

505— WIRELESS TELECOMMUNICATIONS FACILITIES

A. PURPOSE. The purpose of this article is to regulate the placement, construction and modification of commercial wireless telecommunications facilities and antenna support structures in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City in compliance with the Telecommunications Act of 1996, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(b), (c), 126 Stat. 156 (2012) (Spectrum Act), Section 332(c)(7) of the Communications Act and the Federal Communication Commission’s 2009 Declaratory Ruling, FCC Ruling 14-153, adopted October 17, 2014 and released October 21, 2014, and any other applicable laws. ~~and any other applicable laws.~~

B. OBJECTIVES. The objectives of this article are the following:

1. To regulate the placement, construction and modification of wireless telecommunications facilities in the City;
2. To regulate the location of wireless communication facilities in areas and on sites where the adverse impact is minimal;
3. To minimize the potential adverse visual impact of wireless telecommunications facilities through careful design, siting, landscaping and innovative camouflaging techniques;
4. To ensure that wireless telecommunications facilities are compatible with surrounding land uses;
5. To promote and encourage shared use/co-location of wireless telecommunications facilities and antenna support structures as the primary option for personal wireless telecommunications services instead of the construction of additional single-provider towers;
6. To avoid potential damage to property caused by wireless telecommunications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or when determined to be structurally unsound;
7. To encourage the safe, effective and efficient provision of personal wireless telecommunication services to the community;
8. To ensure that the regulation of personal wireless telecommunication services does not prohibit or have the effect of prohibiting the provision of such services; and,
9. To ensure that that the regulation of personal wireless telecommunication services does not unreasonably discriminate among functionally equivalent providers of such services.

C. DEFINITIONS. For the purpose of this article, certain terms or words used herein shall be interpreted as follows:

1. Abandonment. ~~A failure to (a)In the case of a non co-located facility, shall mean: (a) failure to start operations within ninety (90) days of completion of the structure, or (b) to cease operation for a period of ninety (90) or more consecutive days. In the case of~~

- ~~a co-located facility, abandonment shall mean: (a) failure~~ to start operations within one hundred eighty (180) days of completion of the structure, or (b) to cease operation for a period of one hundred eighty (180) or more consecutive days.
2. Act. The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended, including the amendment known as the Telecommunications Act of 1996, and all future amendments.
 3. Antenna. Any structure or device used to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication.
 4. Antenna Support Structure. Any building or structure other than a tower or stealth monopole that can be used for the location of telecommunications facilities.
 5. Applicant. Any person who applies for a ~~administrative approval or special~~conditional use permit or a building permit.
 6. Array. A set of antennas for one (1) carrier or service that are placed on a structure at a given height and spaced so as to avoid interference.
 7. Base Station. ~~A station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. Base station includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a “base station” at the time the relevant application is filed with State or municipal authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not at that time support or house base station components~~
 - 7.8. Camouflage. A wireless communication facility that is disguised, hidden, or integrated with an existing structure as an architecturally compatible element or a wireless communication facility that is placed within an existing or proposed structure so as to be effectively hidden from view. This is a form of stealth design.
 - 8.9. City. The City of Haysville, Kansas.
 - 9.10. Co-location. Locating wireless telecommunication facilities owned by more than one provider on/in a single antenna support structure, tower or stealth monopole structure. Co-location includes equipment associated with the antennas (such as wiring, cabling, cabinets, and backup-power).
 11. Distributed antenna system (DAS) networks. DAS is a small-cell transmission system which uses components that are a fraction of the size of macrocell deployments, and can be installed on utility poles, buildings, and other existing structures.

- 10-12.** **Engineer.** Any qualified, licensed engineer who specializes in either electrical or microwave engineering, especially the study of micro-frequencies; and/or, who specializes in structural integrity and determining whether a tower or antenna support structure has the capacity to accommodate more than one provider.
- 11-13.** **Equipment enclosures.** A structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals and associated equipment. Associated equipment may include air conditioning, back power supplies and emergency generators.
- 12-14.** **Existing tower.** Any tower in existence at the time of application for an administrative permit or special use permit.
- 13-15.** **FAA:** The Federal Aviation Administration.
- 14-16.** **Fall Zone.** The area on the ground within a prescribed radius, beginning from the base of a telecom structure or an antenna support structure within which there is a potential hazard from falling debris or collapsing material.
- 15-17.** **FCC:** The Federal Communications Commission.
- 16-18.** **Guyed Tower.** A type of tower that is supported, in whole or in part, by guy wires anchored to any surface.
- 17-19.** **Height.** The vertical distance above grade to the highest point of the antenna support structure, including the lightning rod and antenna.
- 18-20.** **Landowner.** Any person with fee title to a parcel of land within the City.
- 19-21.** **Lattice Tower.** A self-supporting structure, erected on any surface, which consists of an open network of metal crossed strips or bars to support antennas and related equipment.
- 20-22.** **Modification.** Any physical change to any element of a telecommunications structure or pre-existing structure.
- 21-23.** **Mount.** The structure or surface upon which wireless communication facilities are mounted. There are three (3) types of mounts: (i) Building mounted--a wireless communication facility affixed to the roof or side of a building, (ii) Ground mounted--a wireless communication facility fixed to the ground such as a tower, and (iii) Structure mounted--a wireless communication facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.
- 22-24.** **Monopole.** A monopole structure, erected on any surface, which supports antennas and any connecting appurtenances.

