administrator determines that the application complies with the applicable requirements of section 23-184 and Article XI.3. Otherwise, the applications may be denied.
- (a) *Notification of decision.* The administrator shall notify the applicant in writing of the final decisions, and if any application is denied, specify the basis for a denial, including citations to federal, state, or local code provisions or statutes on which the denial was based. Any decision by the administrator denying a request to place, construct, or modify a telecommunications facility shall be in writing and supported by substantial evidence in a written record. Decisions to approve or deny an application are final but subject to appeals as set forth in article X of the city's zoning code.
- (b) *Appeals.* Any decision adverse to the applicant must be appealed in accordance with the processes described in article X of the city's zoning code after the issuance of the decision, except that: appeals of a decision rendered by the planning department or the zoning administrator shall be taken to the zoning board of appeals; appeals of a decision by the board of zoning appeals or the planning commission shall be taken to the circuit court. In each case

where there is a claim by the applicant that the denial of the application will prohibit or have the effect of prohibiting the provision of wireless services within the meaning of 47 U.S. Code Section 253(a)—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services, as further set forth in the small wireless facility order and the FCC final rules, the board of zoning appeals shall hear and determine the appeal applying the standards set forth in this Article, and those standards set forth in the small wireless facility order and the FCC final rules to determine if the denial of an application results in an effective prohibition of service. To the extent that an applicant makes a claim that any preliminary denial will result in an effective prohibition within the meaning of 47 U.S. Code Section 253(a) or 47 U.S. Code Section 332(c)(7), such claim must be supported by testimony and presented by persons with the requisite knowledge, credentials and qualifications to make and establish such facts to prove the claim.

- (2) *Expedited review for eligible vertical support structures.* The notice of incomplete submissions and tolling practices under section 24-30(1) shall apply to this section. Upon submission of a complete application for collocation on or modification of a pre-existing telecommunications tower, the planning director shall approve, or approve with conditions, the application within 60 days. Conditions of approval may include compliance with previously imposed conditions of approval, generally applicable building, structural, electrical, and safety codes or other laws, including this Code, codifying objective standards reasonably related to health and safety. Any approval shall be operative, and any permit issued under this subsection shall remain in effect only so long as federal law, 47 U.S.C. 1455, and the FCC regulations established under 47 CFR 1.6100 require the approval of an eligible facilities request as defined therein. By approval, the city solely intends to comply with a requirement of federal law and not to grant any property right or interests except as compelled by federal law.

## **ARTICLE XI.5. EFFECT OF ADMINISTRATIVE APPROVAL/ADDITIONAL REQUIREMENTS**

### **Sec. 25-187. - Effect of permit; assignment.**

- (1) Administrative approval of an application will be evidenced by the issuance of the applicable building permits. The issuance of a permit authorizes the permittee to undertake only those certain activities specified in the approved application and its accompanying permits, subject to the requirements of this article V.
- (2) No permit issued this Article XI is divisible or assignable, except that a permittee may assign a permit to its parent company or subsidiary, or the parent of or subsidiary of a parent company, or to any entity which acquires all or substantially all of the permittee's assets in the city's market by reason of a merger, acquisition or other business reorganization.
- (3) The grant of any permit under this Article XI shall not be deemed as a certification by the city of the wireless telecommunications facility's compliance with all applicable codes.

**Sec. 25-188. - Additional requirements.**

- (1) *Applicant's expense.* All costs incurred by an applicant or permittee in connection with its compliance with, or enjoyment of, this Article or any permit issued under this Article XI shall be borne by the applicant or permittee and not by the city. In addition, prior to the issuance of a permit under this Article XI, the applicant or permittee shall reimburse the city for expenses, including engineering and specialized consulting, that the city deems necessary to facilitate its review of any application under this Article XI, subject to any limitations imposed by federal or state law.
- (2) *Duration.* Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Article XI shall be valid for a period longer than 12 months unless the administrator and permittee agree to a reasonable extension and all required fees are paid for the then-current term.
- (3) *No waiver of other permits and authorizations.* All work performed within the city limits shall be in accordance with all applicable standards and applicable codes and shall be done under the general supervision of the public works department. Nothing in this Article or any permit issued to an applicant hereunder shall be construed as a waiver of any laws, regulations, or rules of the city or of the city's right to require the applicant to secure the appropriate permits or authorizations, or to pay the applicable fees associated with the same.
- (4) *Radio frequency emissions.* Without limiting the other provisions of this Article, any person operating a wireless telecommunications facility must cease its operations if it is not in compliance with FCC regulations governing radio frequency emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other order, ruling or regulation permits it to continue to operate. The approval of an application under this Article XI is not intended to insulate the permittee from any claim or any remedy based on radio frequency emissions. Upon the request of the planning director, each permittee shall submit an annual report identifying applicable standards and the measured emissions from each wireless telecommunications facility sited under this Article XI. The report shall not be treated as confidential and shall be available to the public upon request.

**Sec. 25-189. – General maintenance.**

- (1) *Standard.* The permittee shall maintain the telecommunications facilities in a good condition and maintain a neat and orderly appearance in compliance with all applicable laws, codes, permits, and authorizations.
- (2) *Self-help.* The city may, from time-to-time, require the permittee to perform reasonable maintenance or conduct reasonable repairs to the wireless facility. If, within 30 days after written notice of such requirement to perform maintenance or

repair, the city may undertake the requested maintenance and/or repairs and charge the permittee reasonable and documented cost of such maintenance or repairs.

- (3) Payment of costs. Any costs including expenses charged by the city to the permittee under any provision of this Article shall be paid within 30 days. The city may maintain an action to recover the costs of the repairs, including the payment of reasonable attorneys' and consultant fees, if not timely paid.
- (4) Condition/failure to act. The permittee shall keep the facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the city gives the permittee written notice of a failure by the permittee to maintain the facilities under this subsection (4), the permittee shall use its best efforts to remedy such failure within 30 days after receipt of such written notice. If the permittee fails to perform its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

#### **Sec. 25-190. - Graffiti.**

The permittee shall at all times keep and maintain the telecommunications facilities free of all graffiti located thereon. If city notifies the permittee that graffiti is located anywhere on the wireless telecommunications facility, the permittee shall remove the graffiti within 30 days of the written notice. If the permittee defaults in its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

#### **Sec. 25.191. - Emergency notification.**

The permittee shall provide the director of public works with a twenty-four (24) hour emergency telephone number from which a representative of the permittee, not voice mail or a recording, responsible for the maintenance and operation of the wireless facility can be contacted in the event of an emergency. The permittee shall respond immediately to address a reported emergency.

#### **Sec. 23-192. – Removal of wireless telecommunications facility for non-compliance.**

All wireless telecommunications facilities shall be maintained in compliance with standards contained in applicable building and technical codes to ensure the structural integrity of such facilities. If, upon inspection by the building official, any such wireless facility is determined not to comply with the code standards or to constitute a danger to persons or property then upon notice being provided to the permittee and the owner of the property, if such owner is different, such permittee shall have up to 90 days to bring such facility into compliance. In the event such wireless facility is not brought into compliance within 30 days, the city may provide notice to the permittee or operator of the facility requiring the wireless telecommunications facility to be removed. The city may seek to have such facility removed regardless of the owner's or permittee's intent to operate such

facility and regardless of any permits, federal, state or otherwise, which may have been granted. The city may pursue all legal remedies available to it to ensure that such facility is removed. Delay by the city in acting shall not in any way waive the city's right to act.

**Sec. 23-193. - Abandoned telecommunications towers.**

- (1) Any wireless telecommunications facility that is not operated for a continuous period of 6 months shall be considered abandoned, whether or not the permittee or operator of the facility intends to make use of it or any part of it. The said permittee or operator of the abandoned facility shall be under a duty to remove the abandoned wireless telecommunications facility. If such wireless facility is not removed within 90 days of receipt of notice from the city of such abandonment, the city may remove such wireless telecommunications facility and place a lien upon the property for the costs of removal. The city may pursue all legal remedies available to it to ensure that such abandoned facilities are removed. Delay by the city in acting shall not in any way waive the city's right to act. The city may seek to have the wireless telecommunications facility removed regardless of the permittee's or operator's intent to operate the wireless telecommunications tower and regardless of any permits, federal, state or otherwise, which may have been granted. As used in this subsection (1), the word "operate" means used in a manner that is consistent with the current permitted use granted.
- (2) If the owner of an abandoned telecommunications facility wishes to resume use of such abandoned facility, the owner first must apply for and receive all applicable permits and meet all of the conditions of this ordinance as if such telecommunications facility was a new facility.

