

A BILL TO CREATE AN ORDINANCE ENTITLED:

"AN ORDINANCE REPEALING AND REPLACING SECTION 31-44.1 OF THE CENTRALIA CITY CODE."

WHEREAS, the City of Centralia Planning and Zoning Commission, after consideration on October 5, 2017, voted of 7 to 0 to recommend to the Board of Aldermen, in accordance with Section 31-7 of the Centralia City Code, that Section 31-44.1 of the Centralia City Code be repealed and replaced with a new Section 31-44.1 to better provide for regulation of Wireless Communication Facilities in the City of Centralia, Missouri; and

WHEREAS, no citizens made comments at the public hearing, with no citizens supporting the proposed amendment and no citizens opposing the proposed amendment, and no written protest has been made to such proposed amendment and no letter of support has been received; and

WHEREAS, in accordance with Section 31-9 of the Centralia City Code, notice of a public hearing regarding the proposed amendment to Section 31-44.1 of the Centralia City Code was given by the Board of Aldermen, stating that a hearing would be held on October 16, 2017 at 7:00 p.m. in the Council Chambers of the Centralia City Hall, said notice having been published in the September 20, 2017 issue of the Centralia Fireside Guard, a weekly newspaper of general circulation in Centralia, Missouri; and

WHEREAS, a public hearing was held at 7:00 p.m. on October 16, 2017 in the City Hall Council Chambers in Centralia, Missouri, by the Board of Aldermen, at which hearing all parties in interest and citizens were given an opportunity to be heard in relation to the recommended amendment; and

WHEREAS, the Board of Aldermen of the City of Centralia, Missouri, have determined that the repealing and replacing Section 31-44.1 of the Centralia City Code is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CENTRALIA, MISSOURI, as follows:

SECTION 1. Section 31-44.1 Wireless Communication Facilities of the Centralia City Code is hereby repealed and replaced with the attached code provisions made part of this ordinance by reference herein.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. This ordinance shall take effect and be in full force and effect from and after the date of its passage and approval.

PASSED this 16th day of October, 2017.

Mayor, Tim Grenke

ATTEST:

City Clerk, Heather Russell

This ordinance approved by the Mayor this _____ day of _____, 2017.

Mayor, Tim Grenke

ATTEST:

City Clerk, Heather Russell

ARTICLE XVII: WIRELESS COMMUNICATIONS FACILITIES

Section 31-44.1 Wireless communications Facilities

SECTION 1: PURPOSE

- A. **Statement of Purpose.** The general purpose of this Article is to regulate the placement, construction and modification of telecommunications Towers, Support Structures, and Antennas 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 of Centralia. Specifically, this Article is intended to:
1. Provide for the appropriate location and development of telecommunications facilities and systems to serve the citizens and businesses of the City of Centralia;
 2. Minimize adverse visual impacts of Wireless Communications Facilities through careful design, siting, landscape screening, and innovative camouflaging techniques;
 3. Maximize the use of existing and Support Structures so as to minimize the need to construct new or additional facilities;
 4. Facilitate the addition of the least visible new Support Structures capable of achieving these objectives;
 5. Ensure that any new Support Structure is located in an area compatible with the neighborhood or surrounding community to the extent possible; and
 6. Ensure that regulation of Wireless Communications Facilities does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service.
- B. **Applicability.** Notwithstanding any ordinance to the contrary, the procedures set forth in this section shall be applicable to all Wireless Communications Facilities existing or installed, built or modified after the effective date of this Article to the fullest extent permitted by law.

SECTION 2: DEFINITIONS

As used in this Article, the following terms shall have the meanings and usages indicated:

ANTENNA: Any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. The term shall exclude satellite earth station antennas less than two (2) meters in diameter (mounted within twelve feet (12') of the ground or building-mounted) and any receive-only home television antennas.

AGL (Above Ground Level): Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty feet (50') from the center location of measurement.

CABINET: A structure for the protection and security of communications equipment associated with one (1) or more Antennas where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed four feet (4') by six feet (6'), and vertical height that does not exceed six feet (6').

DIRECTOR: The City Administrator of the City of Centralia or his/her designee or official acting in such capacity.

