

TITLE 10

CHAPTER 17

WIRELESS TELECOMMUNICATIONS FACILITIES

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10-17-1: PURPOSE AND LEGISLATIVE INTENT

The Telecommunications Act of 1996 affirmed River Heights City's authority concerning the placement, construction, and modification of wireless telecommunications facilities. In order to ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the City's land use policies and the Federal Telecommunications Act, the City is adopting a single, comprehensive wireless telecommunications facilities application and permit process. The intent of this Local Ordinance is to minimize the negative impacts of Wireless Telecommunication Facilities, establish a fair and efficient process for review and approval of applications, assure an

integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety, and welfare of the residents of River Heights City.

10-17-2: TITLE

This chapter shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for River Heights City, Utah.

10-17-3: SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

10-17-4: DEFINITIONS

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

ACCESSORY FACILITY OR STRUCTURE:	An accessory facility or structure serving or being used in conjunction with the wireless telecommunications facilities including but not limited to, utility or transmission equipment storage sheds or cabinets.
APPLICANT:	Any wireless service provider or their agent submitting an application for a Conditional Use Permit for wireless telecommunications facilities, including municipal providers.
ANTENNA:	A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, Personal Telecommunications Services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the City’s siting, building, and permitting authority.
ANTENNA ARRAY:	One or more antennas used to provide wireless service.
COLLOCATION:	Use of a tower or other structure to support multiple antenna arrays for the provision of the wireless services from multiple telecommunications providers without increasing the height of the tower or other structure. For the purposes of clarification, any application proposing to increase the height of the structure to be attached to shall be deemed a new tower and not a collocated facility.

FAA:	Federal Aviation Administration, or its duly designated and authorized successor agency.
FCC:	Federal Communications Commission, or its duly designated and authorized successor agency.
HEIGHT:	When referring to a tower or other structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna, lightening protection device or any other apparatus attached to the tower or other structure.
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, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or and upgrade or replacement of the equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A change in the effective radiated power (ERP) or a change in the radio frequency (RF) emissions from the facility is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing, or changing anything.
NIER:	Non-Ionizing Electromagnetic Radiation
PERSON:	Any individual, corporation, State, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.
PERSONAL WIRELESS FACILITY OR PERSONAL TELECOMMUNICATIONS SERVICE (PCS):	Shall have the same meaning as defined and used in the 1996 Telecommunications Act, including but not limited to commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access service.
TELECOMMUNICATIONS SITE	See definition for Wireless Telecommunications Facilities.
SERVICE PROVIDER	Any provider of personal wireless services, personal telecommunications services or personal communication services.

STEALTH OR STEALTH TECHNOLOGY	Minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. This technology does not include the use of artificial tree towers, rocks, or other natural features used as camouflage, which shall not be utilized for a project permitted under this ordinance.
TELECOMMUNICA- TIONS	The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
TELECOMMUNICA- TIONS STRUCTURE	A structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
TEMPORARY	In relation to all aspects and components of this ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
WIRELESS SERVICE PROVIDER	The same as “Service Provider” (see preceding definition).
WIRELESS TELECO- MMUNICATIONS FACILITIES	Includes a “Telecommunications Tower” and “Tower” and “Telecommunications Site” and “Personal Wireless Facility” means a structure, facility, or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures that employ stealth technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structure but not artificial trees or rocks, that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, guy wires, and associated anchors, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, Personal Telecommunications Services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the City’s siting, building, and permitting authority.

