

ORDINANCE NO. 2018-05

AN ORDINANCE TO AMEND THE WIRELESS TELECOMMUNICATIONS ORDINANCE FOR THE CITY OF FARMINGTON, ARKANSAS, REPEAL ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND FOR OTHER PURPOSES

WHEREAS, An ordinance was adopted on August 10, 2009 to provide a comprehensive wireless telecommunications facilities application and permit process to ensure the placement, construction or modification of wireless telecommunications facilities to establish a balanced, fair and efficient process for review and approval of such facilities to protect the health, safety and welfare of the citizens of the City of Farmington; and

WHEREAS, the ordinance was amended on July 11, 2011, in conjunction with the adoption of a revised zoning ordinance; and

WHEREAS, the Farmington Planning Commission voted on March 26, 2018, after a public hearing, to approve the amendment of the Wireless Telecommunications Ordinance, which addresses the latest federal laws for the location and installation of wireless telecommunication facilities.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMINGTON, ARKANSAS THAT:


Section 1: The revised Wireless Telecommunications Ordinance is attached hereto as Exhibit "A" and incorporated herein in its entirety.

Section 2: Repealing Clause. All other ordinances and parts of ordinances in conflict herewith, and more specifically Ordinance No. 2009-06, that was adopted on August 10, 2009, and Ordinance No. 2011-04 that was adopted on July 11, 2011, are hereby repealed.

Section 3: Severability Provision. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

PASSED AND APPROVED this 14th day of May, 2018.

APPROVED:

By: 
Ernie Penn, Mayor

ATTEST:

By: 
Kelly Penn, City Clerk

WIRELESS TELECOMMUNICATIONS ORDINANCE

INDEX

General Provisions

- 01 Purpose; legislative intent
- 02 Definitions
- 03 Overall policy, goals, and intent
- 04 Periodic regulatory review

Permit and Facilities

- 05 Permit required
- 06 Exemptions
- 07 Application
- 08 Application review costs
- 09 Public hearing and notice requirements
- 10 Action on application
- 11 Transfer/revocation of permit
- 12 Permit fee
- 13 Height of towers; compliance with codes and regulations
- 14 Signage

Enforcement

- 15 Performance security
- 16 Inspection
- 17 Compliance with federal and state regulations
- 18 Appeals
- 19 Penalties

GENERAL PROVISIONS

§ 1 PURPOSE AND LEGISLATIVE INTENT.

(A) The City recognizes that wireless communication facilities, and the location of them, are regulated by federal law, and this ordinance is not intended to conflict with federal law in any way. This ordinance has been adopted so that the location and installation of wireless communication facilities can be located and installed in a manner that best protects the health, welfare and safety of the citizens of Farmington, and seeks to regulate the location and installation only to the extent permitted by federal wireless facilities law.

(B) It is also specifically noted that the City has reviewed publicly owned property in Farmington, specifically property owned by the city and has noted that in many instances the location and institutional and public uses of that property make location of wireless facilities appropriate. This ordinance seeks to recognize this fact by encouraging the location of such facilities on City owned property wherever appropriate.

§ 2 DEFINITIONS.

For the purpose of this chapter and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

ACCESSORY FACILITY OR STRUCTURE. An accessory facility or structure serving or being used in conjunction with wireless facilities and located on the same property or lot as the wireless facilities including but not limited to, utility or transmission equipment, storage sheds or cabinets.

APPLICANT. Any wireless service provider submitting an application for a wireless facilities permit for wireless facilities.

APPLICATION. All necessary and appropriate documentation that an applicant submits in order to receive a wireless facilities permit for wireless facilities.

ANTENNA. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

BUILDING CODE. The most recently adopted or amended building code of the City of Farmington.

CITY. The City of Farmington as a municipality, its citizenry and the City of Farmington by and through its planning commission and/or governing body.

CO-LOCATION. The use of an existing tower or other structure to support one or more antennae to provide wireless services.

COMPLETED APPLICATION. An application that contains all the submittals, information and/or data required under this chapter and necessary to enable an informed decision to be made with respect to an application.

EFFECTIVE DATE OF THIS ORDINANCE. _____, the date on which Ordinance _____ became effective.

FAA. The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC. The Federal Communications Commission, or its duly designated and authorized successor agency.

GOVERNING BODY. The governing body of the City of Farmington.