- ~~23-25.~~ Municipal Facilities. An antenna support structure owned by the City, including, but not limited to, water towers, fire stations and other similar buildings and structures.
- ~~24-26.~~ Operator. An individual, partnership, association, joint-stock company, trust, or corporation engaged in control and maintenance of all instrumentalities, facilities and apparatus incidental to wireless telecommunication transmission, including but not limited to, a tower, antennae, associated buildings, cabinets and equipment. For the purposes of this article, an "operator" may or may not hold a lease, license or title on or for the site on which a tower is located.
- ~~25-27.~~ Owner. Any person who develops, constructs, builds, modifies, erects or owns a telecommunications structure upon a parcel of land.
- ~~26-28.~~ Person. Any individual person, firm, partnership, association, corporation, company or other legal entity, private or public, whether for profit or not for profit.
- ~~27-29.~~ Personal Wireless Telecommunications Services. Any personal wireless service as defined in the Act, including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services.
- ~~28-30.~~ Pre-Existing Structure. Any telecommunications structure that existed prior to the effective date of this article or any telecommunications structure that exists outside the City limits either before or after the effective date of this article and is annexed into the City limits.
- ~~29-31.~~ Provider. An entity licensed by the FCC or a state agency to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication. A tower builder is not a provider.
- ~~32.~~ Public Right-Of-Way. The area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include utility easements.
- ~~30-33.~~ Screening. Materials that effectively hide personal wireless facilities from view, or landscaping in accordance with the requirements of the Zoning Ordinance.
- ~~31-34.~~ Security Barrier. A wall, fence, or berm that has the purpose of sealing a wireless communication facility from unauthorized entry or trespass.
- ~~32-35.~~ Stealth. A method of designing, constructing, and/or locating any telecommunications structure to blend in with the character and environment of the area in which it is

located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles.

- 33.36. Stealth Monopole.** Any freestanding, monopole structure, 50 feet or less in total height, as measured from the ground, which incorporates stealth design principles, including but not limited to, camouflaging the structure as a tree, flagpole or light pole.
- 37. Substantial Change.** a modification “substantially changes” the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act, if it meets any of the following criteria:
- for towers outside of public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
 - for towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;
 - it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
 - it entails any excavation or deployment outside the current site of the tower or base station;
 - it would defeat the existing concealment elements of the tower or base station; or
 - it does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.
- 38. Support structure.** A ground-mounted self-supporting vertical structure used to elevate or carry lines, cables, wires, or antennas for telecommunications, cable television, electricity or other utility services, or to provide lighting.
- 34.39. Telecommunications Structure (Structure).** Any tower, stealth monopole or telecommunications facilities.
- 35.40. Telecommunications Facilities.** Any cables, wires, lines, wave guides, antennas and any other equipment or facilities, including buildings, shelters or cabinets that house telecommunications providers’ equipment, associated with the transmission or reception of communications that a person seeks to locate or has installed upon or near a commercial tower or antenna support structure.
- 36.41. Tower.** A self-supporting lattice, guyed or monopole structure that supports telecommunications facilities for the purpose of providing personal wireless telecommunications services, including any structure built for the sole or primary

purpose of supporting any FCC-licensed or authorized antennas and their associated facilities. The term shall not include stealth monopoles, as defined herein, or amateur radio operators' equipment, as licensed by the FCC.

42. Transmission equipment. Antennas and other equipment associated with and necessary to the operation of a telecommunication facility, including power supply cables and backup power equipment

37.43. Unlicensed wireless services. Commercial mobile services that operate on public frequencies and do not need a FCC license.

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

D. APPLICABILITY

1. All wireless telecommunications facilities and antenna support structures, and any portion of which are located within the City, shall be subject to this article, except as follows:
 - a. Amateur radio operators. This article shall not apply to any short-wave radio tower that is owned and operated by a federally licensed amateur radio station.
 - b. Residential Antennas. This article shall not apply to accessory antennas attached to residential structures whose purpose is receiving television, radio, microwave, telephone, digital data or similar forms of wireless information transmission for the sole use of the occupants. A provider shall comply with this article to utilize a residential structure as an antenna support structure for its network, and shall obtain the appropriate permits as required.
 - c. Utility poles. This article shall not apply to utility poles, which are utilized solely for the support of electrical, telephone, cable television or similar cables and wires, located on public rights-of-ways or easements for that purpose, and are part of a system of such poles throughout the City.
 - d. Broadcast systems and facilities. This article shall not apply to towers or telecommunications facilities utilized for the transmission of signals that do not constitute personal wireless telecommunications services.

E. ZONING REQUIREMENTS

1. Towers: A tower, and any related telecommunication facilities, shall only be permitted by administrative approval or special use permit, whichever is applicable, in all zoning districts. No person shall erect a tower upon any parcel of land unless:
 - a. An application for administrative approval is made, and approved, in accordance with this article; or
 - b. An application for special use permit is made, and approved, by the Governing Body.
2. Stealth Monopoles. Stealth monopoles and any related telecommunication facilities shall only be permitted by administrative approval or special use permit in all zoning districts. No person shall erect a tower upon any industrial parcel of land unless:
 - a. An application for administrative approval is made, and approved, in accordance with this article; or
 - b. An application for special use permit is made, and approved, by the Governing Body.

