

**ATTACHMENT 5 – ALBANY MUNICIPAL CODE
WIRELESS COMMUNICATIONS FACILITIES****20.08.010 Purpose.**

This section provides definitions of terms and phrases used in this Chapter that are technical or specialized, or that may not reflect common usage. Where any of the definitions in this section may conflict with definitions in the other Chapters of the Albany Municipal Code, these definitions will prevail for purposes of this Chapter. (Ord. No. 04-09)

20.08.020 Definitions (A-Z).

Wireless Communications Facility means any device or system for the transmitting and/or receiving of electromagnetic signals, including but not limited to radio waves and microwaves, for cellular technology, personal communications services, mobile services, paging systems and related technologies. Facilities include antennas, microwave dishes, parabolic antennas and all other types of equipment used in the transmission and reception of such signals; structures for the support of such facilities, associated buildings or cabinets to house support equipment, and other accessory development.

The following terms related to wireless communications facilities have the following meanings:

- a. **Antenna** means any system of poles, panels, rods, reflecting disks, wire or similar devices used for the transmission or reception of electromagnetic signals. Does not include any support structure upon which an antenna is mounted.
- b. **Antenna Structure** means any structure, including a pole, mast, or tower, whether freestanding or mounted on another building or structure, that supports an antenna or an array of antennas. The height of an antenna structure is measured to the highest point of any antenna mounted thereon.
- c. **Base station** means the primary sending and receiving site in a wireless telecommunications network, including all radio-frequency generating equipment connected to antennas. More than one (1) base station and/or more than one (1) variety of telecommunications providers can be located on a single tower or structure.
- d. **Co-Location** means a situation in which a single support structure supports one (1) or more antennas owned or used by more than one (1) public or private entity.
- e. **Microcell Site** means a small radio transceiver facility comprised of an unmanned equipment cabinet with a total volume of one hundred (100) cubic feet or less that is either under or aboveground and one (1) omni-directional whip antenna with a maximum length of five (5) feet, or up to three (3) small (approximately 1 x 2 or 1 x 4) directional panel antennas,

mounted on a single pole, an existing conventional utility pole, or some other similar support structure.

f. **Monitoring Protocol** means an industry accepted radio-frequency (RF) radiation measurement protocol used to determine compliance with FCC RF radiation exposure standards, in accordance with the National Council on Radiation Protection and Measurements Reports 86 and 119 and consistent with the RF radiation modeling specifications of OET Bulletin 65 (or any superceding reports/standards), which is to be used to measure the emissions and determine radio-frequency radiation exposure levels from existing and new telecommunications facilities. RF radiation exposure measurements are to be taken at various locations, including those from which public RF exposure levels are expected to be the highest.

g. **Monopole** means a type of freestanding antenna structure that is seventeen (17) feet or more in height and is designed to be self-supporting without the use of guy wires.

h. **Preferred Wireless Zoning District** means a zone where the City has determined that the location of a wireless communications facility would reduce the noise, aesthetic and visual impact of that facility relative to its placement in another zone. The City has determined that wireless communication facilities may be located in the following order of preference: CMX, PF, and SPC or SC.

i. **Radio Frequency (RF) Radiation** means radiation from the portion of the electromagnetic spectrum with frequencies below the infrared range (approximately 100 GHz and below), including microwaves, television VHF and UHF signals, radio signals, and low to ultra low frequencies.

j. **Receive-Only Antenna** means antenna for the reception of radio and television signals, without transmitting capabilities; may include pole or dish types of antennas.

k. **Repeater** means a small receiver/relay transmitter of not more than twenty (20) watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

l. **Satellite Dish** means a bowl-shaped antenna used to receive and/or transmit electromagnetic signals to and from an orbiting satellite.

m. **Stealth Facility** means a wireless communications facility located so as to be of minimal visibility, such as being incorporated within an architectural feature such as a steeple or parapet, or in the open but disguised as a tree or other natural feature.