GUYED TOWER. A telecommunication tower that is supported, in whole or in part, by guy wires and ground anchors.

HEIGHT. When referring to a tower or structure, the distance measured from the grade level to the highest point on the tower or structure, even if the highest point is an antenna or lightning protection device. A substantial amount of fill may not be added to the site in order to purposefully circumvent the height restrictions for towers within.

LATTICE TOWER. A tapered structure broad at the base and narrower at the top consisting of cross-members and diagonal bracing and without guyed support.

SUBSTANTIAL CHANGE/MODIFICATION

Substantially change means

- 1) the mounting or installation of the proposed antenna on the existing wireless facility would increase the existing height of the existing wireless facility by more than (10%) ten percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed (20') twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed such size limits if necessary to avoid interference with existing wireless communications equipment;
- 2) the mounting of the proposed antenna would involve adding an appurtenance to the body of the existing wireless facility that would protrude from the edge of the

existing wireless facility more than (20') twenty feet, or more than the width of the existing wireless facility at the level of the appurtenance, whichever is greater or

- 3) expansion of the boundaries of the leased or owned property surrounding the existing wireless facility by more than (10%) ten percent in area.

Ordinary repair and/or maintenance (which includes the replacement or upgrade of components with substantially similar components), without any material addition, removal or other material modification of any visible components or aspects of a wireless facility, shall not be considered a substantial modification for purposes of this chapter.

MODIFICATION or **MODIFY**. The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or equipment. Adding a new wireless carrier or service provider to a wireless facilities tower or wireless facilities site as a co-location is a **MODIFICATION**.

MONOPOLE TOWER. A telecommunication tower consisting of a single pole or spire self-supported by a permanent foundation, constructed without guy wires and ground anchors.

PANEL ANTENNA. An inconspicuous, relatively flat, square or rectangular antenna designed to be affixed to the wall of a building or structure in order to receive and transmit signals from a telecommunication device.

PERSON. Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS SERVICES (PWS) or **PERSONAL COMMUNICATIONS SERVICE (PCS)**. These terms shall have the same meaning as defined and used in the 1996 Wireless facilities Act.

PLANNING COMMISSION. The Planning Commission of the City of Farmington.

STATE. The State of Arkansas.

STEALTH OR STEALTH TECHNOLOGY. Technology or practice intended to minimize aesthetic and visual impacts on the land, property, buildings, and other equipment adjacent to, surrounding, and in generally the same area as the requested location of such wireless facilities towers and equipment, which shall mean using the least visually and physically intrusive tower and/or equipment that is not technologically or commercially impracticable under the facts and circumstances.

STEALTH FACILITY. Any stealth telecommunication tower or equipment which is designed using stealth technology to blend into the surrounding environment. Examples of stealth facilities include, but are not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunication and/or personal wireless

services towers designed to look like flag poles, different varieties of trees, tree towers and power poles, which shall mean using the least visually and physically intrusive tower and/or equipment that is not technologically or commercially impracticable under the facts and circumstances

WIRELESS FACILITIES. The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

WIRELESS FACILITIES PERMIT. The official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless facilities as granted or issued by the city.

WIRELESS FACILITIES STRUCTURE. A structure used in the provision of services described in the definition of **WIRELESS FACILITIES**

TEMPORARY. Temporary in relation to all aspects and components of this chapter; something intended to, or that does, exist for fewer than 90 days.

TOWER. Any structure designed primarily to support one or more antennae.

WIRELESS FACILITIES. This term means the structure, facility or location designed, or intended to be used as, or used to support antennas or other wireless facilities transmitting or receiving devices, including without limit, towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or their functional equivalent, and all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

§ 3 OVERALL POLICY, GOALS, AND INTENT.

In order to ensure that the placement, construction, and material modification of wireless facilities are conducted with due regard for the city's health, safety, public welfare, environmental features, the nature and character of the city and neighborhoods and other aspects of the quality of life specifically listed elsewhere in this chapter, the city hereby adopts an overall policy with respect to a wireless facilities permit for wireless facilities for the express purpose of achieving the following goals:

(A) Provision of adequate wireless services throughout the City to provide the citizens, businesses, healthcare facilities, schools, and other institutions with the coverage and capacity needed,

(B) Requiring a wireless facilities permit (in adherence with federal laws as interpreted by the FCC) for any new, co-location or substantial modification of a wireless facility.