**Section 4:**

That the North Myrtle Beach Planning Commission has provided the required public notice of this request and has held the necessary public hearings in accordance with applicable State Statutes and City Ordinances.

DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 5-3-2021  
SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
City Manager

ORDINANCE: 21-21

**7D. ZONING TEXT AMENDMENT ZTX-21-2:** City staff has initiated an amendment to the city’s Zoning Ordinance establishing a process of reviewing and approving small cell facilities.

**Background**

Increasing proliferation of wireless communications facilities combined with new federal and state legislation regulating these facilities has created a need to revise the City’s Zoning Ordinance regarding small cell wireless facilities. A companion ordinance regulating wireless communications facilities in the public right-of-way passed City Council at their April 5 meeting.

**Proposed Changes**

Staff is proposing a text amendment to the Zoning Ordinance specifying the standards and methodology for installation of wireless telecommunications towers in the City of North Myrtle Beach. This ordinance has been prepared by national experts in the wireless communication industry with input and review by city staff to ensure safe small cell facilities that minimize negative impacts to the community.

The proposed amendment addresses two existing sections in *Chapter 23, Zoning*, and would appear in the Ordinance as follows (deleted matter struck). The additional material for the ordinance is presented as a supplement to this report and creates a new article in the Zoning Ordinance: *Article XI. – Wireless Telecommunications Facilities*.

**Sec. 23-28.(4) - Development standards:**

		Manufacturing	All Other <sup>1</sup>
Minimum lot area (square feet)		2 acres	10,000
Minimum Yards	Front	50 feet	25 feet
	Side	20 feet	10 feet <sup>2 1</sup>
	Read	30 feet	20 feet
Maximum impervious surface ratio		75%	75%
Maximum height of buildings		45 feet	50 feet
Maximum height of signs		30 feet	30 feet

Notes:

<sup>1</sup> ~~Wireless personal telephone transmission towers subject to the following: A tower without an engineered breakpoint is to have a setback in all yards of one (1) foot for each foot in height of the entire structure; a tower with a designed breakpoint is to have a setback in all yards equal to the distance between the designed breakpoint and the top of the structure; screening around the entire compound shall be with a vegetative screen in accordance with planting requirements for vegetative screens described in the landscape requirements, and at least a six (6) foot high security fence.~~

<sup>2 1</sup> A five-foot side yard setback shall be required for substandard lots of record.

**Sec. 23-110. - Certain public service uses exempt.**

*Uses:* Due to the nature of certain public/private service uses and the need to locate such uses in certain areas of the city irrespective of prevailing district regulations, the following list of uses may be established in any zoning district, provided such uses meet all the dimensional requirements of the district, except height and minimum lot size, within which they will be located:

- Post office.
- Police and fire stations.
- Sewerage treatment facilities.
- Water treatment and storage facilities.
- Telephone exchange and repeater stations.
- Radio and TV station masts.

Electrical transformers.

~~Wireless personal telephone transmission antennae on public water storage facilities, and towers or monopoles located on city-owned public property, or new and existing vertical structures accommodating "micro-cell," "small cell," or "distributed antenna system" equipment, as those terms are commonly used by the Federal Communication Commission, located on city-owned public property or in the public rights-of-way, each of which is subject to engineering approval and a city lease or license agreement; and subject to the facility being capable of accommodating essential public communication equipment. All lease or license agreements entered into by the city for private use of these transmission tower facilities shall include provisions for extensive visual and noise buffering for all supporting equipment associated with the operation and maintenance of the facilities. The goal should be elimination of any potential negative impact to surrounding properties.~~

~~Wireless personal telephone transmission antennae and accessory equipment located atop flat-roofed buildings (that have a height of one hundred twenty (120) feet or greater), provided the antennae project no more than six (6) feet above and the accessory equipment does not protrude above the lowest parapet wall.~~

~~Wireless personal telephone transmission antennae located atop non single family or duplex structures that are less than one hundred twenty (120) feet in height, provided antennae are constructed to utilize a stealth or concealment design that mimics architectural features consistent with the building design and/ or is complementary to the building architecture. Any supporting equipment required at ground level shall also be screened from public view utilizing the following:~~

- ~~i. Color palette consistent with the building's architecture,~~
- ~~ii. Four sided privacy fence or concealment wall one (1) foot above height of equipment, and~~
- ~~iii. Evergreen landscaping screen planted around the perimeter with minimum planting size of three (3) feet in height and a mature size capable of fully concealing enclosure.~~

Figure 1. Example of personal telephone transmission antenna mounted on building less than one hundred twenty (120) feet in height

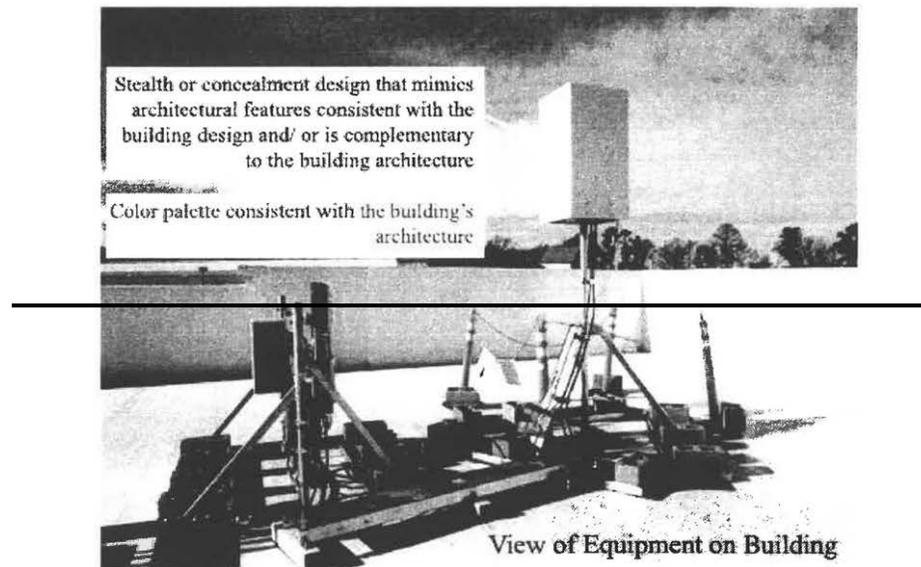


Figure 2. Example of personal telephone transmission antenna mounted on building less than one hundred twenty (120) feet in height, as viewed from the ground