10-17-5: OVERALL POLICY AND DESIRED GOALS FOR CONDITIONAL USE PERMITS FOR WIRELESS TELECOMMUNICAITONS FACILITIES

In order to ensure that the placement, construction, modification, and maintenance of wireless telecommunications facilities protects the City’s health, safety, public welfare,

environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this ordinance, the City hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities;
- B. Establishing a policy for examining an application for and issuing a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;
- C. Requiring, where not technologically or commercially impracticable, the sharing and/or co-location of wireless telecommunications facilities among service providers;
- D. Requiring the placement, height, and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology so as to minimize the adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

10-17-6: CONDITIONAL USE PERMIT APPLICATION AND OTHER REQUIREMENTS

- A. Prior to the submission of an application there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit, but such may be waived if there has been a prior site visit for the requested site and there has been no modification to the site since the site visit. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- B. All applicants applying for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the City Planning Commission.
- C. An applicant shall submit to the City Planning Commission seven (7) copies of the application documentation. Written notification of the application shall be provided to the legislative body of all adjacent municipalities and to the City Planning Commission.
- D. The Applicant Shall Include a Statement in Writing:
 - 1. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by

the City Planning Commission in writing, as well as all applicable and permissible local codes, ordinances, and regulations including any and all applicable City, State, and Federal laws, rules and regulations;

2. That the construction of the Wireless Telecommunication Facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State. Proof of authorization to operate in the State shall be provided.
- E. No wireless telecommunications facilities shall be installed or constructed until the application is reviewed and approved by the City Planning Commission and the Conditional Use Permit and a building permit have been issued.
- F. An application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the applicant by an authorized representative of the applicant and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Commission, any false or misleading Statement made in the application may subject the applicant to denial of the application without further consideration or opportunity for correction. Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of Utah. The application shall include the following information:
1. Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily and essentially within the City. Such documentation shall include, but may not be limited to propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites as requested by the Planning Commission and shall allow the service area and signal strength relationship between the proposed site and adjoining planned, proposed, in-service or existing sites;
 2. The name, address, and phone number of the person preparing the report;
 3. The name, address, and phone number of the property owner, operator, and applicant;
 4. The postal address and tax map parcel number of the property;
 5. The land use designation in which the property is situated;
 6. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines. The Planning Commission may require a boundary and/or land survey. In such cases, the survey will be provided by a licensed Utah State land surveyor.
 7. The location of the nearest residential structure and the distance from the nearest residential structure to the proposed facilities;
 8. The location, size, and height of all structures on the property which is the subject of the application;

9. The location, size, and height of all proposed and existing antennas and all appurtenant structures;
10. The type, location, and dimensions of all proposed and existing landscaping, vegetation, and fencing;
11. The number, type, and design of the tower and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
12. A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances, and apparatus, including the height above pre-existing grade, materials, color, and lighting;
13. The frequency, modulation, and class of service of radio or other transmitting equipment;
14. The actual intended transmission and the maximum effective radiated power of the antenna(s);
15. Direction of maximum lobes and associated radiation of the antenna(s);
16. Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC and the provision of the calculations used to determine the cumulative NIER levels;
17. Certification that the proposed antenna(s) will not cause interference with other telecommunication devices;
18. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
19. Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrata and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities as designed, on the proposed site;
20. Certification that the telecommunications facility, foundation, and attachments are designed and will be constructed to meet all local, City, State, and Federal structural requirements for loads, including wind, snow and ice loads.
21. Certification that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and that appropriate surge protectors will be installed.
22. A list of pending permits or copies of all permits issued from all other local, State, or Federal agencies with jurisdiction over said project, other than the City Planning Commission.

- G. In the case of a proposed new tower, the applicant shall submit a detailed written report, identifying each alternative to a new tower that was investigated, and demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within a radius of four miles of the proposed site. Copies of written requests and responses for shared use shall be provided to the Planning Commission in the application, along with any letters of rejection stating the reason for rejection.
- H. All towers will be stealth structures, unless the applicant is able to prove the technological impracticability of such. Towers shall not be disguised as trees. Stealth technology that may be employed includes mounting transmission equipment on existing structures including multi-story buildings, church steeples, silos, water towers, signs or other structures. If equipment can not be mounted on existing structures, new standalone towers must be camouflaged so their color allows them to blend with their surroundings.
- I. The Applicant Shall furnish a Visual Impact Assessment, Which Shall Include:
1. A “Zone of Visibility Map” which shall be provided in order to determine locations from which the tower may be seen.
 2. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the City as may be appropriate, including but not limited to State highways and other major roads, State and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at a pre-application meeting.
 3. An assessment of the visual impact of the tower, the tower base, guy wires, and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- J. The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.
1. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding 4 inches in diameter measured at a height of 4 feet above the ground shall take place without the approval of the City Planning Commission. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
 2. The landscape plan shall include native evergreen tree plantings to screen the wireless facility from view. Unless otherwise permitted, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within 2 years of planting shall be provided and shall be diligently maintained to protect their vitality.
 3. If the visual impact analysis reveals that there is vegetation on or adjacent to the project site that must be retained for screening of the proposed tower or