(C) Implementing an application process for person(s) seeking a wireless facilities permit.

(D) Establishing a policy for examining an application for and issuing a wireless facilities permit that is both fair and consistent.

(E) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless facilities among service providers.

(F) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless facilities in such a manner, including but not limited to:

- i. Requiring the use of stealth or camouflaged wireless facilities technology to minimize aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless facilities, which shall mean using the least visually and physically intrusive facility that is not technologically impracticable under the facts and circumstances.
- ii. Requiring the screening of the tower base and accessory ground equipment.
- iii. Requiring attractive screening, vegetation and landscaping where appropriate.
- iv. Minimization of noise and light.
- v. Creation of an environment where multiple carriers can be placed on each tower and needless over-proliferation of towers throughout the City is avoided.
- vi. Requiring appropriate environmental compliance.

§ 4 PERIODIC REGULATORY REVIEW.

(A) The city may at any time conduct a review and examination of this entire ordinance.

(B) If after such a periodic review and examination of this ordinance, the city determines that one or more provisions of this ordinance should be amended, repealed, revised, clarified, or deleted, then the city may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the city, the city may repeal this entire ordinance at any time.

(C) Notwithstanding the provisions of divisions (A) and (B) of this section, the city may at any time and in any manner (to the extent permitted by federal and state law), amend, add, repeal, and/or delete one or more provisions of this ordinance.

§ 5 PERMIT REQUIRED.

(A) Placement of New Wireless Facilities or Communication Towers

- i. All New Communication or Wireless Facility Towers shall be required to first apply for and obtain a Conditional Use Permit from the City prior to applying for a wireless facilities or communications tower permit.
- ii. If a Conditional Use Permit to allow a new tower is approved by the City, no person shall be permitted to site, place, build, construct, or substantially modify a wireless facility after the effective date of this ordinance without having first completed the wireless facilities application and permit process and obtain the approval and wireless facilities permit from the City.
- iii. Notwithstanding anything to the contrary in this section, no wireless facilities permit shall be required for those facilities listed in Section 6.

(B) No person shall perform any construction of or on a wireless facility without having first obtained a building permit for such construction. In order to obtain a building permit for a wireless facility, the applicant must complete the wireless facilities permit process in addition to the building permit application.

(C) No person shall use a wireless facility for which a wireless facilities permit is required without the final inspection and approval of the wireless facility showing that the construction of the facility meets all requirements and conditions of the wireless facilities permit, and that all applicable building codes and related building requirements have been met.

(D) An applicant for or holder of a wireless facilities permit shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city, the Federal Communications Commission or other governmental agencies having jurisdiction over the wireless facility.

(E) Repair and maintenance of a wireless facility shall not require a wireless facilities permit.

§ 6 EXEMPTIONS.

The following shall be exempt from this chapter:

- (A) The city's fire and police departments or other public service facilities.
- (B) Over-the-air reception devices including the reception antennas for direct broadcast satellites and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- (C) Facilities that are no more than thirty (30) feet in height that are used exclusively for private, non-commercial radio and television reception and private citizen's bands, and other

similar non-commercial wireless facilities unless otherwise subject to applicable zoning and building code requirements.

(D) Improvements to an existing facility that does not constitute a substantial modification as defined herein.

§ 7 APPLICATION.

(A) All applicants for a wireless facilities permit shall comply with the requirements set forth in this ordinance. Applications for wireless facilities shall be submitted to the City which shall at its discretion obtain the services of engineers, consultants or governmental agencies or officials to review, analyze, evaluate and make their evaluations and recommendations to City Staff and to the commission.

(B) The city may reject applications not meeting the requirements stated herein or which are incomplete (within the federally mandated timeframe). An application will be considered complete when the applicant has provided all submittals required by this section, including but not limited to all required data, reports, attachments, certifications, and authorizations.

(C) Any and all written representations made by the applicant to the city during the application process, and oral representations made on the record during a hearing before the Farmington Planning Commission or other public meeting, shall be deemed a part of the application and may be relied upon in good faith by the city and the members of its commission.

(D) An application for a wireless facilities permit shall be signed on behalf of the applicant by the person or persons preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

(E) The applicant shall provide written and notarized documentation to verify it has the right to proceed as proposed on the site and to employ such easements and/or other property interests to access the site as may be necessary for repair and maintenance of the facility. Such documentation may consist of an executed warranty deed or other conveyances clearly depicting the site and all easements for utilities, and ingress and egress.