F. PERMITS

1. Permit Required: No person shall locate an antenna or tower for wireless communication purposes or substantially change~~alter~~ an existing wireless communication facility upon any lot or parcel within the City except as provided in this article.
2. Application Requirements for Administrative Approval or Special~~Conditional~~ Use Permits: Each application for a permit shall conform to the requirements of this article. If a determination is made to request a Special Use Permit to originally site or modify an existing site, the provisions of Article 87-702 of the Zoning Regulations regarding special uses shall be followed~~Conditional Uses~~, and the following shall be provided:
 - a. The name, address and telephone number of the landowner of any parcel of land or antenna support structure upon which the telecommunications structure will be situated. If the applicant is not the landowner, the applicant shall submit his or her name, address and telephone number. The landowner, owner and applicant shall sign the application.
 - b. The legal description and street address of the parcel of land, or antenna support structure, upon which the proposed telecommunications structure will be situated.
 - c. Elevation plans drawn to scale of all proposed wireless telecommunications facilities; an accurately scaled site plan showing existing buildings, proposed wireless telecommunications facilities and proposed landscaping and

screening; and a written description of all proposed wireless telecommunications facilities and proposed quantities, types and sizes of landscaping materials.

- d. Photographs of the site in its current condition, and accurately proportioned photo-realistic representations of the site showing the telecommunications structure in place with proposed landscaping and screening.

- e. If the applicant is not the landowner, the landowner shall provide an affidavit indicating consent to develop upon the landowner's property. The landowner shall sign an agreement with the City that states if abandonment occurs, the landowner shall be responsible for the removal of the proposed telecom structure if the owner fails to remove it. (See also Section Q Abandonment) The landowner shall file the agreement with the Register of Deeds as a condition of approval of any permit for any telecommunications structure, and shall provide a copy of the filed agreement to the City prior to approval of the permit for the telecommunications structure. The agreement shall refer to the life mentioned in Section Q Abandonment.

- f. An affidavit from the manufacturer or engineer describing the maximum capacity of the telecommunications structure for co-location, including the number and type of providers it can accommodate, with consideration of radio frequency interference, mass, height and other characteristics, as well as options to overcome any problems those considerations may pose to service delivery. The affidavit shall certify that the telecommunications structure has been designed and will be constructed to support the specified number of providers.

- g. For a stealth monopole or tower application, certification from the engineer of the structure's manufacturer that the structure is designed and shall be constructed to ensure that a structural failure or collapse will not create a safety hazard to adjoining properties and that the structure will collapse on itself within the fall zone designated by the manufacturer.

- h. Written statements from the applicant or engineer that indicate the following:
 - (1) ~~(1) — The need for the telecommunications structure to provide or enhance personal wireless telecommunication services in the area, including:~~ a map showing the location of the proposed telecommunications structure and its service area; the location of the providers' other existing wireless telecommunications facilities in the area; applicable propagation models, search ring maps and other relevant documentation.

- (2) The minimum height required to serve the proposed service area.
 - (3) An explanation why the proposed site is required to meet service demands and how it would interact with the providers' other existing wireless telecommunications facilities in the service area.
 - (4) Proposed stealth measures designed to minimize potentially adverse visual effects on nearby properties, with consideration of design, unobtrusiveness, minimum height necessary to accommodate antennae, avoidance of artificial light and the color of the telecommunications structure.
 - (5) A description of the fall zone of the telecommunications structure, including the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.
 - (6) The distance between the proposed telecommunications structure and the nearest residential dwelling unit and residentially zoned properties including any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.
 - (7) A description of the security barrier, including the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, if any, surrounding the base of the telecommunications structure, including the method of fencing, finished color and, if applicable, the method of camouflage and illumination.
- i. Applicants shall be required to submit information on the proposed power density of their proposed telecommunications structure and demonstrate compliance with FCC standards regulating radio frequency (RF) emissions. This information is used solely for public information, as the FCC has the sole jurisdiction to regulate RF emissions. The City will not condition or deny an application because of potential RF impacts.
 - j. When applicable, documentation that the proposed tower or stealth monopole meets FAA requirements.
 - k. Any other information requested by the City that is reasonably necessary for the City to fully evaluate the application including information associated with any potential additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.

1. An engineer shall provide the following written technical evidence:
 - (1) Evidence that existing wireless telecommunications facilities and antenna support structures within the proposed service area of the proposed telecommunications structure site are not capable of co-location to provide reasonable service to the proposed service area, due to height, capacity, structural strength or interference with other electromagnetic/radio frequencies, including, but not limited to, public safety communications, radio and television signals.
 - (2) Evidence that the proposed telecommunications structure meets the standards set forth in “Structural Requirements.”
 - (3) Evidence that the proposed site of the telecommunications structure, including any additional dimensions associated with a possible increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials such as LP gas, propane, gasoline, natural gas or corrosive or other hazardous chemicals.
- m. The applicant shall provide an affidavit, attesting to the following:
 - (1) That the applicant made diligent efforts to install or co-locate on existing wireless telecommunications facilities or antenna support structures within the proposed service area.
 - (2) That the fees, cost or contractual provisions required by the owner(s) of other wireless telecommunications facilities or antenna support structures within the proposed service area are unreasonable.
 - (3) That other limiting factors render the use of other wireless telecommunications facilities and antenna support structures within the proposed service area, unsuitable.
- n. For towers, the applicant shall provide evidence that indicates why the use of alternative types of wireless telecommunications facilities, such as stealth monopoles or telecommunications facilities mounted on antenna support structures or municipal facilities, is insufficient or inadequate to meet the providers’ service area needs.

Except as otherwise provided within this article for siting of telecommunication facilities within right of ways, the following permit process shall be applicable within the City.