DISGUISED SUPPORT STRUCTURE: Any free-standing, man-made structure designed for the support of Antennas, the presence of which is camouflaged or concealed as an appropriately placed and designed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, light standards, flag poles and artificial trees. For purposes of this definition, a structure "camouflaged or concealed as an appropriately-placed and designed architectural or natural feature" shall meet the following additional criteria: (1) it is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located, (2) it does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate, (3) it cannot be identified as an Antenna Support Structure by persons with reasonable sensibilities and knowledge, (4) its equipment, accessory buildings, or other aspects or attachments relating to the Disguised Support Structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated, and (5) it is of a height, design and type that would ordinarily occur at the location and neighborhood selected.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: The vertical distance measured from the average grade of the base of the structure at ground level to its highest point and including the main structure and all attachments thereto.

INCIDENTAL USE: Any use authorized herein that exists in addition to the principal use of the property.

MODIFICATION: Any addition, deletion or change, including the addition or replacement of Antennas, or any change to a structure requiring a building permit or other governmental approval.

SHELTER: A building for the protection and security of communications equipment associated with one (1) or more Antennas and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected Antennas is prohibited.

SUBSTANTIAL MODIFICATION: The mounting of a proposed wireless facility on a wireless support structure which, as applied to the structure as it was originally constructed:

- (a) Increases the existing vertical height of the structure by:
 - a. More than ten percent; or
 - b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or
- (b) Involves adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);
- (c) Involves the installation of more than the standard number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or
- (d) Increases the square footage of the existing equipment compound by more than one thousand two hundred fifty square feet;

SUPPORT STRUCTURE: A Tower or Disguised Support Structure.

TOWER: A structure designed for the support of one (1) or more Antennas and including guyed towers, self-supporting (lattice) towers, or monopoles, but not Disguised Support Structures or buildings. The term shall also not include any Support Structure that includes attachments of sixty-five feet (65') or less in height owned and operated solely for use by an amateur radio operator licensed by the Federal Communication Commission.

WIRELESS COMMUNICATIONS FACILITY: Any Antenna, Cabinet, Shelter and Support Structure and associated equipment.

SECTION 3: APPLICATION PROCEDURES; TIMING.

- A. Applications for permitted, administrative, or conditional uses pursuant to this Article shall be subject to the supplementary procedures in this Article. Applications shall be submitted to the City as a complete application on forms provided by the City. A "complete application" shall be an application submitted on the forms provided by the City, fully executed by the applicant, identifying the specific approval sought, and containing all attachments, fees and information as required thereon or by the City, consistent with this Article. Applications shall be accompanied by a building permit application and other applicable forms, and such application fees as may be established to reimburse the City for its inspection and review costs.
- B. Co-location requests. A final decision on all applications to co-locate wireless communication facilities on an existing Support Structure shall be made no later than forty-five (45) days after receipt of a complete application from an Applicant, unless extended by the City for good cause or by consent of the Applicant.
- C. Other applications; new Support Structures. A final decision on all other applications under this Article, including but not limited to applications for new Support Structures, shall be made no later than one hundred twenty (120) days after receipt of a complete application from an Applicant or within such additional time as may be mutually agreed to by an Applicant and the City.
- D. Incomplete applications. Within thirty (30) days after receipt of an incomplete application, and within fifteen (15) days after the receipt of an incomplete co-location application, the Director shall provide notice to the Applicant stating that the application is incomplete and generally identifying the code provisions or application requirements not satisfied or information not provided that the Applicant must satisfy for a complete application commencing the City's review process. Nothing in this procedure shall alter the affirmative obligation of each applicant to review the applicable code and satisfy all applicable provisions as may apply to the applicant's specific submission.

SECTION 4: GENERAL REQUIREMENTS

- A. The requirements set forth in this Article shall be applicable to all Wireless Communications Facilities within the City installed, built or modified after the effective date of this Article to the full extent permitted by law.
 1. Principal or incidental use. Wireless Communications Facilities shall be Conditional Use in all zoning districts, subject to any applicable requirement relating to yard, height or setback. An incidental use subject to a leasehold interest of a person other than the lot owner may be approved for a Tower only if the leasehold area separately meets all requirements for a separate subdivided lot, including dedicated access, parking, and lot size, applicable to a primary use in the district in which the use is proposed.