(F) The applicant shall include a statement in writing:

- i. That the applicant's proposed wireless facilities shall be maintained in a safe manner, and in compliance with all conditions of the wireless facilities permit, without exception, as well as all applicable building codes and ordinances, including any and all applicable city, state and federal laws, rules, and regulations;
- ii. That the construction of the applicant's wireless facilities is legally permissible.

(G) That all engineering certifications shall bear the signature and seal of a professional engineer licensed in the State of Arkansas.

(H) **Wireless Communications**

The following general requirements shall apply to all new wireless communications facilities.

- i. Noise requirements. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional muffler and any onsite fuel storage meet all applicable building codes.
- ii. Compliance with federal regulations. Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided before the issuance of the facility building permit, or after the facility's construction.
- iii. *Lighting and signage.* Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.
- iv. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

(I) **New towers.** New wireless communications towers shall meet the following requirements:

- i. *Type of towers allowed.* New towers shall be limited to monopole type structures (with internal antennas) or other stealth/camouflaged type tower structures.
- ii. *Tower or antenna height limitations.* Towers or tower structures are permitted to a maximum height of 150 feet.
- iii. *Safety zone.* The minimum distance from the base of any tower to any residential dwelling unit shall be the tower height plus ten percent (10%) or the zoning/subdivision required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located sign a consent for the construction of said tower. This setback is considered a "safety zone." In the event that an existing structure (i.e. existing

water tower, building or pole) is proposed as a mount for a wireless communication facility, a safety zone shall not be required

- iv. *Camouflaging or stealth technology for new towers.* If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees, and other structures that may screen or partially screen the view of the tower from adjacent properties or rights-of-way.
- v. *Color of towers.* To the extent that any tower or antenna extends above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.
- vi. *Information required to process new tower Conditional Use Permit requests.*
 - a) Provide a map of the approximate geographic area that your project will serve;
 - b) All new tower applications shall include a letter of intent to locate from at least one carrier.
 - c) Provide a map showing the approximate location of all other existing communication towers within the area and a written explanation as to why co-location is not possible on an existing tower structure. Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. This paragraph does not apply to applicants who desire to construct a tower for the primary purpose of attracting other persons to collocate on the tower.
 - d) If the proposed tower is being constructed to provide service for a particular communications carrier, please provide a map that shows other adjacent existing or adjacent planned facilities that will be used by the wireless communication service provider who is making the application;
 - e) Provide a scaled site plan containing information showing the property boundaries, proposed tower lease area (if applicable), proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate any existing significant trees or vegetation, proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility. The proposed surface material of the ingress/egress shall be considered in regard to compatibility with the surroundings.

f) Provide a letter stating why the proposed site was chosen.

- (1) Please submit a written statement describing how your proposed site and plan meet the City of Farmington's "Statement of Goals and Intent" (As listed in Section 3(f) of this ordinance)
- (2) Each Goal should be addressed individually and in detail.
- (3) The document should also include: visual aspects, setbacks, and proximity of single-family residences;
- (4) Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness (if applicable) to accommodate other providers who may be able to co-locate on your facility.

vii. *Optional balloon test and crane test photographs.* If the Planning Commission or City Staff find it necessary, the proposed tower shall be photographed from four locations taken 90° apart and (three hundred) 300 feet from the center of the tower (or wherever the tower can be seen best if three hundred, 300 feet from the center of the tower the view is obstructed, etc.). The proposed tower shall be superimposed on the photographs. A balloon or crane test may be performed to illustrate the height of the tower and photographed from the same four locations. The four locations shall be approved by the Planning Administrator (or other City designee).

viii. *Sight line representation.* A sight line representation shall be drawn from four points 90° apart and 100 feet from the proposed tower. Each sight line shall be depicted in section, drawn at one-inch equals (forty) 40 feet. The sections shall show all intervening trees and buildings.

(J) Review and Construction Requirements for new Communication Towers if Conditional Use Permit is granted

i. *Structural integrity and inspections of towers.*

a) If a conditional use permit for the tower is approved, the applicant shall provide a complete set of plans for the proposed tower and a site plan of the property or proposed lease area.