1. Administrative approval or Special~~Conditional~~ Use Permit. The Administrator, and/or The Planning Commission and Governing Body shall consider an administrative approval or special~~a conditional~~ use permit application, as applicable, subject to the requirements set forth within this article~~above~~, and shall also take into account the following additional standards:
 - a. Whether substantial evidence exists to demonstrate that existing or approved wireless telecommunications facilities or antenna support structures are unsuitable for co-location or to serve the proposed service area.
 - b. Whether the proposed telecommunications structure(s) has incorporated a reasonable level of stealth design to minimize the visual impact of the telecommunications structure(s), given the type of telecommunications structure and the character of the area in which the structure(s) is proposed to be located.

2. Administrative Approval Process. Within ten (10) business days of receiving a complete application, the zoning administrator shall approve, approve with conditions, or deny the request for an administrative permit, or shall refer the application to the planning commission for a public hearing.
 - a. The zoning administrator may issue an administrative permit for the installation, structural modification, or change in height, dimension, or number of antenna of a wireless communication facility if:
 - (1) The proposed wireless communication facility satisfies the performance standards and other requirements of this article; and
 - (2) If the antenna component of the wireless communication facility will be installed or exists in a residential or commercial district, it will be attached to:
 - i. An existing support structure; or
 - ii. A replacement or extension of an existing support structure, if the height of the replaced or extended support structure does not exceed the height of the original support structure by more than ten (10%) percent or more than ten (10) feet, whichever is greater. In addition, the diameter of the replaced or extended support structure shall not add an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet; or
 - iii. Installation of ground cabinets that are not more than 10% larger in height or overall volume than any other ground cabinets associated with the structure (NOTE: A request for installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure shall require a special use hearing).

(3) Written Findings Required. Any decision to deny an Administrative approval or Speciala-Conditional Use Permit, under this section shall be made in writing and shall state the specific reasons for the denial. Any denial by the Governing Body shall be deemed a final administrative decision, subject to judicial review and appeal. In the event that a permit application is denied by the Governing Body, no new request for the same or substantially similar permit shall be accepted or processed within six (6) months after denial of that application.

(4) The Applicant may appeal any determination of the zoning administrator to the Planning Commission by converting the application to a request for a special use permit. The applicant may, by written notice to the zoning administrator, convert the request for an administrative permit to a request for a special use permit at no additional cost. Additionally, an applicant may, in lieu of and without first seeking an administrative permit hereunder, initially request a special use permit for a proposed wireless communication facility.

(5) 3-Protests. The notification and protest area for permit applications shall be ~~two~~^{four} hundred (~~200~~⁴⁰⁰) feet from the property boundary of the proposed tower site. The protest procedure shall be as provided in K.S.A. 12-708 and Article ~~5~~⁷ of the Haysville Zoning Code.

3. Special Use permit.

a. Hearing. For any application to install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility that does not meet the criteria for an administrative permit, or for any application to install a new support structure in a residential district or commercial district, the planning commission may issue a special use permit after holding a public hearing in accordance with the procedures established in the Haysville Zoning Code.

b. Standards for evaluation of special use permit applications. The planning commission may approve, or approve with conditions an application for a special use permit in any zoning district after review and consideration of all of the following:

- (1) Conformity with the city's comprehensive plan;
- (2) Compatibility with abutting property and surrounding land uses;
- (3) Adverse impacts such as visual, environmental, or safety impacts;
- (4) Color and finish of the proposed facilities;
- (5) Screening potential of existing vegetation, structures and topographic features;
- (6) Potential for adequate screening of proposed facilities;
- (7) Scale of facilities in relation to surrounding land uses;
- (8) Impact on entry corridors into the city;
- (9) Impact on landmark structures, historically or architecturally significant structures or districts, or environmentally sensitive areas;

(10) Impact upon established easements;

(11) History of land use of property, including but not limited to: existing nuisance code violations, failure of property owner to abide by nuisance, health and safety, building or zoning codes, failure of property owner to enforce codes upon subject property when property occupied by a tenant, and documentation that property is currently subject to abandonment or foreclosure action;

(12) Property owner entering into abandonment agreement, which will be filed with the register of deeds and run with the property.

c. Denial of special use permit. Any decision by the Planning Commission to deny a special use permit under this section shall be made in writing and shall state the specific reasons for the denial. Any denial by the planning commission may be appealed to the Governing Body. Any denial by the Governing Body shall be deemed a final administrative decision, subject to appeal and judicial review. In the event that a special use permit application is denied by the planning commission or Governing Body, no new request for the same or substantially similar administrative or special use permit shall be accepted or processed within six (6) months after denial of that application.

c. Protests. The notification and protest area for special use permit applications shall be two hundred (200) feet from the proposed boundary areas of the site(s) of the wireless communication facilities. If a special use permit is approved by the planning commission, affected property owners shall have the same right to present a protest petition to the Governing Body and appeal that decision as property owners as provided for in rezoning cases.

H. SITING AND PLACEMENT WITHIN THE PUBLIC RIGHT-OF-WAY

1. Purpose and objectives. The purpose of this section is to establish requirements for the siting and placement of wireless communication facilities, including support equipment and support structure(s) (as defined herein) to such wireless communication facility, within the public right-of-way in a manner consistent with state and federal law, while ensuring the public health, safety, and welfare, including minimizing the visual effects of wireless communication facilities on public streetscapes, protecting public views, and otherwise avoiding and mitigating the potential impacts of wireless communication facilities on nearby properties and the community at-large. The provisions of this section are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecommunication services, nor shall they be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecommunication services.