20.20.100 Wireless Communication Facilities.

A. Purpose and Intent. The purpose and intent of this section are to:

1. Enact appropriate regulations, in accordance with the Telecommunications Act, for the provision of personal wireless service facilities for the benefit of the Albany community.
 2. Establish standards to regulate the placement and design of antennas and wireless communication facilities so as to preserve the visual and other characteristics of the City; to assure compatibility with properties adjacent to such facilities; to minimize negative impacts; and to protect the general safety, welfare, and quality of life of the community.
 3. Establish development standards that are consistent with federal law related to the development of wireless communication facilities.
 4. Pursue additional benefit to the public by encouraging the leasing of municipally-owned properties where feasible or desirable, for the development of wireless communication facilities;
 5. Allow antennas to be located according to demonstrated need; encourage the use of existing facilities, including co-location by multiple companies; encourage the placement of antennas on existing structures and encourage the use of smaller, less-obtrusive facilities such as repeaters and microcell facilities where they are feasible alternatives to base station facilities;
 6. Locate wireless communication facilities within nonresidential zoning districts, according to a preferential ordering of zoning districts with an objective of minimizing the impacts of such facilities upon neighboring land uses, except as otherwise provided in this Chapter.
 7. Require all wireless communication facilities to be consistent with all other applicable City of Albany plans and municipal code provisions, and applicable regulations and standards of other governmental agencies, and any applicable discretionary permits affecting the subject property except to the extent the Planning and Zoning Commission or City Council shall modify such requirements.
- B. Definitions. Unless otherwise specifically provided, the terms used in this section shall have the meanings stated in the Definitions section of this Chapter, under the general heading of "Wireless Communications Facility".
- C. Exempt Facilities. Except as specifically noted, the following types of facilities shall be exempt from the permit requirements of this section.
1. Exempted by State and/or Federal Regulations. An antenna or wireless communications facility shall be exempt from the provisions of this section if and to the extent that a permit issued by the California Public Utilities Commission (CPUC) or the rules and regulations of the Federal Communications Commission (FCC) specifically

provides that the antenna and/or wireless communications facility is exempt from local regulation.

2. Exempted Subject to Locational Requirements. The following types of antennas are exempted provided that installation are entirely on-site and are not located within required front yard or side yard setback areas. Installations may be located in that portion of a rear yard where accessory buildings are permitted to be located. Such locational requirements are necessary to ensure that such antenna installations do not become public or private nuisances adversely impacting adjacent properties, and/or result in hazards if located adjacent to a street or other public right of way.

a. Radio or Television Antenna. A single ground-mounted or building-mounted receive-only radio or television antenna for the sole use of residential occupants of the parcel on which such antenna is located, with a height including any mast not exceeding ten (10) feet over the basic maximum building height prescribed by the regulations for the district in which the site is located.

b. Satellite Dish Antenna. A ground-mounted or building-mounted receive-only radio or television satellite dish antenna not exceeding twenty-four (24) inches in diameter for the sole use of residential occupants of the parcel on which such antenna is located, provided that the highest point of such dish does not exceed the height of the highest roof ridge or parapet line of the primary structure on said parcel.

c. Citizens Band Antenna. A ground-mounted or building-mounted citizens band radio antenna not exceeding thirty-five (35) feet above grade including any mast.

d. Amateur Radio Antenna. A ground-mounted, building-mounted or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service. Such antennas shall require building permit approval and approval of placement by the Community Development Director to ensure maximum safety is maintained. Height of antenna and support structure shall not exceed thirty-five (35) feet above grade, except that an extendable structure may, when fully extended, exceed by no more than fifteen (15) feet the height limit prescribed by the regulations for the district in which the site is located.

3. Pre-existing Citizens Band and Amateur Radio Antennas. All citizens band radio antennas and antennas operated by a Federally-licensed amateur radio operator as part of the Amateur Radio Service that existed at the time of adoption of this section.

4. Mobile Services. Mobile services providing public information coverage of news event of a temporary nature.

5. Hand-Held Devices. Hand-held devices such as cell phones, business-band mobile radios, hand-held amateur radios, family service band radios, walkie-talkies, cordless telephones, garage door openers, and such other devices as the Community Development Director may find to be similar.

6. Government Antennas. Receive and/or transmit telemetry station antennas owned and operated by the City of Albany and other public agencies including Federal, State, County and special district entities, for supervisory control and data acquisition systems for such functions as water, flood alert, traffic control devices and signals, storm water, and sanitary sewer, with heights not exceeding sixty (60) feet.