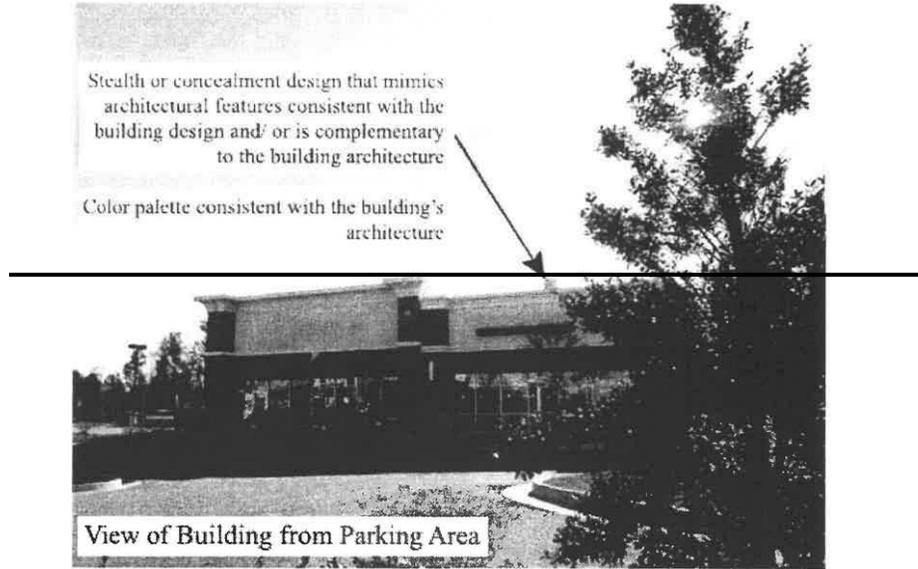
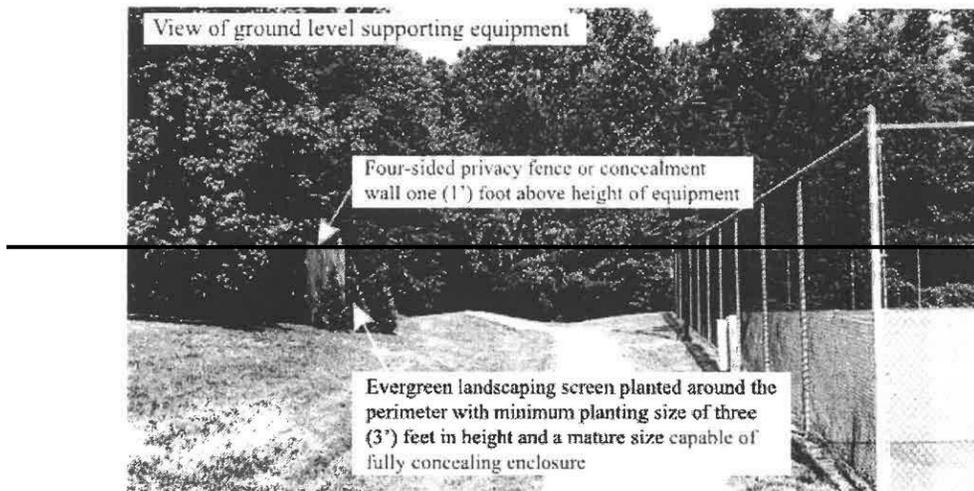


Figure 3. Example of ground level supporting equipment



~~Wireless personal telephone equipment for transmission when it is necessary to locate away from an existing water storage facility or monopole antennae.~~  
Spoilage easements and basins for deposition of dredged materials from area waterbodies.

According to § 23-4, *Amendments*, of the Zoning Ordinance, the advertisement requirement for Zoning Ordinance amendments is 15 days, and that advertisement notice has been met. The amendment is presented to the Planning Commission for a recommendation that will be forwarded to City Council at their next meeting scheduled for May 3, 2021.

**Planning Commission Action:**

The Planning Commission may recommend approval, recommend approval with modifications and/or conditions, or recommend denial of the proposal as submitted.

Alternative Motions

- 1) I move that the Planning Commission forward the Zoning Ordinance Text Amendment [ZTX-21-2] to the Mayor and City Council with a recommendation of approval.

OR

- 2) I move that the Planning Commission forward the Zoning Ordinance Text Amendment [ZTX-21-2] to the Mayor and City Council with a recommendation of denial.

OR

- 3) I move (an alternate motion).

## **ARTICLE XI - WIRELESS TELECOMMUNICATIONS FACILITIES**

### **Sec. 23-163. – Enactment and exceptions.**

- (1) Pursuant to the authority conferred by Chapter 29 of Title 6 of the South Carolina Code of Laws, 1976, as amended and supplanted by all applicable laws, and to balance the interests of the residents of the city, wireless telecommunications providers, and wireless telecommunications customers in the siting of wireless telecommunications facilities within the city so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carriers that does not unreasonably discriminate among providers of functionally equivalent wireless services and shall not prohibit or have the effect of prohibiting the provision of wireless services, and so as to promote the city as a proactive city in the availability of personal wireless telecommunications service, the city council does ordain and enact into law the following regulations to be incorporated as new Chapter 23, Article XI - Wireless Telecommunications Facilities, sections 23-163 to 23-193 of the city code.
- (2) These regulations shall apply to the siting of all wireless telecommunications facilities, including small wireless facilities, as both terms are defined in section 24-2, except that approval for the siting of small wireless facilities in public rights of way, specifically, shall be governed by the Small Cell Ordinance in Chapter 24 of the city code.

### **ARTICLE XI.1. – IN GENERAL**

#### **Sec. 23-164. - Title and objectives.**

This Article XI shall be known and may be cited as the “Wireless Telecommunications Facilities Ordinance of the City of North Myrtle Beach, South Carolina.”

As authorized in Title 6, Chapter 29 of the Code of Laws of South Carolina, the general purposes of this Article XI are to guide development in accordance with existing and future needs and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the community with reasonable consideration for the following specific purposes, where applicable:

- (a) To protect the city’s existing built and natural environment by promoting compatible design standards for wireless telecommunications facilities;
- (b) To protect residential areas and lands by minimizing adverse impacts of wireless telecommunications facilities;
- (c) To minimize the total number of vertical support structures including towers, in the community by encouraging the joint use of new and existing vertical support structures by multiple carriers;
- (d) To ensure that vertical support structures are located in areas that minimize adverse impacts;
- (e) To ensure telecommunication facilities are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
- (f) To enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;

- (g) To consider the public health and safety of our community;
- (h) To avoid damage to adjacent properties caused by a vertical support structure's failure through careful engineering and locating of such structures, and;
- (i) To encourage the attachment of antennas to existing vertical support structures, wherever, and whenever possible.

As presented in the city's 2018 comprehensive plan, the city's economy is dependent on the retail and service industries supported by tourism. As such, it is a further objective of the city to ensure that tourists, residents, businesses, and public safety operations have reliable access to wireless communications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to the city's zoning, planning, and design standards.

It is the further objective of this Article XI to ensure the continued compliance with existing city code, as well as applicable federal statutes and the rules and regulations of the FCC, including, but not limited to, the provisions of Title 47 U.S. Code Section 253—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services; Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018 (the "small wireless facility order") and the Federal Communications Commission Final Rules attached to the Small wireless facility order as Appendix A, both as may be amended in the future (the "FCC final rules").

#### **Sec. 23-165. - Definitions.**

For the purpose of this Article XI, certain words and terms are herein defined. Words used in the present tense shall include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "shall" is mandatory and not directory. Any words not herein defined shall carry their customary dictionary definition.

*Accessory equipment:* Any equipment serving or being used in conjunction with a wireless facility or vertical support structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, electric meter, concealment elements, network demarcation equipment, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and cable, conduit, coax, vertical and horizontal runs for the provision of power, fiber, telephone, or other services.

*Administrative approval:* Approval granted by the administrator to an applicant after administrative review, which shall be demonstrated by the issuance of all applicable building permits.

*Administrative review:* An evaluation of an application by the designated administrator.

*Administrator:* This designated person that reviews an application under this Article XI as set forth in section 23-173 of this Article XI.

*Antenna:* Any exterior apparatus designed for the purpose of emitting, transmitting, or receiving radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services.

*Applicant:* The owner of, or any other person with a recognized interest in, the wireless facility to be sited, or its authorized agent, who submits an application under this Article XI. The applicant may be a wireless services provider or a wireless infrastructure provider.

*Application for a wireless facility:* An application submitted by an applicant, including all ancillary building permit applications, for the siting of a wireless facility or for the maintenance, modification, operation, or replacement of an existing wireless facility. In the proper context, an application for wireless facility may be referred to as an application.

*Applicable code:* FCC, FAA and such codes as, but not limited to, uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in S.C. Code 1976, Title 6, Chapter 9, as modified from time to time, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements set forth in articles II and III of this Chapter, including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

*Backhaul or Backhaul Network:* The lines, or other network devices such as, but not limited to, microwave, that connect a provider's telecommunications facility to one or more applicant or carrier network elements, switching offices, long-distance providers, internet backbone, or the public switched telephone network.

*Base Station:* The equipment, including ancillary accessory equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass the vertical support structure.