facility, the applicant shall document how such vegetation will be protected throughout the construction and operational life of the facility.

- K. Site work, with the exception of soil testing, surveying, and other necessary site location testing, is prohibited from being performed prior to the application approval and issuance of the Conditional Use Permit. Any violation of this section will, at the discretion of the City Planning Commission, subject the applicant to denial of the application without further consideration.
- L. Any and all representations made by the applicant to the City on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the City.
- M. All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all local, State, and Federal laws, ordinances, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- N. All wireless telecommunications facilities shall contain a visual representation that the facility will be sited so as to be the least visually intrusive as is reasonably possible and thereby have a minimal adverse visual effect on the environment and the nature and character of the community, existing vegetation, and on the residences in the area of the wireless telecommunications facility.
- O. Both the wireless telecommunications facility and any and all necessary or associated facilities shall maximize the use of building materials, colors, and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, which shall include the utilization of stealth or concealment technology, not including fabricated trees, as may be required by the Planning Commission.
- P. At a telecommunications site, an access road, turn around space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours of the land and be constructed or improved at the edge of fields and/or forests. Road/driveway grades shall closely follow natural contours to also assure minimal visual disturbance and reduce soil erosion. Equipment or vehicles may not be stored at the facility site. The applicant shall comply with the state and local storm water regulations.
- Q. A person who holds a Conditional Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify, or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety, and safety-related codes adopted by the City, State or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erector. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire,

safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

- R. A holder of a Conditional Use Permit granted under this Ordinance 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 or other governmental entity or agency having jurisdiction over the applicant.
- S. An applicant for a new tower shall design the tower structurally to accommodate future demand for at least one additional commercial application, including future co-locations. The tower shall be structurally designed to accommodate at least one additional antenna array equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary and unreasonable burden based upon:
1. The foreseeable number of FCC licenses available for the area;
 2. The kind of wireless telecommunications facilities site and structure proposed;
 3. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
 4. Available space on existing and approved towers.
- T. The owner of the proposed new tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
1. Respond within 60 days to a request for the information from a potential shared-use applicant;
 2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower to equipment to accommodate a shared user without causing electromagnetic interference.
 4. Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for the tower.
- U. In order to better inform the public, in the case of a new telecommunications tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test". The applicant shall arrange to fly, or raise upon a temporary mast of a brightly

colored balloon at a minimum three feet in diameter at the minimum height of the proposed new tower. The dates, times, and location of this balloon test (including a second date in case of poor visibility or high winds on the initial date) shall be advertised by the applicant seven and fourteen days in advance of the first test date in a newspaper with a general circulation in the City. The applicant shall inform the Planning Commission, in writing, of the dates and times of the test, at least fourteen days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 AM and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

- V. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided in a timely manner.

- W. The holder of a Conditional Use Permit shall notify the Planning Commission of any intended modification of a wireless telecommunications facility and shall apply to the Planning Commission to modify, add to, or relocate equipment or facilities to rebuild a wireless telecommunications facility. This includes a change in the effective radiated power (ERP) from the facility, or a change in the Radio Frequency (RF) emissions from the facility, or anything that could reasonably affect the health or safety of individuals.

10-17-7: LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

- A. Applicants for wireless telecommunications facilities shall locate, site and erect said facilities in accordance with the zone use and area regulations contained in section 10-12-1 and 10-12-2.