D. Location by Zoning Districts.

1. No wireless communication facilities that both transmit and receive electromagnetic signals shall be permitted in any residential zone, except for those facilities designated in paragraph C. above to be exempt from City review, unless substantial technical evidence acceptable to the Planning and Zoning Commission is submitted showing a clear need for this facility and the infeasibility of locating it elsewhere.

2. Wireless communication facilities may be located within the following Districts, subject to approval of a use permit, with the findings required by subsection 20.20.100.F.5 of this Chapter. The following permitted Districts are listed in a descending order of preference for the location of wireless communication facilities, with the CMX District being the most preferred location:

- a. Commercial Mixed Use District (CMX).
- b. Public Facilities District (PF), except on sites occupied by schools and parks.
- c. San Pablo Commercial District (SPC) or Solano Commercial District (SC).

3. In all districts where wireless communication facilities are permitted, any such facility shall be located on a site that provides for, in order of priority:

- a. The maximum achievable setback from any permitted child care facility or school; and
- b. The maximum achievable setback from any property line abutting a residential district.

4. In the San Pablo Commercial District and the Solano Commercial District any wireless communication facility that abuts a residential district shall be set back from a property line that is contiguous to the residential district a minimum distance

of fifty (50) feet, provided that such distance may be reduced by the Planning and Zoning Commission based on a determination that the lesser distance will not have perceptibly greater noise impact or greater visual impact with respect to properties in the abutting residential district, and further provided that there be no less than ten (10) feet of separation between a property line that is contiguous to the residential district and the subject wireless communication facility (with the exception of such elements as transmission cables and meter boxes).

E. Development Requirements and Standards.

1. Basic Development Requirements. The following basic development requirements shall be met by all new or modified wireless communication facilities.

- a. Applicable Goals, Objectives, and Policies of the Albany General Plan.
- b. Permit requirements of any agencies having jurisdiction over the project;
- c. Requirements established by the Albany Municipal Code;
- d. Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, where applicable;
- e. Applicable easements or similar restrictions on the subject property;
- f. Applicable development standards or conditions of approval for those properties developed under a Planned Unit Development procedure;
- g. Applicable FCC rules, regulations, and standards;
- h. All service providers shall cooperate in the locating of equipment and antennas to accommodate the maximum number of operators at a given site where feasible and aesthetically desirable. This will facilitate the co-location of wireless communication facilities. The project sponsor shall agree to allow future co-location of additional antennas and shall not enter into an exclusive lease for the use of the site;
- i. All equipment shall be situated or sufficiently buffered to minimize interference with the quiet enjoyment of adjacent properties;
- j. All equipment, antennas, poles, or towers shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual impacts; and

k. All wireless communication facilities shall provide sufficient security measures and anti-climbing measures in the design of the facility to reduce the potential for damage, theft, trespass, and injury.

2. General Development Standards. The following general development standards shall be met by all new wireless communication facilities:

a. New wireless communication facilities shall be co-located with existing facilities and with other planned new facilities whenever feasible and aesthetically desirable to minimize overall visual impact. Service providers are encouraged to co-locate antennas with other facilities such as water tanks, light standards, and other utility structures where the co-location is found to minimize the overall visual impact;

b. Where feasible and aesthetically desirable, the location of wireless communication facilities shall be encouraged to be located on City-owned or controlled property or right-of-way, with the exception of right-of-way within or abutting residential districts and school or park sites, in accordance with provisions for location by zoning districts stated in paragraph D. above.

c. Wireless communication facilities shall be sited to avoid any unreasonable interference with views from neighboring properties, and where their visual impact is least detrimental to scenic vistas.

d. Wireless communication facilities placed on vacant sites shall be considered temporary and the Planning and Zoning Commission may impose a condition that when the site is developed, these facilities shall be removed, and if appropriate, replaced with building-mounted antennas;

e. All wireless communication facilities shall be screened in one of the following ways:

1) Substantially screened from the view of surrounding properties and the public view or co-located with existing facilities or structures so as not to create substantial visual, noise, or thermal impacts;

2) Sited within areas with substantial screening by existing vegetation;