(i) The term base station includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term also includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term also includes any vertical support structure other than those structures that, at the time the relevant application is filed with the city under this Chapter, supports or houses equipment described in items (i) through (ii) above, which have been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the vertical support structure was not built for the sole or primary purpose of providing such support.

(iv) The term base station does not include vertical support structures that, at the time the relevant application is filed with the city under this Chapter, does not support or house equipment described in items (i)-(ii) of this definition.

*Cable, communications, fiber or electric easement or encroachment:* An easement or encroachment, granted to a cable or video service provider, a communications service provider (including, without limitation, a telephone utility), a fiber optics cable services provider, or an electric services provider created or authorized by state law to provide such services, that runs parallel to and abuts or is within a rights of way and is occupied by existing utility poles or vertical support structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting municipal street lights, or security lights. The term cable, communications, fiber, or electric easement excludes easements for service drops or lines connecting the end user's premise to the cable, communications, fiber, or electrical provider.

*City:* City of North Myrtle Beach, South Carolina.

*City code:* The Code of Ordinances enacted by the City.

*City-owned pole or vertical support structure:* (i) a utility pole owned or operated by the city, including a utility pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, (ii) a pole or similar vertical support structure owned or operated by the city in a covered area that supports only wireless facilities, and/or (iii) decorative poles owned or operated by the city.

*Collocate:* The mounting or installation of transmission equipment, together with the associated base station equipment, on a vertical support structure that is existing at the time the relevant application is filed with the city under this Chapter, whether or not such vertical support structure is already in use for wireless services, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

*Concealment elements:* Any design feature, including, but not limited to, painting to match existing landscaping or structures, landscaping, and/or shielding requirements and restrictions on proportions, or physical dimensions in relation to the surrounding area or existing vertical support structures that are intended to make a wireless facility or accessory equipment attached to any vertical support structure less visible or invisible to the casual observer.

*County:* Horry county.

*Day:* A calendar day unless the last day for the city or an applicant to act under this Article XI ends on a weekend, holiday, or time when all but city emergency services are closed.

*Decorative pole:* A pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed, according to nondiscriminatory municipal practices.

*Deployable:* A portable, self-contained wireless telecommunications facility that can be moved to a specified location or area and provide wireless services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.

*Existing or pre-existing:* In existence at the time an application is filed.

*FCC:* The federal communications commission.

*FCC final rules:* The Federal Communications Commission final rules attached as Appendix A to the small wireless facility order, as may be amended from time to time.

*Governing body:* The city council for the city.

*Light pole:* A pole upon which is installed a light standard or other illumination device designed to illuminate a limited specific area.

*Monopole:* A vertical support structure purpose-built for telecommunications purposes consisting of a single pole, that is self-supported and constructed without guy wires or ground anchors.

*Permit:* A written authorization, in electronic or hard copy format, required to be issued by an authority to initiate, continue, or complete (i) the siting of a vertical support structure upon which a

wireless facility is to be collocated, or (ii) the collocation of a wireless facility on an existing vertical support structure, or (iii) the modification or replacement of an existing vertical support structure upon which a wireless facility is collocated, none of which is located within a public right of way.

*Permittee:* The responsible person, its' successors and assigns or approved authorized agent, who is required to comply with any administrative approval or permit issued under this Article XI. When the applicant is the authorized agent for the person who owns the federal license to broadcast from the wireless facility, then the permittee shall also be such owner.

*Person:* An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the city.

*Pole:* A type of vertical support structure, such as a utility pole, light pole, traffic pole, decorative pole, flagpole, or other similar pole, made of wood, concrete, metal, or other material.

*Planning director:* The director of the department of Planning and Development for the City of North Myrtle Beach or his or her designee.

*Planning department:* The department of Planning and Development for the City of North Myrtle Beach.

*Private Rights-of-way or ROW:* That area on, below, or above a roadway, highway, street, sidewalk, or alley that is dedicated to, managed, or controlled by a private person.

*Rights-of-way or ROW or city rights-of-way or public rights-of-way:* That area on, below, or above a public roadway, highway, street, sidewalk, or alley that is dedicated to, managed, or controlled by the city, county, or the state, but not including a federal interstate highway that is located within the city limits but is not controlled or maintained by the city.

*Site:* An approved location, by permit, for the siting of a wireless telecommunication facility.

*Site plan:* A detailed proposal which includes detailed engineering drawings, construction drawings and other documentation as required by the administrator, from time-to-time, of proposed improvements related to the siting, maintenance, modification, operation, or replacement of a wireless facility within the city limits.

*Small wireless facility or small cell:* A wireless facility that meets all of the following conditions: (i) the vertical support structure on which antenna facilities are mounted is 50' or less in height, or is no more than 10 percent taller than other adjacent existing vertical support structures of similar type and character, or is not extended to a height of more than 10 percent above its preexisting height as a result of the siting of new wireless facilities; and (ii) each antenna (excluding associated antenna equipment) is no more than 6 cubic feet in volume; and (iii) all electronic and ancillary equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and (iv) the wireless facility does not require vertical support structure registration; and (v) the facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b). The following types of associated accessory equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation equipment provided by third party interconnection networks that have been approved by the city under separate permit or license, approved ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

*Small wireless facility order:* The Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018, as may be amended from time to time.

*State:* State of South Carolina.

*Stealth facility:* A telecommunications tower employing concealment elements.

*Tower or telecommunications tower:* A specific type of vertical support structure, such as, but not limited to, a lattice tower, guyed tower, or monopole tower, built for the sole or primary purpose of supporting FCC-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that telecommunications tower. This definition is intended to be consistent with that definition set forth in 47 C.F.R. 1.40001(b)(9).

*Transmission equipment:* Equipment that facilitates transmission of FCC-licensed or authorized wireless communication services, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular or backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Transmission pole:* A pole that is used to carry high voltage electric transmission (as opposed to distribution) lines.

*Utility pole:* A wood pole or similar vertical support structure of any material that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including city-owned poles. Such term shall not include structures supporting only wireless facilities or decorative poles.

*Vertical support structure:* A pole, tower or telecommunications tower, base station, or other above-ground structure including, but not limited to, buildings, water tanks, light poles, flag poles, and utility poles, whether or not the structure has an existing wireless facility, that is used or will be used for the provision of wireless service (whether on its own or comingled with other types of services).

*Wireless telecommunication facility or wireless facility or telecommunications facility:* Any equipment and physical assets owned by a permittee or by a permittee's end-users and under the control of the permittee, at a fixed location, that enables wireless services between end-user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, antennas, satellite transmit and receive equipment, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities, accessory equipment, aboveground and underground fiber optic and coaxial cable, conduit, wires, and any vertical support structure whether existing, replacement or new, and whether referred to singly or collectively, that would not be sited under Chapter 24 of the code. The term does not include the wireline backhaul facilities, coaxial or fiber optic cable that is between wireless vertical support structures or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna. This term also shall exclude any tower and antenna under one hundred (100) feet in total height which is privately owned and operated by an amateur radio operator licensed by the federal communications commission.

*Wireless services:* Any services provided using licensed or unlicensed spectrum, including the use or provision of Wi-Fi, whether at a fixed location or mobile, delivered to the public using wireless facilities.

*Wireless service(s) provider:* A person who provides wireless services.

*Writing:* Any writing requirement under this Article XI shall be performed via electronic notice through the city’s public website.

**Secs. 23-166—23-170. - Reserved.**

**ARTICLE XI.2. - SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES**

**Sec. 23-171. - General.**

The siting of wireless communications facilities within the city limits, and the maintenance, modification, operation, and replacement of such facilities, shall be considered either a permitted use, a conditional use, or a special exception as indicated in the table below. Uses not specifically listed below are prohibited.