- B. Applicants for wireless telecommunications facilities shall locate, site, and erect said facilities in accordance with the following priorities, one (1) being the highest priority and five (5) being the lowest priority.
 - 1. On existing City-owned structures or facilities without increasing the height of the structure being attached to;
 - 2. On other existing towers or other structures without increasing the height of the tower or structure being attached to in areas designated as industrial or commercial;
 - 3. On city-owned property.
 - 4. On or adjacent to electric power line transmission towers;
 - 5. On other property in the City not zoned residential.

- C. Telecommunications towers shall be excluded from all residential land use areas.
- D. An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the City Planning Commission why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- E. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City Planning Commission may disapprove an application for any of the following reasons.
 - 1. Conflict with safety and safety-related codes and requirements;
 - 2. Conflict with the nature or character of a neighborhood or historical district;
 - 3. Conflicts with the provisions of this ordinance;
 - 4. Any development in a slope overlay zone shall comply with 10-11-3.
 - 5. There will be no development on mountaintops or ridgelines.
 - 6. There will be no development within 200 feet of wetlands or where storm water drainage emanates from the site or site development that will cause undue impact on a wetland.

10-17-8: SHARED USE OF WIRELESS TELECOMMUNICAITONS FACILITIES AND OTHER STRUCTURES

- A. Conditional Use Permit shall be non-exclusive.
- B. An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.
- C. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

10-17-9: HEIGHT OF TELECOMMUNICATIONS TOWER(S)

- A. The maximum preferred height of a new tower shall be sixty feet tall, based on accommodating two collocated antenna arrays that cannot be located at the same level.
- B. The applicant shall submit documentation justifying the total height of any requested tower, facility, and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown. In no case shall a new tower's total height exceed 100 feet.
- C. No tower constructed after the effective date of this ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with City, municipal, State, and/or any Federal statute, law, local law, City ordinance, code rule, or regulation.

10-17-10: APPEARANCE AND VISIBILITY OF WIRELESS TELECOMMUNICATIONS FACILITIES

- A. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this ordinance.
- C. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under the city's Outdoor Lighting Ordinance 9-3 and State and Federal regulations.

10-17-11: SECURITY OF WIRELESS TELECOMMUNICATIONS FACILITIES

All wireless telecommunications facilities and antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access, specifically:

- A. All antennas, towers, and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

10-17-12: SIGNAGE

Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has radio frequency or microwave transmission capabilities and shall

contain the name(s) of the owners(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

10-17-13: LOT SIZE AND SETBACKS

Any proposed tower and/or other proposed wireless telecommunications facility structure shall be located on a single parcel of land and shall be set back from abutting parcels, recorded rights-of-way, and road and street lines by the greater of the following distances; For non-residential areas, a distance equal to one and a half (1½) times the height of the proposed tower or wireless telecommunications facility structure, or existing setback requirement for the applicable land use designation, whichever is greater. Setbacks shall apply to all components of the facility, including accessory facilities. For all areas the minimum setback shall be two hundred (200) feet from designated residential areas and/or property lines or non-compatible use easements or structures unrelated to the wireless facility.

10-17-14: ACTION ON AN APPLICATION FOR A CONDITIONAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

The Planning Commission shall decide upon the application within forty (40) days after the public hearing. The time within which the Planning Commission must render its decision may be extended by mutual consent of the applicant and the Planning Commission.

10-17-15: MAINTENANCE

- A. All facilities shall be maintained to acceptable industry standards. All permitted facilities shall be inspected at least every second year for structural integrity, including but not limited to the effects of corrosion, by a Utah State licensed engineer.
- B. All facilities shall be maintained to ensure paint and other coating is not deteriorated and continues to be consistent with the immediate surroundings of the tower. Furthermore, on site vegetation shall be maintained to ensure the desired screening effect is achieved.
- C. The Service Provider or owner of a tower, as appropriate, shall annually file with the City Planning Commission a written report showing the cumulative effect of the NIER radio frequency levels at the site, as obtained from field measurements. Reports may be subject to verification by an independent testing company. The decision for verification shall rest with the Planning Commission and the costs borne by the applicant.
- D. The holder of a Conditional Use Permit granted under this ordinance shall provide to the City and Cache County Emergency Services the name and emergency contact information of the entity that performs maintenance activities for the facility.