2. Permit required.

- a. No person shall install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility in the public right-of-way except upon approval of an administrative permit or a special use permit, as provided in this section.
 - b. Maintenance or repair of existing permitted wireless communication facilities shall be excluded from the permitting requirement of this section.
3. Complete Application Required. Within ten (10) business days after receiving a submitted application, if the zoning administrator, or designee, determines that the application is incomplete, such administrator, or designee, shall issue a written determination of incomplete application to applicant setting forth in detail the areas of such application that must be completed before such application may be processed. The notice of incomplete application may be communicated via e-mail, fax, or via regular mail, as applicant has indicated preference for this notice on the application.
4. Administrative Approval Process. Within ten (10) business days of receiving a complete application, the zoning administrator shall approve, approve with conditions, or deny the request for an administrative permit, or shall refer the application to the planning commission for a public hearing.
 - a. The zoning administrator may issue an administrative permit for the installation, structural modification, or change in height, dimension, or number of antenna of a wireless communication facility in the public right-of-way if:
 - (1) The proposed wireless communication facility satisfies the performance standards and other requirements of this section; and
 - (2) If the antenna component of the wireless communication facility will be installed or exists in a residential district or commercial district, it will be attached to:
 - i. An existing support structure; or
 - ii. A replacement or extension of an existing support structure, if the height of the replaced or extended support structure does not exceed the height of the original support structure by more than ten (10%) percent or more than ten (10) feet, whichever is greater. In addition, the diameter of the replaced or extended support structure shall not add an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet; or
 - iii. Installation of ground cabinets that are not more than 10% larger in height or overall volume than any other ground cabinets associated with the structure (NOTE: A request for installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure shall require a special use hearing).
 - b. Any decision to deny an administrative permit under this section shall be

made in writing and shall state the specific reasons for the denial.

a. The Applicant may appeal any determination of the zoning administrator to the Planning Commission by converting the application to a request for a special use permit. The applicant may, by written notice to the zoning administrator, convert the request for an administrative permit to a request for a special use permit at no additional cost. Additionally, an applicant may, in lieu of and without first seeking an administrative permit hereunder, initially request a special use permit for a proposed wireless communication facility.

5. Special use permit.

a. Hearing. For any application to install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility in the public right-of-way that does not meet the criteria for an administrative permit, or for any application to install a new support structure in the public right-of-way in a residential district or commercial district, the planning commission may issue a special use permit after holding a public hearing in accordance with the procedures established in the Haysville Zoning and Subdivision Codes.

b. Standards for evaluation of special use permit applications. The planning commission may approve, or approve with conditions an application for a special use permit in any zoning district after review and consideration of all of the following:

- (1) Conformity with the city's comprehensive plan;
- (2) Compatibility with abutting property and surrounding land uses;
- (3) Adverse impacts such as visual, environmental, or safety impacts;
- (4) Color and finish of the proposed facilities;
- (5) Screening potential of existing vegetation, structures and topographic features;
- (6) Potential for adequate screening of proposed facilities;
- (7) Scale of facilities in relation to surrounding land uses;
- (8) Impact on entry corridors into the city; and
- (9) Impact on landmark structures, historically or architecturally significant structures or districts, or environmentally sensitive areas.

c. Denial of special use permit. Any decision by the Planning Commission to deny a special use permit under this section shall be made in writing and shall state the specific reasons for the denial. Any denial by the planning commission may be appealed to the Governing Body. Any denial by the Governing Body shall be deemed a final administrative decision, subject to appeal and judicial review. In the event that a special use permit application is denied by the planning commission or Governing Body, no new request for the same or substantially similar administrative or special use permit shall be accepted or processed within six (6) months after denial of that

application.

- b. Protests. The notification and protest area for special use permit applications shall be two hundred (200) feet from the proposed boundary areas of the site(s) of the wireless communication facilities. If a special use permit is approved by the planning commission, affected property owners shall have the same right to present a protest petition to the Governing Body and appeal that decision as property owners in rezoning cases.

6. Application Requirements.

7. Performance criteria. Unless otherwise specified, all wireless communication facilities in the public right-of-way shall comply with the following performance standards. The planning commission may grant a waiver from these standards when the applicant has demonstrated that there is a need to close a significant gap in coverage or capacity that can only be met by placement of the proposed facilities in the proposed location, or if the applicant can demonstrate any technical limitations conflicting with the performance standards, and if the purpose and objectives of this section would be better served thereby.

- a. Antennas shall be screened by means of canisters, shrouds or other screening measures and treated with exterior coatings of a color and texture to match the support structure upon which they are attached.
- b. Any replacement support structure shall be of new material, and the replacement or extension of a support structure shall match the original and/or surrounding utility or light poles in material, style, design, color, and finish.
- c. Antennas shall not extend more than thirty-six (36) inches from the top of the support structure.
- d. Support equipment attached to a support structure (excluding ancillary attached electrical equipment, such as an electric meter or breaker panel) shall not exceed six (6) feet in height and two (2) feet in width, or project more than twenty-four (24) inches horizontally from the support structure.
- e. All portions of the wireless communication facilities (other than the support structure and ground-mounted or underground support equipment) shall be located so as to provide adequate roadway clearance, to prevent interference or hazard to pedestrians, vehicular traffic, or other property in the public right-of-way.
- f. Cable connecting an antenna to any support equipment shall be contained inside or shall be flush mounted to the support structure and covered with a metal, plastic, or similar material cap that matches the color of the support structure and is properly secured.
- g. A new, modified, or replaced support structure shall not exceed eighteen (18) inches in diameter.

- h. No signs or advertising shall be allowed on wireless communication facilities, except for small identification, address, warning, and similar information plates approved by the zoning administrator.
- i. Wireless communication facilities shall not be artificially illuminated unless required by applicable law to protect the public's health and safety.