(1) Tower Plans:

- (a) Engineer Stamped Plans for the proposed Tower and an accompanying structural analysis
- (b) Engineer stamped plans for the proposed tower foundation based on the local geotechnical information gathered for the specific site.
- (c) A statement that the tower ~~meets~~ or exceeds design criteria for federal requirements regarding the construction of the tower.

(2) Site Plan

- (a) Name & address of owner, applicant & surveyor.
- (b) Date, scale (1"=100' preferred), and north arrow.
- (c) Vicinity map covering a minimum of one mile with a scale and north arrow indicating surrounding roads, municipal limit lines, growth area boundaries, state lines & county lines as applicable
- (d) Legal description of the property on which the tower is to be placed, with dimensions and angles sufficient to locate all lines. Property shall be located by Section, Township and Range, and tied to the nearest defined and referenced Section or Quarter Section Corner.
- (e) The precise location and dimensions of the proposed tower or existing tower as it is to be modified.
- (f) The location and identification of existing roads or access ways within and to the property (including proposed access easements).
- (g) The location and size of existing access and/or utility easements on or adjoining the property, or a note there are none.
- (h) The location of flood areas on the property or a note indicating there are none.
- (i) The location of USGS documented perennial and intermittent watercourses on or adjoining the property or a note indicating there are none.

- (j) The area set aside to accommodate future outbuildings and/or equipment pads to be placed on the property in the future in connection with the tower
- (k) The location of all personal residences within the height of the tower (plus ten percent- 10%) from the perimeter of the base of the tower.
- (l) The names of the owners of such residences and copies of their signed consent to the placement of the proposed tower (if applicable).
- (m) The existing topography on the property, as per existing U.S. Geological Services survey maps or other more current source
- (n) A note describing any plat and deed restrictions, or a note indicating there are none.

(3) If a wireless communication facility fails to comply with the requirements and criteria above and within this code and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have 90 days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 90 days, the city may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense). In no instance shall this process prevent the City from taking whatever action to protect the public from imminent harm. Including but not limited to immediate removal of a tower.

(4) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the city. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

b) Security fencing and anti-climbing device. Using security fencing, towers and equipment shall be enclosed by opaque fencing not less than

eight feet in height. The fencing material shall be wood or other opaque fencing material. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing," "High Voltage," or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving these provisions in a particular instance. Barbed wire fencing or razor wire shall be discouraged.

c) *Vegetative screening recommendations.* It is recommended that wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property, installed as part of the proposed facility, or a combination of both. The need for screening shall be evaluated during the Conditional Use Permit process. If additional vegetative screening is determined to be necessary, the Planning Commission will consider adding a condition of approval that takes into account the following:

(1) Vegetative screening should be designed to visually screen the area by using groups of clustered vegetation to achieve a screen natural in appearance. The screened area may exclude access and utility easements.

(2) The screened area should include a mixture of evergreen and deciduous vegetation types of varying heights. Depending on the setting and existing vegetation on or near the tower property or leased area, a landscape easement adjacent to the site/leased area may be required. If a landscape easement is needed, it must be at least a minimum of 15' in width.

(3) In order to effectively screen the tower site, for every 25 linear feet of perimeter of the leased area, property line (or defined property used for the tower site), the following landscaping is recommended to be installed:

- (a) One (1) large tree
- (b) Two (2) understory trees
- (c) Five (5) large shrubs

(4) If there is existing vegetation onsite or within close proximity that currently provides screening for the site, then the Planning Administrator may determine that lesser amounts of additional landscaping may be needed. Offsite landscape easements may be required to assure the existing vegetation persists.

(5) A landscape plan depicting varieties, size (upon planting), and proposed placement of all landscape materials shall be

submitted with the Wireless Facilities application or the Conditional Use Permit application if necessary. All proposed or existing easements should also be shown (utility, access, rights of way, and landscape easements, etc.).