10-17-16: RECERTIFICATION OF A CONDITIONAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

- A. Between 12 months and 6 months prior to the five year anniversary date after the effective date of the Conditional Use Permit and all subsequent five year anniversaries of the effective date of the original Conditional Use Permit for Wireless Telecommunications Facilities, the holder of the Conditional Use Permit for such wireless telecommunications facilities shall submit a signed written request to the City Planning Commission for recertification. In the written request for recertification, the holder of such Conditional Use Permit shall note the following:
1. The name of the holder of the Conditional Use Permit for Wireless Telecommunications Facilities;
 2. If applicable, the number or title of the Conditional Use Permit;
 3. The date of the original granting of the Conditional Use Permit;
 4. Whether the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified, then whether the City Planning Commission approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 5. That the wireless telecommunications facilities are in compliance with the Conditional Use Permit and compliance with all applicable codes, laws, rules, and regulations;
 6. Recertification that the tower and attachments both are designated and constructed and continue to meet all local, City, State, and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of Utah, the cost of which shall be borne by the applicant.
- B. If, after such review, the City Planning Commission determines that the permitted wireless telecommunications facilities are in compliance with the Conditional Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations then the City Planning Commission will issue a recertification of the Conditional Use Permit for Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules, or regulations. If, after such review it is determined that the permitted wireless telecommunications facilities are not in compliance with the Conditional Use Permit and all statutes, laws, ordinances, codes, rules, or regulations, then the City Planning Commission may refuse to issue a recertification Conditional Use Permit for the wireless telecommunications facilities, and in such event such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of the decision by the City Planning Commission until such time as the facility is brought into compliance. Any decision requiring the cessation of the use of the facility or imposing a penalty shall be in writing and supported by substantial

- C. evidence contained in a written record and shall be promptly provided to the owner of the facility.
- D. If the applicant has submitted all of the information requested and required by this ordinance, and if the review is not completed, as noted in Subsection (B) of this section, prior to the five year anniversary date of the Conditional Use Permit, or subsequent five year anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the Conditional Use Permit for up to six months, in order for the completion of the review.
- E. If the holder of a Conditional Use Permit for Wireless Telecommunications Facilities does not submit a request for a recertification of such Conditional Use Permit within the timeframe noted in subsection (A) of this section, then such Conditional Use Permit and any authorizations granted there under shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit, or the subsequent five year anniversaries, unless the holder of the Conditional Use Permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the City Planning Commission agrees that there were legitimately extenuating circumstances, then the holder of the Conditional Use Permit may submit a late recertification request of application for a new Conditional Use Permit.

10-17-17: APPLICATION FEE

- A. Any and all persons requesting approval on preliminary plans and construction drawings and specifications for the construction of improvements shall have first paid all fees required as set forth by the most recent prevailing fee schedule adopted by the city. The fee schedule shall include, but shall not be limited to, office checking, legal and field engineering fees to be payable to the city at the time of each of the submittals, or in one lump sum as approved by the city. In addition to the above, a retainer fee for the construction inspection based on the above mentioned fee schedule shall be payable to the city prior to any construction of Wireless Telecommunications Facility improvements. All costs of inspection, including any necessary testing, shall be borne by the applicant, not the city. The fee schedule shall be held in the city office. (Ord., 8-12-2003; amd. 2005 Code)
- B. No application fee is required in order to recertify a Conditional Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facility since the date of the issuance of the existing Conditional Use Permit for which the conditions of the Conditional Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply, in addition to any fines that may apply.
- C. The City may hire any consultant and/or expert necessary to assist the City in review and evaluation of the application, including the construction and modification of the site, once permitted, and any requests for recertification.

10-17-18: PERFORMANCE SECURITY

The security of performance is required to assure the faithful performance of the terms and conditions of this ordinance and conditions of any Conditional Use Permit issued pursuant to this ordinance. Prior to issuance of a Building Permit for wireless telecommunications facilities, the applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a security of performance in an amount of at least one and one-half (1 ½) times the reasonable value of the improvements and wireless telecommunication’s facilities required herein, as determined by the applicant’s engineer and approved by the city engineer. Securities of performance acceptable to the City are outlined in Section 11-5-1 B.2. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original Conditional Use Permit.