~~G.~~ PRE-EXISTING STRUCTURES

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1. Pre-existing structures shall meet all requirements of this article upon modification, in accordance with these regulations.
2. All pre-existing structures shall comply with the following requirements of this Article:
 - a. "Building Permits, Certifications and Inspections."
 - b. "Maintenance."
 - c. "Abandonment."

JH. BULK REGULATIONS

1. Maximum Height.
 - a. The height of a tower or stealth monopole shall be regulated by this article.
 - b. The height of a tower, including any antenna, shall not exceed one-hundred-fifty (150) feet, as measured from the ground. The maximum height limitation does not include a lightning rod, which shall not exceed an additional twenty (20) feet in height. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
 - c. The total height of a stealth monopole shall not exceed fifty (50) feet, as measured from the ground.
When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
 - d. The following height requirements shall apply to telecommunications facilities mounted externally on antenna support structures or municipal facilities:
 - (1) On structures 30 feet in height or less, telecommunications facilities shall be mounted consistent with the "Stealth Design Principles."

- (2) On structures between 30 and 60 feet in height, telecommunications facilities shall not extend more than a combined height of 75 feet, including the structure on which it is mounted upon.
- (3) On structures 60 feet in height or more, telecommunications facilities shall not extend more than 75 feet, including the structure on which it is mounted upon.

2. Setback Restrictions.

- a. Towers. Towers shall be set back from all property lines a distance equal to the fall zone of the tower, as certified by the structure manufacturer's engineer. If the fall zone is not ascertainable, the tower shall be set back from all property lines a distance equal to the height of the tower, including any antenna, plus other appurtenances.

When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.

- b. Stealth Monopoles. Stealth monopoles shall be set back from all property lines a distance equal to the fall zone of the structure, as certified by the structure manufacturer's engineer. If the fall zone is not ascertainable, the stealth monopole shall be set back from all property lines a distance equal to the height of the stealth monopole, including any antenna, plus other appurtenances. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
- c. Accessory ground-level equipment including guy-wire anchors shall follow the setbacks for accessory uses in the applicable zoning district. When considering the dimensions of any accessory ground-level equipment, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.

KI. STRUCTURAL REQUIREMENTS

1. All wireless telecommunications facilities shall be designed and certified by an engineer to be structurally sound and shall, at a minimum, be in conformance with these regulations and all applicable federal and city codes.
2. All towers and stealth monopoles shall be designed and constructed to collapse on themselves to minimize the impact on surrounding properties.

New towers

- ~~3. No new tower or stealth monopoles, monopole shall be built, constructed or erected in the City to be unless the tower is capable of co-location. All new towers less than 100 feet in height and stealth monopoles shall provide space for at least two (2) separate providers. All new towers one-hundred (100) feet or higher in height shall provide space for at least three (3) separate providers.~~
3. Antennas Mounted on Structures or Rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:
 - a. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 10 feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if over 100 square feet of gross floor area or six (6) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
 - b. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than fifteen (15) percent of the roof area.
 - c. Equipment storage buildings or cabinets shall comply with all applicable building codes.
4. Antennas Mounted on Utility Poles or Light Poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
 - a. In residential districts, the equipment cabinet or structure may be located:
 - i. In a front or side yard provided the cabinet or structure is no greater than five (5) feet in height or fifty (50) square feet of gross floor area and the cabinet/structure is located a minimum of twenty-five (25) feet from all lot lines. To allow for a future non-substantial change, the amount of additional space associated with such change shall be calculated and enough space allowed so that such change would continue to be outside the twenty-five (25) foot set back requirement.
 - ii. In a rear yard, provided the cabinet or structure is no greater than eight (8) feet in height or 100 square feet in gross floor area, inclusive of any future non-substantial change to increase height or area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
 - b. In commercial or industrial districts the equipment cabinet or structure shall be no greater than eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of any and all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence eight (8) feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
5. Antennas Located on Towers. The related unmanned equipment structure shall not continue more than 100 square feet of gross floor area or be more than eight (8) feet

in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

6. Modification of Building Size Requirements. The requirements of this Section may be modified by the Zoning Administrator in the case of administratively approved uses or by the Planning Commission in the case of uses permitted by special use in an effort to encourage collocation.

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J.

USE LIMITATIONS

1. Stealth Design: The ~~City Governing Body~~ may require stealth design of a tower or telecommunications facility, in accordance with regulations, depending on the character of the proposed location and type of tower or telecommunications facility.
2. Illumination:
 - a. Towers shall not be artificially lighted except as required by the FAA.
 - b. Notwithstanding subsection (1), in the case of a stealth telecommunications structure, illumination may be provided that is appropriate and customary for the type of stealth structure, as approved by the Special Use process~~Governing Body~~.
 - c. Security lighting may be installed around the base of a tower or accessory telecommunication facilities, provided the lighting is a full cut-off design to prevent direct light from being cast upon nearby property and to prevent glare on nearby public streets, as approved by the Special Use process~~Governing Body~~.
3. Security Fencing: The ~~City Governing Body~~, may require the installation of a security fence around all sides of a telecommunications structure located at ground level, and shall review and approve the material and design of any fencing to ensure that it will in fact serve to secure the facility.
4. Screening and Landscaping: All landscaping on a parcel of land containing wireless telecommunications facilities and/or antenna support structures shall conform to the applicable landscaping requirements, if any, in the zoning district where the structure is located. The ~~City Governing Body~~ may require year-round landscaping and/or screening in order to reduce visual impacts and enhance the compatibility of telecommunications structure(s) with the character of nearby land uses and the area. Such screening may consist of walls, fencing and/or landscaping or combinations thereof, as approved by the ~~City Governing Body~~, but any such screening may be reviewed to determine that it does in fact screen the facility from view.
5. Parking and Access. The parcel of land upon which a telecommunications structure is located shall either contain at least one (1) off-street parking space on the site,

~~or and~~ shall identify other permanently available off-street parking associated otherwise conform with the siterequirements of Article 5-500, Off-Street Parking Requirements.