2. Building codes, safety standards and zoning compliance. Wireless Communications Facilities shall be constructed and maintained in compliance with all standards contained in applicable State and local building codes. A certified engineer's structural report shall be required with each application, unless waived upon application to the Director stating why such report is unnecessary to the specific application and a determination in the discretion of the Director approving such statement. In addition to any other approvals required by this Article, no Wireless Communication Facility or portion thereof shall be erected, replaced, or expanded prior to receipt of a Certificate of Zoning Compliance and the issuance of a Building Permit. For all sites located within a Historic Preservation District, a Certificate of Appropriateness shall also be required.
3. Regulatory compliance. All Wireless Communications Facilities shall meet or exceed current standards and regulations of the FAA, FCC and any other local, State or Federal agency with the authority to regulate Wireless Communications Facilities, and including all required licenses, permits and taxes applicable to such structure and/or modification. Should such standards or regulations be amended, then the owner shall bring such devices and structure into compliance with the revised standards or regulations within the time period mandated by the controlling agency. No approval for any placement, construction or modification of any Wireless Communications Facilities permitted by this Article shall be granted for any Applicant having an uncured violation of this Article, any zoning regulation regarding the lot on which the structure is proposed, or any other governmental regulatory, licensing, or tax requirement applicable to such Antenna or structures within the City.
4. Security. All Wireless Communications Facilities shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build or modify Wireless Communications Facilities. Additional measures may be required as a condition of the issuance of a Building Permit or Administrative Permit as deemed necessary by the Director or by the Board of Aldermen for a Conditional Use Permit.
5. Lighting. Antennas and Support Structures shall not be lighted unless required by the FAA or other State or Federal agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application to install, build or modify the Antennas or Support Structure. Lighting may also be approved as a consistent component of a Disguised Support Structure. Equipment Cabinets and Shelters may have lighting only as approved by the Director or Board of Aldermen on the approved site plan.
6. Advertising. Except for a Disguised Support Structure in the form of an otherwise lawfully permitted sign, the placement of advertising on Wireless Communications Facilities is prohibited other than identification signage of not greater than 1 square foot on ground equipment.
7. Design.
 - a. Color. Subject to the requirements of the FAA or any applicable State or Federal agency, Towers and attachments shall be painted a neutral color consistent with the natural or built environment of the site or an alternative painting scheme approved by the Director, or Board of Aldermen, consistent with the requirements of this Article. Unpainted galvanized steel Support Structures are not permitted.
 - b. Ground equipment. Equipment Shelters or Cabinets shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located. All equipment shall be either placed underground, contained in a single Shelter or Cabinet, or wholly concealed within a building, approved walled compounds or another alternative method of concealment approved by the Director or Board of Aldermen.
 - c. Antenna design. Antennas attached to a Disguised Support Structure or Tower shall be contained within the Disguised Support Structure or within or mounted flush on the surface of the Tower to which they are mounted. Antennas attached to an existing building or structure shall be of a color identical to the surface to which they are mounted. All Antennas shall be designed to be disguised and maximally concealed on or within the Support Structure. Exposed Antennas on "crows nest" or other visible platforms or extensions are prohibited.
 - d. Height. Support Structures shall be no taller than necessary and shall not exceed the height limitation of any airport overlay zone as may be adopted by the City or other regulatory agency. Support Structures may exceed underlying zoning district height restrictions for buildings and structures only where shown to be necessary, provided that no reasonable alternative exists. District height restrictions shall be considered by the City in determining the appropriateness of the design and location of the application under the applicable standards for approval.
 - e. Monopole design. All Towers shall be of a monopole design. Lattice, guyed towers or other non-monopole Tower designs shall not be permitted.