<b>Installation Type</b>	<b>Zoning Districts</b>	<b>Administrative Review</b>
Vertical Support Structures	LI	Permitted Use
Wireless facilities on rooftops	LI	Permitted Use
Eligible facilities requests that do not substantially change the physical dimensions of such facility	All zones	Permitted Use
Vertical support structures and wireless facilities on rooftops	All zoning districts that are not LI, R-1, R-1A, or R-1B	Conditional Use
Eligible facilities requests that substantially change the physical dimensions of such facility	All zones	Conditional Use
Vertical support structures and wireless facilities on rooftops	R-1, R-1A, R-1B	Special Exception

**Sec. 23-172. – Administrative Approval Required**

No person shall install, modify, or remove a vertical support structure within the city limits, that is to be used for or is currently being used for the operation of a wireless telecommunications facility, without first obtaining administrative approval under this Article XI.

**Sec. 23-173. – Types of Administrative Review**

- (1) *Conditional Use.* Use shall be approved by the zoning administrator, subject to appeal to the board of zoning appeals, when the application is complete, meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited, and there is sufficient evidence that the siting of the wireless facility will meet the following conditions:
  - (a) That the use will be an enhancement to the character and sense of place of the area in which it is to be located;

- (b) That the use has taken measures to not be injurious to adjoining property, including, but not limited to controlling of all elements that produce light and noise, so as not to create nuisance conditions off-site;
  - (c) That the use will contribute to the economic vitality and promote the general welfare of the community;
  - (d) That the use is compatible to the purpose of the district as set forth in Chapter 23, zoning; and
  - (e) That the use will not discourage or negate the use of surrounding property for use(s) permitted by right.
- (2) *Permitted Use.* Use shall be approved by the planning department when the application is complete and meets all applicable provisions of Article XI.3 of and all applicable development standards for the zoning district in which the facility is sought to be sited.
- (3) *Special Exception.* Owing to their potential negative impact on the community and surrounding areas, the siting of a wireless facility may be approved by the board of zoning appeals in accordance with the process set forth in section 23-160 when the application is complete, meets all applicable provisions of Article XI.3 and all applicable development standards for the district in which the facility is sought to be sited, and there is sufficient evidence that the siting of the wireless facility will meet the following conditions:
- (a) That the special exception will be in substantial harmony with the area in which it is to be located;
  - (b) That the special exception will not be injurious to adjoining property;
  - (c) That the special exception will contribute to the economic vitality and promote the general welfare of the community; and
  - (d) That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.

In approving a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgement, will enhance the siting of the telecommunications facility. In addition, the board of zoning appeals shall either approve the application for the special exception as presented, approve the application with specified modifications, or disapprove the application.

- (4) *Variations.* The board of zoning appeals may grant a variance from the requirements of this Article XI in accordance with and pursuant to section 23-161(2) when strict application of the provisions of this Wireless Telecommunications Facilities ordinance would result in unnecessary hardship and the board makes and explains in writing the following findings:
- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
  - (b) The conditions do not generally apply to other property in the vicinity;
  - (c) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
  - (d) The authorization of a variance will not be of substantial detriment to adjacent property or

to the public good, and the character of the district will not be harmed by the granting of the variance.

**Sec. 23-174. - Public/Private Use.**

Subject to the additional requirements below and following review by the planning department, the following wireless communication facilities used for public/private use shall be approved as a permitted use in all zoning districts when the application is complete and meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited:

- (a) Antennas on public water storage facilities, and other vertical support structures located on city-owned public property, subject to engineering approval and the entry into a city lease or license agreement and subject to the facility also being capable of accommodating essential public communication equipment; and
- (b) New and existing vertical support structures accommodating "micro-cell," "small cell," or "distributed antenna system" equipment located on city-owned public property, subject to engineering approval and a city lease or license agreement and subject to the facility also being capable of accommodating essential public communication equipment or services.

**Sec. 23-175. – Small Cell in Private ROW.**

Following review and approval by the City’s planning commission under code Chapter 20 – Land Development Regulations, small wireless communication facilities may be allowed in private ROWs when the application is complete and meets all applicable provisions of Article XI.3 and all applicable development standards for the zoning district in which the facility is sought to be sited.

**ARTICLE XI.3. – REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS FACILITIES**

**Sec. 23-176. – General.**

- (1) *General design for towers.* The height of the vertical support structure shall be no greater than the height limit for the zoning district for which it is sought to be sited and the following requirements shall apply:
  - (a) Except where inconsistent with other provisions of the city code, new telecommunication towers shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
    - (i) telecommunications towers 60 to 100 feet shall support at least 2 wireless service providers;
    - (ii) Telecommunications towers greater than 100 feet but less than 150 feet shall support at least 3 wireless service providers; and
    - (iii) greater than 150 feet in height shall support at least 4 wireless service providers.
  - (b) Except where inconsistent with other provisions of this code, the equipment compound area surrounding the telecommunications tower must be of sufficient size to accommodate base station and accessory equipment for the appropriate number of wireless service providers in accordance with section 24-20(1)(a), above.

- (2) *Visual Impact.*
- (a) All telecommunications towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable federal or state agency, be painted a neutral color or painted and/or textured to match the existing vertical support structure so as to reduce visual clutter.
  - (b) Where feasible, wireless telecommunications facilities shall be placed directly above, below or incorporated with existing vertical design elements of a building to help in camouflaging.
  - (c) Wireless telecommunication facilities shall not substantially detract from the ocean view or from property listed in the National Register of Historic Places, or from a road or inlet, which has been officially designated as a scenic road or inlet, or areas designated as protected by any federal agency, state agency or the city.
- (3) *Base station and accessory equipment requirements.*
- (a) When a stealth design is used, accessory equipment shall be incorporated into the stealth facility. Otherwise, accessory equipment shall be located, designed, and/or screened to blend with the existing natural or as-built surroundings to reduce the visual impact as much as technically feasible and shall be compatible with neighboring land uses and the character of the community.
  - (b) In all instances, base station equipment shall be located, designed, and/or screened to blend with the existing natural or as-built surroundings to reduce the visual impact as much as technically feasible and shall be compatible with neighboring land uses and the character of the community.
  - (c) Ground-based equipment shall be elevated at least 2 feet above the base-flood elevation.
- (4) *Fencing.* Except where the requirement would defeat concealment elements, a telecommunications tower, and all accessory equipment or base station, shall be secured and enclosed within a fence that is between 6 and 10 feet in height. Fencing shall be screened in accordance with section 24-18(7) below.
- (5) *Lighting.* No illumination is permitted on wireless telecommunications towers unless required by the FCC, FAA or state or federal agency of competent jurisdiction or unless necessary for air traffic safety. If lighting is required or necessary, the planning director may review the available lighting alternatives within the appropriate regulatory guidelines and approve the design that would cause the least disturbance to the surrounding uses and views. All lighting shall comply with those requirements for lighting on buildings set forth in section 123 of Chapter 23 of the code.
- (6) *Advertising.* No advertising is permitted on wireless telecommunications facilities.
- (7) *Screening.* Landscaping or screening shall be used to screen the view of the wireless telecommunications facility from adjacent public ways, public property, or residential property. Ground-level landscaping shall be at least 6 feet in height and meet those requirements set forth in article V of Chapter 23, zoning.
- (8) *Maintenance impacts.* Equipment at a wireless communications facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a

collector of local street traffic, access for maintenance vehicles shall be exclusively by means of the collector or local street.