MK. SIGNS

1. Signs Prohibited. No signs, flyers, flags or banners, shall be permitted on any telecommunications structure, except as may be required by the FAA, FCC, other federal or state agency or the City. A flag may be hung on an approved stealth flagpole structure in accordance with regulations.
2. Removal of Signs. The owner shall remove any sign placed on any telecommunications structure in violation of this section within five (5) seven (7) days of ~~receiving~~ notice having been sent by~~of removal from~~ the City.
3. Notwithstanding any contrary provisions of the city's zoning ordinance, the following warning signs shall be utilized in connection with the tower or antenna site, as applicable:
 - a. If high voltage is necessary for the operation of the tower or associated equipment, "HIGH VOLTAGE--DANGER" warning signs shall be permanently attached to each side of the fence or wall surrounding the structure.
 - b. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than forty (40) feet apart; (a) the height of the lettering of the warning signs shall be at least twelve (12) inches and the signs shall be installed at least five (5) feet above the finished grade; (b) the warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.
 - c. A sign on the gate indicating the name and address of the tower owner and a phone number where the tower owner can be reached twenty-four (24) hours a day in case of an emergency shall be permanently attached to the fence.

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L. STEALTH DESIGN FOR WIRELESS TELECOMMUNICATIONS FACILITIES

1. Stealth wireless telecommunications facilities shall be designed to blend in with the character and environment of the area in which they are proposed to be located, and to enhance compatibility with nearby land uses by minimizing visual impacts. Stealth wireless telecommunications facilities shall incorporate the following design principles, as applicable to the type of telecommunications structure and character of the location:
 - a. Preserve the pre-existing character of the area as much as possible.
 - b. Minimize the height, mass and proportion of wireless telecommunications facilities to minimize impacts on the character of the nearby area.
 - c. Minimize the silhouette presented by new towers, stealth monopoles, antenna support structures and antenna arrays. Monopoles are favored over lattice-type towers; antennas mounted inside an antenna support structure or monopole, or mounted flush to the antenna support structure, are favored over triangular “top-hat” or other projecting external types of antenna arrays.
 - d. Use colors, textures and materials that blend in with the existing environment; surfaces shall be painted, or otherwise treated, to match or complement existing background structures and surfaces, and to minimize reflection.
 - e. Conceal telecommunication facilities from view by placing inside a building, steeple, penthouse, clock tower, flagpole or other appropriate structure. Architectural additions or appurtenances to existing antenna support structures that are intended to conceal telecommunication facilities, shall be designed to be appropriate in mass, scale, material, texture, color and character with the existing antenna support structure.
 - f. Camouflage and/or disguise wireless telecommunications facilities to look like another type of structure or object, through methods including, but not limited to design, placement, use of materials, texture, color, year-round landscaping and screening, to blend in with the character of the surroundings, or integrate into the architectural elements and character of an existing antenna support structure to such an extent that it is

indistinguishable by the casual observer from the structure on which it is located, or from the surroundings in which it is placed. Stealth monopoles designed to look like a flagpole shall utilize a flag that is appropriately sized for the height of the pole. Stealth monopoles disguised as a tree shall be of a height, character and placement that is appropriate to the location. Wireless telecommunications facilities mounted on roofs or similar structures shall be concealed from view by placement and setback from the edges and/or through use of architectural screening that is in character with the building or antenna support structure.

- g. Locate wireless telecommunications facilities in areas where trees and/or buildings obscure some or all the wireless telecommunications facilities from view, and install new year-round landscaping and screening around the site where visible from public streets or residential areas.
- h. Locate accessory equipment inside a building or in underground vaults when possible. Screen ground-level wireless telecommunications facilities through use of walls, fencing or year-round landscaping, or combinations thereof, which is appropriate in design, height and material to the character of the location and the structure to be screened.

OM. MODIFICATION AND REPLACEMENT

- 1. Modification to existing site. Up to fifty (50) percent of the height of an existing tower may be replaced with no ~~substantial change~~~~resulting increase~~ in height as part of modifications made to provide for co-location of a new facility. Replacement of more than fifty (50) percent of a tower shall be considered a new tower and shall meet all of the applicable requirements for new construction.
- 2. Rebuilding damaged or destroyed existing site. If more than fifty (50) percent of the tower or facility is damaged or destroyed, it shall be considered a new facility and shall meet all the applicable requirements for new construction. All replacement shall comply with then applicable building codes and a new administrative approval or special~~conditional~~ use permit and building permit shall be obtained and be completed within one hundred eighty (180) days from the date the tower or facility was damaged or destroyed. If no permit is obtained or it expires, or replacement is not timely completed, the tower or facility shall be deemed abandoned.

PN. BUILDING PERMITS, INSPECTIONS AND CERTIFICATIONS

- 1. The applicant shall apply for and receive all applicable City permits prior to the construction of an antenna support structure or telecommunications structure. Wireless telecommunications facilities shall conform to the requirements of the applicable city codes and all other construction standards set forth by federal and state law. The City shall inspect the antenna support structure or telecommunications structure and issue a certificate of occupancy prior to use by the providers. It shall be a violation of this subsection for an owner to construct or

use a telecommunications structure without the required permit, inspection or certificate of occupancy.