10-17-19: RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with an applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations, and other applicable requirements, the City Planning Commission may inspect all facets of said permit holder’s, renter’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.

10-17-20: LIABILITY INSURANCE

- A. A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below.
 - 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000.00 per occurrence / \$2,000,000.00 per aggregate;
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence / \$2,000,000.00 per aggregate;
 - 3. Workers Compensation and Disability: Statutory amounts.
- B. The Commercial General liability insurance policy shall specifically include the City and its officers, councils, employees, committee members, attorneys, agents, and consultants as additional named insured’s.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of Utah and with a Best’s rating of at least A.

- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the City at least fifteen days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen days after the grant of a Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the City a copy of the policies or certificates representing the issuance in the required amounts.

10-17-21: INDEMNIFICATION

- A. Any application for wireless telecommunications facilities that is proposed for City property, pursuant to this ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City and its officers, employees, council and committee members, attorneys, agents, and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorney's fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities.

10-17-22: FINES

Any person who violates any provision of this chapter, upon conviction, is guilty of a Class B Misdemeanor as provided by in Section 1-4-1.

10-17-23: DEFAULT AND/OR REVOCATION

- A. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way that is inconsistent or not in compliance with the provisions of this ordinance or of the Conditional Use Permit, then the City

shall notify the holder of the Conditional Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this ordinance, if the violation causes, creates, or presents an imminent danger or threat to the health or safety of lives or property, the City may, at its sole discretion, order the violation remedied within twenty-four (24) hours.

- B. If within the period set forth in subsection A above the wireless telecommunications facilities are not brought into compliance with the provisions of this ordinance, or of the Conditional Use Permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the City Planning Commission may revoke such Conditional Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Conditional Use Permit within forty-eight (48) hours of such action.

10-17-24: REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES

- A. Under the following circumstances, the City Planning Commission may determine that the health, safety, and welfare interests of the City warrant and require the removal of wireless telecommunications facilities.
 - 1. Abandonment or Vacation of Conditional Use: See Ord., 10-19-2.F
 - 2. Permitted wireless telecommunications facilities fall into such a State of disrepair that it creates a health or safety hazard;
 - 3. Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization.
- B. If the City Planning Commission makes a determination as noted in subsection (A) of this section, then the City Planning Commission shall notify the holder of the Conditional Use Permit for the wireless telecommunication facilities within forty-eight (48) hours that said such facilities are to be removed. The City Planning Commission may approve an interim temporary use agreement/permit, such as, for example, to enable the sale of the wireless telecommunications facilities.
- C. The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and removes such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the City Planning Commission. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the City Planning Commission.

- D. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received notice, then the City Planning Commission may order officials or representatives of the City to remove the wireless telecommunications facilities at the sole expense of the owner or Conditional Use Permit holder.
- E. If, pursuant to this section, the City removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten days, then the City Planning Commission may take steps to declare the wireless telecommunications facilities abandoned, and sell them, and their components and keep the proceeds from such facilities sale.
- F. Notwithstanding anything in this section to the contrary, the City Planning Commission may approve a temporary use permit/agreement for the wireless telecommunications facilities, for not more than ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the Planning Commission, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the Planning Commission. If such a plan is not developed, approved, and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

10-17-25: ADHEARENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS

- A. To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use 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 FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and radio frequency emissions 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 Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

10-17-26: INTERPRETATION

The provisions of this title are in addition to all other city ordinances, the laws of the state, the laws of the United States, and applicable common law. The ordinances shall not supersede any private land use regulations in deeds or covenants which are more restrictive. Whenever a conflict exists, the more restrictive provision shall apply to the extent allowed by law. The city does not enforce private restrictive covenants, nor shall any such covenant have the effect of modifying the regulations herein. (3-2009, 3-24-09)