- f. Compound walls/landscaping. All Towers shall be surrounded by a minimum of six (6) foot high decorative wall constructed of brick, stone or comparable masonry materials and a landscape strip of not less than ten feet (10') in width and planted with materials, which will provide a visual barrier to a minimum height of six feet (6'). The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the Director, or by the Board of Aldermen, upon demonstration by the Applicant that an equivalent degree of visual screening will be achieved. Landscaping or other improvements may be required for Disguised Support Structures if needed to implement an approved disguise.
 - g. Setbacks. All Support Structures, and related structures, fences and walls shall be separated from the property line of any adjacent property zoned for a residential use at least a distance equal to the height of the Support Structure, and shall be separated from all building setback lines by at least a distance equal to one-half (½) of the height of the Support Structure.
 - h. Storage. Vehicle or outdoor storage on any Support Structure site is prohibited, unless otherwise permitted by the zoning.
 - i. Parking. On-site parking for periodic maintenance and service shall be provided at all Antenna or Support Structure locations consistent with the underlying zoning district and the type of Antenna or Support Structure approval granted.
8. Shared use.
- a. Existing Support Structures. Prior to the issuance of any permit to alter or modify any Support Structure existing on the effective date of this Article, the owner shall provide to the City a written statement that the Applicant conducted an analysis of available co-location opportunities on existing wireless towers within the same search ring defined by the Applicant.
 - b. Support Structure inventories. Prior to the issuance of any permit to install, build or modify any Support Structure, such Applicant shall furnish the Director an inventory of (1) all Support Structures owned or controlled by such Applicant and by the proposed Antenna user (if the proposed Antenna user is different from the Applicant), and (2) all Towers owned by any person located within one and one-half (1½) miles of the proposed structure. The inventory shall include the structure or Antenna reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing Antennas and an assessment of available ground space for the placement of additional equipment shelters.
 - c. Shared use--new Support Structures. Any new Support Structure approved at a height of sixty feet (60') AGL (Above Ground Level) or higher shall be designed and constructed to accommodate at least one additional user. The Director may waive this requirement for Disguised Support Structures if the Applicant submits a written request demonstrating that compliance cannot be achieved without violating one or more of the definitional requirements of a Disguised Support Structure.
 - d. Notice of Support Structure applications. Prior to any application for the construction of a new Support Structure, a copy of the application or a summary containing the height, design, location and type and frequency of Antennas shall be delivered by certified mail to all known potential Tower users within City, including but not limited to all companies providing wireless internet and commercial mobile radio services in the City, and such other potential users, if any, if identified on a schedule maintained by the Director. Proof of such delivery shall be documented by the Applicant with the application to the City. The Director may establish a form required to be used for such notifications and establish other procedures consistent with and as may facilitate compliance with this Article. The Director shall, before deciding on the application or forwarding it to the Planning and Zoning Commission or Board of Aldermen for review, allow all persons receiving notice at least fifteen (15) calendar days to respond to the City and request to locate within one (1) mile of such area. The failure of the receiving party to use this process or respond to any such notice shall be considered cause for denying requests by such party for new Support Structures.

SECTION 5: PERMITTED USE

- A. The placement of Wireless Communications Facilities is permitted in all zoning districts only as follows:
 - 1. The attachment of additional or replacement complying Antennas or equipment to any existing fully conforming Wireless Communications Facility which does not require a Substantial Modification to the height of the Structure or to the accompanying ground equipment provided that all requirements of this Article and the underlying zoning ordinance are met, including that such changes to ground equipment or height are approved by the Director or Board of Aldermen.

2. The mounting of Antennas on any existing and conforming building or structure other than a Support Structure (such as a water tower), provided that the presence of the Antennas and equipment is concealed by architectural elements or fully camouflaged and concealed by painting a color identical to the surface to which they are attached and further provided that all requirements of this Article and the underlying zoning ordinance are met.
3. The mounting of Antennas on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than ten feet (10'), provided that all requirements of this Article and the underlying zoning ordinance are met, except minimum setbacks provided in this Article shall not apply.
4. The installation of Antennas or the construction of a Support Structure on buildings or land owned by the City following the approval of a lease agreement by the Board of Aldermen and subject to such specifications, conditions and requirements as set forth in the lease.