- (9) *Principal, accessory and joint uses.*
- (a) Accessory equipment or base stations that are used in direct support of a wireless telecommunications facility shall be allowed but shall not be used for offices, vehicle storage or other outdoor storage. Mobile or immobile equipment that is not used in direct support of a wireless telecommunications facility shall not be stored or parked on the site of such facility.
  - (b) Wireless telecommunications facilities may be located on sites containing another principal use in the same buildable area provided that such facilities do not reduce parking or landscaping requirements for the principal use.
- (10) *Setbacks.* New vertical support structures, and their associated ground-based equipment, must comply with existing setback requirements for the zoning district in which the new vertical support structure is sought to be sited. Setbacks are required on all sides of the vertical support structure to prevent its fall zone or collapse from encroaching onto adjoining properties. The fall zone shall be determined by an engineer certified by the state in a letter which includes the engineer's signature and seal, provided that the city shall reserve the right to obtain independent review of such engineering.
- (11) *Nuisances.* Wireless telecommunications facilities, including, without limitation, their power source, ventilation and cooling systems, shall be operated at all times within the city noise ordinance in section 12-72 of Chapter 12, health and sanitation.
- (12) *Underground utility zones.* Wireless telecommunications facilities may collocate on existing transmission poles subject to those requirements set forth in section 19-13 of Chapter 19, streets, sidewalks and other public ways.
- (13) *Building codes and safety standards.* To ensure the structural integrity of a vertical support structure, the owner of such structure shall ensure that the structure is maintained in compliance with standards contained in the applicable, local building codes and the applicable standards for such structures, as amended, from time to time. Upon the request of the director of public works, and within 90 days of such request, owners of vertical support structures shall have an inspection of its vertical support structure and shall provide the findings of such inspection to the director of public works. Inspections shall be conducted by a qualified, independent engineer licensed to practice in the state and the results of such inspection shall be provided to the director of public works. Failure to comply with this section 23-176(13) shall result in a fine of up to \$1,000 per day and will cause all outstanding and future permit requests related to the vertical support structure to be temporarily frozen until compliance has been met.
- (14) *Regulatory compliance.* All wireless telecommunications facilities must meet or exceed current standards, guidelines, and regulations of the Federal Aviation Administration, the FCC and any other agency of the state or federal government with the authority to regulate wireless telecommunications facilities. If such standards and regulations are changed, then the owners of the wireless telecommunications facilities governed by this ordinance shall bring such facilities into compliance with such revised standards and regulations by the dates established by the agency promulgating the standards or regulations.

**Sec. 23-177. - Additional requirements for new vertical support structures.**

- (1) New vertical support structures that are proposed in those zoning districts other than LI, must be self-supported and incorporate stealth or camouflaging components, to the maximum extent feasible so as to completely shield the wireless facility's antenna, radio, and cables from a casual observer. Self-supported lattice towers shall be permitted in zoning district LI.
- (2) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
- (3) At new vertical support structure locations, the design of the base station and any related structures shall, to the extent possible, be located to, and use materials, colors, textures, screening, and landscaping that will, blend the vertical support structure and related facilities to the natural setting and as-built environment.
- (4) A permit for a new vertical support structure to be located within 1,000 feet of an existing telecommunications facility that is not a small wireless facility, shall not be issued until the applicant supplies documentation showing that the existing telecommunications facility will not meet applicant's structural specifications and technical design requirements, or that a co-location agreement could not be obtained at a reasonable market rate. The applicant shall be required to provide evidence to the administrator to support applicant's claims regarding reasonable market rates.
- (5) Excluding small wireless facilities, no more than 1 vertical support structure may be sited per acre of any lot.
- (6) Permittee shall allow future wireless service providers, including public and quasi-public agencies, using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a new vertical support structure (i) unless specific technical or structural constraints prohibit said co-location, or (ii) if future wireless service providers, or other potential future users refuse to pay reasonable compensation for collocation. Permittee and future collocating wireless service providers, and other potential users, shall provide a mechanism for the construction and maintenance of shared facilities and vertical support structures and shall provide for equitable sharing of costs and expenses in accordance with industry standards.
- (7) All telecommunication towers shall be designed and constructed so as to withstand winds in accordance with ANSI/EIA/TIA 222 (latest revision) standards as have been adopted by the city.

**Sec. 23-178. - Roof-mounted wireless communication facilities.**

- (1) Wireless communications facilities sited atop flat-roofed buildings shall not project more than 8 feet in height above the lowest parapet wall, except that wireless facilities may be mounted on the side of roof-top structures such as elevator shafts and mechanical buildings provided that the top of such facilities do not extend above such structure.
- (2) With every rooftop installation, the wireless facility must be screened or constructed to utilize a stealth or concealment design that mimics architectural features consistent with the building design and/or is complimentary to the building architecture so that the wireless facilities are not readily apparent to the casual observer from ground level.
- (3) Base station or accessory equipment required at ground level shall comply with yard set-back requirements and shall be screened from public view utilizing the following:

- (a) Color palette consistent with the building's architecture; and either
  - (b) Four-sided privacy fence or concealment wall 1-foot above height of equipment; or
  - (c) Evergreen landscaping screen planted around the perimeter with minimum planting size of 3 feet in height and a mature size capable of fully concealing enclosure.
- (4) All roof-mounted antenna installations shall be designed, engineered and installed in accordance with ANSI/EIA/TIA 222 (latest revision) standards as have been adopted by the city. Antenna and equipment mounting hardware and platforms shall be physically attached to the roof or building structure, designed, and engineered, as if the wireless facility was part of the floor immediately below the roof level. Structural loading calculations must include all current existing roof loading, including but not limited to, HVAC equipment (as modified over time), additional existing carriers (if any), and other mechanical or ancillary equipment. Ballast or skid mounting of wireless facilities will not be allowed on a permanent basis.

**Sec. 23-179. - Building, utility pole and light pole mounted wireless communications facilities.**

- (1) *Stealth techniques preferred.*
- (a) Unless this requirement is not technologically feasible, wireless facilities mounted to new or modified vertical support structures must incorporate the wireless facility's antenna, radio, and cables inside the vertical support structure so that these items are not visible to the casual observer.
  - (b) When the requirements of subsection (a) above cannot be met, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the vertical support structure so as to make the antenna and related equipment as visually unobtrusive, or invisible, as possible.
- (2) *Placement on existing utility poles.*
- (a) This section applies to utility poles that are located outside of public rights of way.
  - (b) Antennas associated with a wireless telecommunications facility may be placed on an existing utility pole, colored to match or complement the color of the utility pole, and mounted in as unobtrusive a manner as technically feasible and incorporating concealment elements where possible. Except where the utility or owner of the pole prohibits it, the antenna shall be placed in a shroud at the top of the utility pole, with the shroud of the same circumference as the utility pole at the point of attachment. Except for such designs as may be included in any pre-approved design catalogue, pole-top antennas (including attachment hardware) shall not extend more than 6 feet above the existing utility pole. Where the antenna cannot be placed at the top of the utility pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on utility poles in the same corridor and with antennas and cross-arms sized and mounted as close to the centerline of the pole to minimize visual clutter. The volume of the antennas on any utility pole shall, not exceed 6 cubic feet in size.
  - (c) Only accessory equipment required to operate the wireless facility may be attached to the utility pole, or ground-mounted in compliance with this code. If requested, permittee must show that such equipment is required to operate the wireless facility and that no other placement is feasible or less intrusive.
  - (d) Other base station and permitted, utility pole-mounted accessory equipment shall be

- mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Equipment shall be flush mounted to the pole, with all required cabling neat and concealed in vertical conduits. In no event shall any portion of the telecommunications facility be ground-mounted without the city's express approval, which approval may be conditioned on concealing the facilities in a manner appropriate to the location. Unless base station equipment is within the utility pole to maximize concealment elements, the equipment must be designed so that it is not readily apparent from all angles of view and, mounted at a height such that it is out of pedestrian sight lines and placed on the pole in such a way as to minimize the impact on adjoining property.
- (e) Neither the wireless communications facility, nor the vertical support structure, shall interfere with pedestrian or vehicular movement or storage.
  - (f) All attachments to new or modified utility poles must have a clearance of at least 7 feet above ground level for all sidewalks and a clearance of at least 18 feet above ground level for all roads.

(3) *Mounted on light poles.*

- (a) This section applies to light poles that are located outside of public rights of way.
- (b) Wireless communications facilities may be placed on existing light poles subject to the conditions that:
  - (i) The design and placement of all elements of the telecommunications facility is consistent with the design of the light pole to which it will be attached;
  - (ii) The design and placement of all elements of the telecommunications facility will not adversely affect the overall design of the area within which the light pole is located; and
  - (iii) The city must know who will own and control the light pole, and who is responsible for emergency response, maintenance, and ensuring public safety, including NEIR radiation standards as outlined in OET bulletin 65.
- (c) All attachments to new or modified light poles must have a clearance of at least 7 feet above ground level for all sidewalks and a clearance of at least 18 feet above ground level for all parking areas and roads.