(6) Irrigation shall not be required, but the owners shall be required to care for the planted vegetation and replace any vegetation that does not survive.

d) *Setbacks from property lines.* Wireless communication facilities shall meet current setbacks as required by zoning.

ii. ***Co-location.***

The Planning Commission, following an administrative review without the requirement of an issuance of conditional use permit, may approve the following antenna installation (if said application is in compliance with all applicable requirements).

a) *Locating on existing structures.* Installation of an antenna or antenna array on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure) provided the antenna or antenna array and its support are not more than 20 feet in height.

b) *Locating on existing towers.* Additional antennas may be placed or upgraded upon any tower so long as such additional antenna would not violate any requirements of the conditional use permit or other provisions of the original approval. For the purpose of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

Existing antennas may be replaced by updated antennas or equipment, however, a statement regarding the loading of the replacement equipment shall be submitted and the applicant shall certify that the loading of the proposed equipment shall be less than or equal to the existing equipment. If no certification can be made, then a structural analysis for the tower and the proposed equipment shall be required.

iii. ***Other requirements.***

a) *Wireless communications facilities placed on top of buildings.* When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Stealth (RF Transparent) screening

visually appropriate to the specific site should be explored as an effective compatibility tool.

- b) *Wireless communications facilities placed on sides of buildings.* Antennas which are side-mounted on buildings shall be painted, constructed of, or have a stealth covering made up of materials to match the color of the building material directly behind them.
- c) *Expiration.* Once the CUP is approved, the applicant shall have one year to submit an application for a wireless facilities construction permit.

Except when due to circumstances beyond an applicant's reasonable control, all approved applications for a wireless facilities permit shall be constructed within 1 year of receiving building permit, or both CUP and building permit shall be deemed void and new applications must be submitted.

§ 8 APPLICATION REVIEW COSTS.

(A) The city may hire any engineer and/or consultant necessary to assist the city in reviewing and evaluating applications, and for inspecting construction and/or modification of wireless facilities

(B) For new towers, the CUP application fee shall be a non-refundable review fee of \$2,000.00 (two thousand dollars) at the time the application is accepted. In the event that engineering review fees exceed \$2,000.00, the owners and/or developers shall reimburse the City of Farmington for all additional expenses incurred throughout the CUP review process.

(C) For co-location or new antennae applications, the application fee shall be a non-refundable review fee of \$300.00 (three hundred dollars) at the time the application is accepted. In the event that engineering review fees exceed \$300.00, the owners and/or developers shall reimburse the City of Farmington for all additional expenses incurred throughout the review process.

(D) For administrative wireless facility applications for a new tower (following the approval of a CUP to allow a new towers), the application fee shall be a non-refundable review fee of \$500.00 (five hundred dollars) at the time the application is accepted. In the event that engineering review fees exceed \$500.00, the owners and/or developers shall reimburse the City of Farmington for all additional expenses incurred throughout the review process.

§ 9 PUBLIC HEARING AND NOTICE REQUIREMENTS.

Notification of public hearings for conditional use permits shall occur as follows:

(A) *Public Hearing Required.* A public hearing shall be held by the Planning Commission for consideration of a conditional use permit.

- (B) *Notice of Public Hearing.* The applicant shall provide the following notice:
- i. *Who Gets Notice.* Notice of the proposed conditional use permit shall be given to all adjacent landowners.
 - ii. *Methods of Notice.* Notice shall be provided by the following methods, as required by this chapter:
 - iii. *Written Notice.* Written notice shall be provided at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by the Farmington Zoning Regulations.
 - iv. *Posted Notice.* The City shall post notice at least fifteen (15) days prior to the Planning Commission meeting. Proof of notice shall be provided as required by this chapter.

§ 10 ACTION ON APPLICATION.

(A) The Planning Commission will undertake a review of a completed application in a timely fashion, compliant with federal regulations, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution. When an application is complete, including the submission of all reports and other submittals required hereunder and same has been reviewed by the city's engineer and/or consultant, the Planning Commission shall act on the proposed permit within parameters compliant with federal regulations.

(B) After formally considering the application, the Planning Commission may approve, approve with conditions, or deny a wireless facilities permit, based on the applicant's compliance with the requirements of this ordinance. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record and statements made by the applicant at public hearings and meetings of the Planning Commission.

(C) If the Planning Commission approves the wireless facilities permit and construction of facilities, then the applicant shall be notified of such approval in writing, and the wireless facilities permit shall be issued within five (5) calendar days of the Planning Commission's action.

(D) If the Planning Commission denies the wireless facilities permit, then the applicant shall be notified of such denial in writing within five (5) calendar days of the Planning Commission's action. Such written notice shall enumerate, with particularity, the specific deficiencies, omissions, and/or instances of noncompliance with the requirements of this ordinance.