SECTION 6: AUTHORIZATION BY ADMINISTRATIVE PERMIT

- A. The placement of Wireless Communications Facilities is permitted in all zoning districts by Administrative Permit approved by the Director only as follows:
 1. The attachment of additional or replacement Antennas, equipment, Cabinets or Shelters to any nonconforming Support Structure existing on the effective date of this Article or subsequently approved in accordance with these regulations and not satisfying the requirements for such attachment pursuant to Section 5 as a permitted use as long as the Applicant provides documentation from which the Director has reasonably determined that the application will bring the Support Structure (including ground equipment and site) into conformance with this Article to the maximum extent feasible and further provided that the proposal does not cause a Substantial Modification to the height of the Support Structure or to the exterior equipment compound area. A "nonconforming Support Structure" shall be any Support Structure or associated site or equipment that does not comply with all of the requirements of this Article, including but not limited to the General Requirements herein and the requirements of the underlying zoning district.
 2. The one-time replacement of any Tower existing on the effective date of this Article or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard and the new structure otherwise complies with this Article. The new Tower shall be of the same type as the original except that a guyed or self-supporting (lattice) tower shall be replaced by a monopole. The height of the new monopole Tower may exceed that of the original to the extent the additional height would not be considered a Substantial Modification to the original tower. Subsequent replacements or replacements requiring what would be a Substantial Modification to the existing tower shall require the approval of a Conditional Use Permit.
 3. The construction of a Disguised Support Structure provided that all related equipment shall be placed underground or concealed within the structure or associated buildings consistent with the disguise when the structure is located in any district other than a district authorizing industrial uses as a permitted use. Equipment may be placed in an appropriately concealed Cabinet if the Disguised Support Structure is incidental to an industrial, commercial, institutional or other non-residential use.
 4. The placement in any M-1 or B-2 zoning district, as defined by this code, of camouflaged Antennas on wooden or steel functioning utility poles not to exceed forty feet (40') in height and on any such poles (or functional replacement poles of no greater height) existing in any other district on the date of adoption of this Article. All related equipment for Antennas permitted by this sub-section shall be located outside of the rights-of-way in a concealed Cabinet or underground and shall otherwise comply with requirements for accessory utility facilities provided in this Code.
 5. Temporary Towers erected and maintained for a period not to exceed sixty (60) days for the purpose of replacing an existing Tower, testing an existing or proposed network, or special events requiring mobile towers. The approval for such Tower shall be limited to the amount of time necessary for its purpose and approval may be further conditioned for public safety and other purposes of this Article.
- B. Application Procedures. Applications for Administrative Permits shall be made on the appropriate forms to the Director and accompanied by a deposit of one hundred dollars (100.00), or such other deposit amounts as may be established. In addition to the above fee, upon request by the Director, an Applicant shall deposit with the City such additional amounts reasonably necessary to reimburse the City for actual and direct costs and fees for legal, engineering or other contractual or other consultant services determined by the City to be needed in review or action on the application. No application for an Administrative Permit under this section shall be deemed complete until the Applicant has paid all fees and deposits required under this Article. Any amount not used by the City shall be refunded to the Applicant upon written request after a final decision. Applicant shall submit along with its completed application form a:
 1. A detailed site plan, based on a closed boundary survey of the host parcel, indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, public rights-of-way, the zoning categories of the subject and

adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the existing or proposed Support Structure.

2. The application shall be reviewed by the Director to determine compliance with the above standards and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.
 3. In reviewing an application, the Director may require the Applicant to provide additional information, including technical studies, and/or may require Applicant to pay the cost of such studies if to be performed by the City, if such studies are reasonably necessary to assess whether the standards for approval are satisfied. An application shall not be deemed complete until satisfaction of all application requirements and submission of all requested information as provided herein.
 4. The Director shall issue a decision on the permit within the time provided in Section 3 or the application shall be deemed approved unless the time period for review and action is extended by writing of the Director or Board of Aldermen for reasonable cause. The Director may deny the application or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with and to effectuate the purposes of this Article. The Director may consider the purposes of this Article and the factors established herein for granting a Conditional Use Permit, as well as any other considerations consistent with the Article. A decision to deny an application shall be made in writing and state the specific reasons for the denial.
- C. Appeals. Unless otherwise required by law, appeals from the decision of the Director shall be made first to the Board of Aldermen in accordance with the procedures for a contested case as defined in Chapter 536, RSMo., within ten (10) days of any denial.