(4) *Replacement.* For purposes of this section, if an existing utility or light pole must be replaced it may be replaced provided that the replacement pole meets all applicable development standards for the zoning district in which the facility is sought to be sited, it meets other applicable requirements of this section and:

- (a) In the case of the utility pole, the overall height of the pole, measured from ground level to the highest point on the wireless communications facility, does not increase by more than 6 feet, and the diameter measured at 6 feet from the butt, does not increase by more than 2 inches; and
- (b) In the case of the light pole, its overall height, measured from ground level to the highest point on the wireless communications facility, does not increase by more than 6 feet, and the design, height and proportions remain consistent with design of the light pole that is being replaced. In addition, all lighting shall comply with section 21-15 – Lighting, of the city code.

**Sec. 23-180. – Temporary and emergency installations.**

- (1) A deployable may be operated in any zoning district for a period of not more than 120 days, when operated in connection with a special event after issuance of a permit based upon an administrative review under this Article XI. A deployable, operated in conjunction with a special event, shall meet reasonable setback requirements determined by stated permit conditions, shall meet uniform fire code requirements, and shall be removed within 72 hours of completion of the event.
- (2) A deployable may be operated in any zoning district after a declaration of an emergency or a disaster by the city and after issuance of a permit based upon administrative review under this Article XI.

**Sec. 23-181. – Modifications to pre-existing wireless telecommunication facilities.**

- (1) *Collocations and Modifications (Eligible Facilities Request per 47 C.F.R. §1.6100).*
  - (a) Notwithstanding any other provisions of this article, the administrator shall grant administrative approval and may not deny applications for any modifications to a pre-existing wireless telecommunications facility that does not substantially change the physical dimensions of such facility.
  - (b) A modification shall be determined to be a substantial change to the physical dimensions of the subject wireless communications facility if the modification meets any of the following criteria:
    - (i) For vertical support structures that are not located in the public rights of way, it increases the height of the vertical support structure by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, or, for other existing wireless telecommunications facilities, it increases the height of such facilities by more than 10% or more than 10 feet, whichever is greater;
      - a. Changes in height should be measured from the original vertical support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the telecommunications tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act, Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).
    - (ii) For wireless telecommunications facilities that are not located in the public rights of way, it involves adding an appurtenance to the body of such facility that would protrude from the edge of the wireless telecommunications facility by more than 20 feet, or more than the width of the vertical support structure at the level of the appurtenance, whichever is greater; for other wireless telecommunications facilities, it involves adding an appurtenance to the body of such facility that would protrude from the edge of such facility by more than 6 feet;
    - (iii) For any existing wireless telecommunications facility, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets;
    - (iv) It entails any excavation or deployment outside the site;

- (v) It would defeat the concealment elements of the pre-existing wireless telecommunications facility; or
  - (vi) It does not comply with restrictions associated with initial approval of the wireless facility such as, but not limited to, number of antenna or volume of equipment when initially approved.
- (2) *Collocation on and modifications to pre-existing wireless telecommunications facilities that are physically substantial.*
- (a) Modifications not defined in section 24-23(1), above, shall be considered physically substantial.
  - (b) A pre-existing vertical support structure may be substantially modified or reconstructed to accommodate the collocation of additional antennas under the following conditions:
    - (i) A telecommunications tower shall be the same type as the existing telecommunications tower, unless the telecommunications tower is replaced by a monopole not more than 48 inches in diameter; and
    - (ii) When an existing vertical support structure is not over 50 feet in height, it may only be replaced by another alternative vertical support structure that does not exceed 50 feet in height;
    - (iii) When a vertical support structure that is not a telecommunication tower is replaced with a telecommunication tower to accommodate a physically substantial collocation, only 1 vertical support structure may remain on the zone lot; and
    - (iv) Antennas may be attached to an existing vertical support structure that is accessory to a police station, fire station or hospital, and said structure may be substantially modified to allow this attachment without increasing the height of the vertical support structure.
- (3) *Substantial modifications to vertical support structures that are not in conformance.* Antennas may be attached to an existing vertical support structure that is not in conformance, and such vertical support structure may be substantially modified with the following limitations:
- (a) The vertical support structure is a telecommunications tower, and is of the same type as the existing telecommunications tower, unless the telecommunications tower is replaced by a monopole or other stealth facility not more than 48 inches in diameter; and
  - (b) The telecommunications tower, with the attached additional antenna as substantially modified, must meet the requirements of article III of this Chapter.

**Sec. 23-182. - Pre-existing telecommunications facilities/non-conforming uses.**

- (1) All wireless telecommunications facilities operative on the date this ordinance was enacted that do not already comply with the provisions of this Article XI, shall be allowed to continue their present usage as a non-conforming use and shall be treated as a non-conforming use in accordance with article VIII of the city zoning code. Routine maintenance, including replacement of structural elements such as diagonal bracing or antenna and equipment of like construction and height, shall be permitted on such existing wireless telecommunications facilities. New construction, including the addition of new antenna and equipment other than routine maintenance shall comply with the requirements of this ordinance.

- (2) A wireless telecommunications facility that has received city approval as of the date this ordinance was enacted, in the form of either a building permit or special use exception but has not yet been constructed or placed in operation shall be considered an existing telecommunications facility so long as such approval is current and not expired.

#### **ARTICLE XI.4. APPLICATION PROCESS FOR TELECOMMUNICATION FACILITIES**

##### **Sec. 23-183. - Application procedures.**

All applications for a building permit or special use permit for any wireless telecommunications facility filed pursuant to this article IV shall be in an electronic form, as it may be amended from time to time by the planning director. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly and the city will honor such designation to the extent permitted by law.

##### **Sec. 23-184. – Application requirements.**

Each applicant must provide all information requested in the application materials when applying for a building permit, special use permit or other permit or variance pursuant to this Chapter, and all required information and certifications must be submitted for an application to be considered complete.

##### **Sec. 23-185. - Timelines for review of applications for wireless telecommunication towers.**

- (1) *Initial review/notification of incompleteness.* The planning director must determine whether an application for the siting of a new wireless telecommunications tower is complete within 30 days of receiving such application. If an application is incomplete, the planning and development department must notify the applicant, in writing, that the application is incomplete and specifically identify the missing documents or information that the applicant must submit to render the application complete. An application is incomplete if it omits or withholds any required information or fails to provide information in sufficient detail to determine whether the work will be performed in accordance with and will result in a vertical support structure that complies with all applicable code, and other applicable laws. The applicant shall have 30 days to respond to a notice of an incomplete application. If the applicant responds, but the resubmission remains incomplete, the planning director shall notify the applicant in writing that the application remains incomplete within 30 days of the resubmission, and also identify the missing documents or information that the applicant must submit to render the application complete. Any resubmission that remains incomplete after 10 days of this second notice by the planning director will be deemed withdrawn.
- (2) *The timing of a final decision.* Once an application is deemed complete, the administrator shall have 90 days for applications for collocations (regardless of whether the vertical support structure has previously been zoned for wireless facilities) and 150 days for new construction in which to render a decision. These timeframes commence once an application is submitted; however, a notice of an incomplete application and an incomplete resubmission tolls the clock on that date that such notice is provided to the applicant until that date upon which the application is resubmitted.
- (3) *Tolling agreement.* Notwithstanding the time requirements set forth herein, the planning director may enter into an agreement with any applicant extending the time for action on any application, where such an extension is permitted under applicable law.