2. An engineer shall certify that all wireless telecommunications facilities are structurally sound. For new wireless telecommunications facilities, such certification shall be based upon the construction plans, and shall be submitted with an application. The City may require subsequent certifications if the City reasonably believes that the structural and/or electrical integrity of the telecommunications structure is jeopardized. Failure to comply within seven business days of such request shall be grounds for revoking such structure's occupancy permit, and ceasing operations until compliance is achieved.

Q. ABANDONMENT

1. The owner and/or provider of a telecommunications structure shall provide the City a copy of its notice to the FCC of intent to cease operations. The owner shall remove the structure at the owner's expense within one hundred and eighty (180) days from the date of abandonment. If the owner and/or provider fail(s) to provide the City with the proper notice of intent to cease operations, the structure may be declared a nuisance and dangerous structure in conformance with the City's nuisance code. Failure to remove the abandoned structure within ninety (90) days of issuance of notice that such facility has been declared a nuisance shall be grounds for the City to remove the structure with all costs of removing such dangerous and nuisance structure assessed against the landowner. The removal process shall be as set forth in the Haysville Code for removal of nuisance and/or dangerous buildings.
2. If the landowner further refuses to remove the structure as required, the City shall remove the structure and place a lien on the real property in the amount of all direct and indirect costs associated with the dismantling and disposal of the structure.

RΘ. MAINTENANCE

1. Owners shall employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public including sufficient anti-climbing and other measures to reduce the potential for trespass or injury.
2. Owners shall install and maintain wireless telecommunications facilities, fixtures and other equipment in compliance with the requirements of all federal, state and local codes and regulations, and in such manner that will not interfere with the use of other property.
3. All wireless telecommunications facilities shall be maintained in good condition, order and repair.

4. Licensed maintenance and construction personnel shall perform all maintenance and construction of wireless telecommunications facilities.
5. All wireless telecommunications facilities shall comply with the current RF emission standards, as determined by the FCC.

S. FEES. The following fees shall apply:

<u>Administrative Permit (New Cell Tower)</u>	<u>\$500.00</u>
<u>Administrative Permit (Modification of Existing Structure)</u>	<u>\$250.00</u>
<u>Right of Way, Wireless Facility Administrative Permit</u>	<u>\$250.00</u>
<u>Special Use Permit Application (New Cell Tower)</u>	<u>\$500.00</u>
<u>Staff Review, Special Use Permit</u>	<u>\$40.00 per hour</u>
<u>Special Use Permit Deposit</u>	<u>\$1,000.00</u>

Special Use Permit Deposit Process. The applicant shall submit with any Special Use Permit application, or at the time of converting an application for an administrative permit to a request for a Special Use Permit, an initial deposit of \$1,000.00 for each wireless facility location that is the subject of the application. After completing the preliminary review, the zoning administrator shall notify the applicant, in writing, of any additional information required to complete the review, and of any anticipated extraordinary costs or expenses for additional City staff time, postage and advertising, retention of expert or consultant assistance, or legal fees. If the zoning administrator identifies anticipated costs in excess of the deposit balance after payment of expenses incurred, the deposit shall be replenished or supplemented to the extent necessary to assure payment of the anticipated costs before the City shall incur those anticipated costs and before any further review of the application shall occur. At the conclusion of the permitting process a finalized statement shall be provided to the applicant, all deposit monies held by City in excess of actual costs shall be returned to the applicant.

T. ENFORCEMENT. It shall be the duty of the City Manager to appoint a Code Enforcement Officer, who shall enforce all provisions of this sign code. It shall be unlawful for any person to interfere with any City Official in the performance of the duties assigned under this sign code.

U. PENALTY. In addition to any other enforcement action or nuisance abatement action, the municipal court is hereby authorized, upon proper motion, empowered and directed to abate or suppress any violation of this article and for the purpose of carrying out the provisions of this section, the municipal court is hereby authorized, after giving proper notice, to give to any city law enforcement officer or health officer the right to enter into or upon any premises or establishment for the purpose of making thorough examinations

and for the further purposes of causing any violations to be abated or suppressed. Any person convicted of a violation of this article shall be punished by a fine in accordance with the general penalty provisions set out in Chapter 1, Article 2 of this code. Each day that any violation of this article continues shall constitute a separate offense and be punishable hereunder as a separate violation.

~~P. ABANDONMENT~~

- ~~1. The owner and/or provider of a telecommunications structure shall provide the City a copy of its notice to the FCC of intent to cease operations. The owner shall remove the structure at the owner's expense within one hundred and eighty (180) days from the date of abandonment. If the owner and/or provider fail(s) to provide the City with the proper notice of intent to cease operations, the structure may be declared a nuisance and dangerous structure by resolution of the Governing Body. A copy of such resolution and a written notice to remove the structure shall then be issued to both the landowner and the structure's owner(s) by registered mail and regular mail to the addresses provided with the application, or to any updated addresses previously provided to the City by the structure owner and/or landowner. The resolution shall also be published in the City's official newspaper. Failure to remove the abandoned structure within ninety (90) days of issuance of such mailings shall be grounds for the City to remove the structure with all costs of removing such dangerous and nuisance structure assessed against the landowner. The removal process shall be as set forth in the Haysville Code for removal of nuisance and/or dangerous buildings.~~
- ~~2. If the owner does not remove the structure within the required time period, the City shall require that the landowner remove the structure pursuant to the agreement between the City and the landowner (see Section F.2.e.) If the landowner further refuses to remove the structure as required, the City shall remove the structure and place a lien on the property in the amount of all direct and indirect costs associated with the dismantling and disposal of the structure.~~