SECTION 7: CONDITIONAL USE PERMIT REQUIRED

- A. All proposals to install, build or modify Wireless Communications Facilities not permitted by Section 5 (Permitted Uses) or Section 6 (Administrative Permit) shall require a recommendation of the Planning and Zoning Commission and approval of the conditional use permit by the Board of Aldermen, subject to the forthcoming limitations.
1. Applications. Applications for conditional use permits shall be filed on such forms required by the Director and processed subject to the requirements of and in the manner and time frame as established for conditional use permits in the Zoning Code and, in addition to such other requirements, shall be accompanied by one hundred dollars (100.00), or such other deposit amount as may be established by the Board of Aldermen. In addition, upon request by the Director, an Applicant shall deposit with the City such additional amounts reasonably necessary to reimburse the City for such actual and Direct costs and fees for legal, engineering or other contractual or other consultant services determined by the City to be needed in review or action on the application. No application for a Conditional Use Permit under this section shall be deemed complete until the Applicant has paid all fees and deposits required under this Article. Any amount not used by the City shall be refunded to the Applicant upon written request after a final decision.
 2. Additional minimum requirements. No conditional use permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of Wireless Communications Facilities pursuant to Section 5 (Permitted Uses) or Section 6 (Administrative Permits) of this Article is not technologically or economically feasible. The City may consider current or emerging industry standards and practices, among other information, in determining feasibility.
 3. Decision and findings required. A decision shall be accompanied by substantial evidence supporting the decision, which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. Evidence shall be under oath and may be submitted with the application or thereafter, or presented during the public hearing by the Applicant or others.
 4. Findings Required: In addition to the determinations or limitations specified herein and by this Zoning Code for the consideration of Conditional Use Permits, no Conditional Use Permit shall be approved by the Board of Aldermen unless findings in the affirmative are made that the following conditions exist:
 - a. Applicant has conducted an analysis of available co-location opportunities on existing wireless towers within the same search ring as defined by the Applicant in its application.
 - b. That the design of the Wireless Communications Facilities, including ground layout, maximally reduces visual degradation and otherwise complies with provisions and intent of this Article. New Towers shall be of a monopole design.
 - c. That the proposal minimizes the number and/or height size, and visibility of Wireless Communications Facilities that will be required in the area. Where alternate technology or design exists, or is reasonably available that would satisfy the general need for the proposal, this factor is ordinarily not satisfied.

- d. That the Applicant has not previously failed to request to locate within one (1) mile of any existing structures after receiving notice that such structure was being built in the same area of the new structure defined by the Applicant in its application.

Provided, that if one, but not more than one, of the previous five (a-d) conditions is not satisfied, approval may be granted only on a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of this Article.

- B. Additional height limitations. No Tower shall be approved at a height exceeding one hundred fifty feet (150') AGL unless the applicant clearly demonstrates that such height is required for the proper function of the applicant's system or that of a public safety communications system of a governmental entity sharing the Tower. Such showing must also be supported by the opinion of a telecommunications consultant or expert. The opinion of the consultant or expert shall include a statement that no available alternatives exist to exceeding the height limit including but not limited to the use of two or more Support Structures, and the reason why such alternatives are not viable.
- C. Historic Preservation: A Conditional Use Permit shall not be issued for any Wireless Communications Facility that the Board of Aldermen determines would create a significant negative visual impact or otherwise have a significant negative impact on the historical character and quality of any property within a Historic Preservation District or such District as a whole.

SECTION 8: OBSOLETE NON-COMPLYING SUPPORT STRUCTURES

Any upper portion of a Support Structure which is not occupied by active Antennas for a period of twelve (12) months, and any entire Support Structure which is not so occupied for a period of six (6) months, shall be removed at the owner's expense. Removal of upper portions of a Support Structure manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the Support Structure or property owner's expense. Any Applicant for a new Support Structure not built as a disguised part of another existing or permitted structure shall place a bond or other security with the City prior to any final approval for the purpose of removing any Support Structure as required herein and to compensate the City for performing proper maintenance of such Support Structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Article.

SECTION 9: COMMERCIAL OPERATION OF UNLAWFUL WIRELESS COMMUNICATIONS FACILITIES

Notwithstanding any right that may exist for a governmental entity to operate or construct Wireless Communications Facilities, it shall be unlawful for any person to erect or operate for any private commercial purpose any Wireless Communications Facilities in violation of any provision of this Article, regardless of whether such Wireless Communications Facilities are located on land owned by a governmental entity.

SECTION 10: PENALTY

Except as may otherwise be provided by law, any person violating this Article shall be subject to a fine of not more than two hundred dollars (\$200.00). Each day the violation continues shall constitute a separate offense.