**Sec. 23-186. - Approval or denial of applications.**

- (1) The administrator shall approve any application for a new wireless telecommunications facility when the administrator determines that the application complies with the applicable requirements of section 23-184 and Article XI.3. Otherwise, the applications may be denied.
  - (a) *Notification of decision.* The administrator shall notify the applicant in writing of the final decisions, and if any application is denied, specify the basis for a denial, including citations to federal, state, or local code provisions or statutes on which the denial was based. Any decision by the administrator denying a request to place, construct, or modify a telecommunications facility shall be in writing and supported by substantial evidence in a written record. Decisions to approve or deny an application are final but subject to appeals as set forth in article X of the city's zoning code.
  - (b) *Appeals.* Any decision adverse to the applicant must be appealed in accordance with the processes described in article X of the city's zoning code after the issuance of the decision, except that: appeals of a decision rendered by the planning department or the zoning administrator shall be taken to the zoning board of appeals; appeals of a decision by the board of zoning appeals or the planning commission shall be taken to the circuit court. In each case where there is a claim by the applicant that the denial of the application will prohibit or have the effect of prohibiting the provision of wireless services within the meaning of 47 U.S. Code Section 253(a)—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services, as further set forth in the small wireless facility order and the FCC final rules, the board of zoning appeals shall hear and determine the appeal applying the standards set forth in this Article, and those standards set forth in the small wireless facility order and the FCC final rules to determine if the denial of an application results in an effective prohibition of service. To the extent that an applicant makes a claim that any preliminary denial will result in an effective prohibition within the meaning of 47 U.S. Code Section 253(a) or 47 U.S. Code Section 332(c)(7), such claim must be supported by testimony and presented by persons with the requisite knowledge, credentials and qualifications to make and establish such facts to prove the claim.
- (2) *Expedited review for eligible vertical support structures.* The notice of incomplete submissions and tolling practices under section 24-30(1) shall apply to this section. Upon submission of a complete application for collocation on or modification of a pre-existing telecommunications tower, the planning director shall approve, or approve with conditions, the application within 60 days. Conditions of approval may include compliance with previously imposed conditions of approval, generally applicable building, structural, electrical, and safety codes or other laws, including this Code, codifying objective standards reasonably related to health and safety. Any approval shall be operative, and any permit issued under this subsection shall remain in effect only so long as federal law, 47 U.S.C. 1455, and the FCC regulations established under 47 CFR 1.6100 require the approval of an eligible facilities request as defined therein. By approval, the city solely intends to comply with a requirement of federal law and not to grant any property right or interests except as compelled by federal law.

**ARTICLE XI.5. EFFECT OF ADMINISTRATIVE APPROVAL/ADDITIONAL REQUIREMENTS**

**Sec. 25-187. - Effect of permit; assignment.**

- (1) Administrative approval of an application will be evidenced by the issuance of the applicable building permits. The issuance of a permit authorizes the permittee to undertake only those certain activities specified in the approved application and its accompanying permits, subject to the requirements of this article V.
- (2) No permit issued this Article XI is divisible or assignable, except that a permittee may assign a permit to its parent company or subsidiary, or the parent of or subsidiary of a parent company, or to any entity which acquires all or substantially all of the permittee's assets in the city's market by reason of a merger, acquisition or other business reorganization.
- (3) The grant of any permit under this Article XI shall not be deemed as a certification by the city of the wireless telecommunications facility's compliance with all applicable codes.

**Sec. 25-188. - Additional requirements.**

- (1) *Applicant's expense.* All costs incurred by an applicant or permittee in connection with its compliance with, or enjoyment of, this Article or any permit issued under this Article XI shall be borne by the applicant or permittee and not by the city. In addition, prior to the issuance of a permit under this Article XI, the applicant or permittee shall reimburse the city for expenses, including engineering and specialized consulting, that the city deems necessary to facilitate its review of any application under this Article XI, subject to any limitations imposed by federal or state law.
- (2) *Duration.* Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Article XI shall be valid for a period longer than 12 months unless the administrator and permittee agree to a reasonable extension and all required fees are paid for the then-current term.
- (3) *No waiver of other permits and authorizations.* All work performed within the city limits shall be in accordance with all applicable standards and applicable codes and shall be done under the general supervision of the public works department. Nothing in this Article or any permit issued to an applicant hereunder shall be construed as a waiver of any laws, regulations, or rules of the city or of the city's right to require the applicant to secure the appropriate permits or authorizations, or to pay the applicable fees associated with the same.
- (4) *Radio frequency emissions.* Without limiting the other provisions of this Article, any person operating a wireless telecommunications facility must cease its operations if it is not in compliance with FCC regulations governing radio frequency emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other order, ruling or regulation permits it to continue to operate. The approval of an application under this Article XI is not intended to insulate the permittee from any claim or any remedy based on radio frequency emissions. Upon the request of the planning director, each permittee shall submit an annual report identifying applicable standards and the measured emissions from each wireless telecommunications facility sited under this Article XI. The report shall not be treated as confidential and shall be available to the public upon request.

**Sec. 25-189. – General maintenance.**

- (1) *Standard.* The permittee shall maintain the telecommunications facilities in a good condition and maintain a neat and orderly appearance in compliance with all applicable laws, codes, permits, and authorizations.

- (2) *Self-help.* The city may, from time-to-time, require the permittee to perform reasonable maintenance or conduct reasonable repairs to the wireless facility. If, within 30 days after written notice of such requirement to perform maintenance or repair, the city may undertake the requested maintenance and/or repairs and charge the permittee reasonable and documented cost of such maintenance or repairs.
- (3) *Payment of costs.* Any costs including expenses charged by the city to the permittee under any provision of this Article shall be paid within 30 days. The city may maintain an action to recover the costs of the repairs, including the payment of reasonable attorneys' and consultant fees, if not timely paid.
- (4) *Condition/failure to act.* The permittee shall keep the facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the city gives the permittee written notice of a failure by the permittee to maintain the facilities under this subsection (4), the permittee shall use its best efforts to remedy such failure within 30 days after receipt of such written notice. If the permittee fails to perform its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

#### **Sec. 25-190. - Graffiti.**

The permittee shall at all times keep and maintain the telecommunications facilities free of all graffiti located thereon. If city notifies the permittee that graffiti is located anywhere on the wireless telecommunications facility, the permittee shall remove the graffiti within 30 days of the written notice. If the permittee defaults in its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

#### **Sec. 25.191. - Emergency notification.**

The permittee shall provide the director of public works with a twenty-four (24) hour emergency telephone number from which a representative of the permittee, not voice mail or a recording, responsible for the maintenance and operation of the wireless facility can be contacted in the event of an emergency. The permittee shall respond immediately to address a reported emergency.

#### **Sec. 23-192. – Removal of wireless telecommunications facility for non-compliance.**

All wireless telecommunications facilities shall be maintained in compliance with standards contained in applicable building and technical codes to ensure the structural integrity of such facilities. If, upon inspection by the building official, any such wireless facility is determined not to comply with the code standards or to constitute a danger to persons or property then upon notice being provided to the permittee and the owner of the property, if such owner is different, such permittee shall have up to 90 days to bring such facility into compliance. In the event such wireless facility is not brought into compliance within 30 days, the city may provide notice to the permittee or operator of the facility requiring the wireless telecommunications facility to be removed. The city may seek to have such facility removed regardless of the owner's or permittee's intent to operate such facility and regardless of any permits, federal, state or otherwise, which may have been granted. The city may pursue all legal remedies available to it to ensure that such facility is removed. Delay by the city in acting shall not in any way waive the city's right to act.

**Sec. 23-193. - Abandoned telecommunications towers.**

- (1) Any wireless telecommunications facility that is not operated for a continuous period of 6 months shall be considered abandoned, whether or not the permittee or operator of the facility intends to make use of it or any part of it. The said permittee or operator of the abandoned facility shall be under a duty to remove the abandoned wireless telecommunications facility. If such wireless facility is not removed within 90 days of receipt of notice from the city of such abandonment, the city may remove such wireless telecommunications facility and place a lien upon the property for the costs of removal. The city may pursue all legal remedies available to it to ensure that such abandoned facilities are removed. Delay by the city in acting shall not in any way waive the city's right to act. The city may seek to have the wireless telecommunications facility removed regardless of the permittee's or operator's intent to operate the wireless telecommunications tower and regardless of any permits, federal, state or otherwise, which may have been granted. As used in this subsection (1), the word "operate" means used in a manner that is consistent with the current permitted use granted.
- (2) If the owner of an abandoned telecommunications facility wishes to resume use of such abandoned facility, the owner first must apply for and receive all applicable permits and meet all of the conditions of this ordinance as if such telecommunications facility was a new facility.