(E) If the Planning Commission denies a wireless facilities permit, and the grounds for such denial concern matters that may be cured within a reasonable time, the applicant may amend, supplement, or re-submit its application within sixty (60) days of the Planning Commission's denial, and such amendment(s), supplement(s), or re-submission shall be

evaluated as part of the applicant's original application. All additional costs associated with the city's engineer and /or consultant shall be borne by the applicant.

§ 11 REVOCATION OF PERMIT.

A wireless facilities permit may, following a hearing upon due prior notice to the holder of the permit, be revoked, canceled, or terminated for a violation of the conditions and provisions of the wireless facilities permit. The CUP granted for the tower or facility, may, following a hearing upon due prior notice to the holder of the permit, be revoked, cancelled, or terminated for a material violation of this ordinance and the failure to cure the violation as provided in Section 15 hereinafter.

§ 13 HEIGHT OF TOWERS; COMPLIANCE WITH CODES AND REGULATIONS.

(A) Towers within the city limits of Farmington shall not exceed 150' in height.

(B) All wireless facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or United States, including but not limited to the most currently adopted editions of the ANSI Code, National Electrical Safety Code and the International Building Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent rule shall apply.

(C) All utilities at a wireless facilities site shall be installed underground, to the extent practicable, and in compliance with all laws, ordinances, rules and regulations of the city.

(D) All wireless facilities sites shall include an access road, turn around space and parking, adequate to assure emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion in more remote areas of property zoned Agriculture. The construction of asphalt driveways and parking for facilities in industrial and commercial, and residential zones shall be in compliance with city building requirements.

(E) The following items must be provided to the City:

- i. A copy of the FCC license applicable for the intended use of the wireless facilities.
- ii. A copy of the structural analysis or structural design report for the proposed wireless facility.
- iii. A copy of the City of Farmington business license.

- iv. The applicant shall provide written documentation of FAA and FCC compliance as part of the Building/ Construction Permit application.

§ 14 SIGNAGE.

(A) Each wireless facility shall display a sign no larger than four square feet, containing the site identification number and emergency phone number(s) of the permit holder or other person (s) operating the facility. The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

(B) The applicant or future owner of the site shall update the site identification number and emergency phone number of the wireless facility as displayed on the required sign within 60 calendar days of any sale, assignment, or transfer.

ENFORCEMENT

§ 15 PERFORMANCE SECURITY, DEFAULT, and REMOVAL.

(A) If a wireless communication facility fails to comply with the requirements and criteria in this ordinance and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have 90 (ninety) days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 90 (ninety) days, the city may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense). In no instance shall this process prevent the City from taking immediate action to protect the public from imminent harm, which includes but is not limited to, immediate removal of a tower.

(B) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the city. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 (twelve) months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

§ 16 INSPECTION.

(A) In order to verify that the holder of a wireless facilities permit, and any and all lessees and/or licensees of wireless facilities, construct, maintain and operate such facilities in accordance with this ordinance and all state and federal rules and regulations, the wireless facilities permit issued for such facility, and all technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of the permit holder's, lessee's or licensee's placement, construction, modification and

maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

§ 17 COMPLIANCE WITH FEDERAL AND STATE REGULATIONS.

(A) Any holder of such a wireless facilities permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

(B) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a wireless facilities permit, then the holder of such a wireless facilities permit shall conform the permitted wireless facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of six (6) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

(C) A final determination by a state or federal agency with jurisdiction that a rule or regulation has been violated shall be grounds to revoke a wireless facilities permit.

§ 18 APPEALS.

(A) All decisions by the Planning Commission regarding this ordinance must be appealed to a court of competent jurisdiction.

§ 19 PENALTIES.

(A) In addition to other remedies available in this ordinance, the city may impose against the holder of a wireless facilities permit the penalties as set forth below.

(B) A failure to obtain a permit when required or a violation of any wireless facilities permit issued pursuant to this ordinance is hereby declared to be an offense, punishable by a fine not exceeding \$500 (five hundred dollars) per occurrence upon conviction. Each week's continued violation shall constitute a separate additional violation.

(C) Notwithstanding anything in this section, the holder of a wireless facilities permit may not use the payment of fines to evade or avoid compliance with this ordinance or any section of this ordinance. An attempt to do so shall subject the holder of the wireless facilities permit to termination and revocation of its wireless facilities permit. The city may also seek injunctive relief to prevent the continued violation of this ordinance, without limiting other remedies available to the city.