3) Designed to appear as natural features found in the immediate area, such as trees or rocks, so as to be unnoticeable (stealth facilities); or

4) Screened with additional trees and other native or adapted vegetation which shall be planted and maintained around the facility, in

the vicinity of the project site, and along access roads in appropriate situations, where such vegetation is deemed necessary to screen the facilities. Such landscaping, including irrigation, shall be installed and maintained by the project sponsor, as long as the permit is in effect or to the extent permitted by law.

f. Where the Community Development Director finds that proposed wireless communication facilities have the potential to create a significant impact to the surrounding area or neighborhood, the Community Development Director may require an independent, third-party review, at the expense of the project sponsor, to identify potential impacts on the surrounding area, to confirm the radio frequency needs of the project sponsor and to identify potential alternative solutions;

g. All wireless communication facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of abutting residential properties, and at a minimum shall be subject to the City-adopted noise standards contained in Section 8-1 of the Albany Municipal Code. Where the Community Development Director finds that noise associated with such facilities may have a detrimental effect at a location off the site, the Director may require an independent acoustic analysis, at the expense of the project sponsor, to identify appropriate mitigation measures. Failure to institute any such required measures, or any violation of noise standards, may be cause for the Community Development Director to initiate a revocation procedure as provided by subsection 20.100.010.M.

h. The height of a wireless communication facility (building or ground mounted) shall not exceed ten (10) feet above the basic maximum building height prescribed by the regulations for the district in which the site is located, as provided by subsection 20.24.080.B, and shall be subject to applicable daylight plane restrictions.

i. For properties developed under a Planned Unit Development procedure, the maximum height for a proposed wireless communication facility shall be determined by the Planning and Zoning Commission who shall consider the maximum approved heights for buildings in the area and adjacent to the subject parcel;

j. Unless mandated by Federal or State regulations, the use of barbed wire, razor wire, electrified fence, or any other type of hazardous fence as a security precaution is not allowed;

k. Any equipment shelter shall be designed to be architecturally compatible with existing structures on the site or found in the area; and

1. No advertising or signs, other than necessary owner identification signs and warning signs, shall be allowed on or at the location of a wireless communications facility.

3. Development Standards for Building and Roof-Mounted Antennas. In addition to all other applicable development standards, wireless communication facilities proposed to be mounted on or attached to existing or proposed buildings shall comply with the following:

a. Building-mounted antennas and any ancillary equipment shall be in scale and architecturally integrated with the building design in such a manner as to be visually unobtrusive. Screening may include designs such as locating the facility within attics, steeples, towers, behind and below parapets, or concealed within a new architectural addition to a building or structure which is architecturally compatible with the building;

b. When antennas or other equipment are viewed directly against a building wall, colors and materials of the equipment shall be painted or otherwise treated to match the exterior of the building;

c. Roof-mounted equipment and antennas shall be located as far away as feasible from the edge of the building; and

d. Antennas mounted on such structures as utility poles, light standards or flagpoles shall be placed on the structure in a way to reduce visibility, and shall be painted to blend into the structure.

4. Additional Development Standards for Monopoles. In addition to all other applicable development standards, monopoles shall comply with the following:

a. The project sponsor shall demonstrate that the proposed facility cannot be placed on an existing building or co-located on an existing monopole or other tower. Where the Community Development Director finds that such demonstration has not been made, the Community Development Director may require an independent, third-party review, at the expense of the project sponsor, to identify the obstacles to co-location or building placement, to confirm the electromagnetic frequency needs of the project sponsor, and to identify alternative solutions;

b. The maximum height of the proposed monopole or other tower shall be no higher than ten (10) feet above the height limit for the main structure allowed by the zoning district within which the facility is located, as provided by subsection 20.24.080.B, and shall be subject to applicable daylight plane restrictions.

c. Guy wires or support structures shall not be allowed; monopoles shall be self-supporting structures. Design and safety considerations are subject to approval by the Community Development Director;

d. A monopole or other tower facility shall be designed to allow co-location of additional antennas, if deemed desirable by the Planning and Zoning Commission; and

e. Exterior lighting shall not be allowed on commercial wireless communication facilities except for that required for use of authorized persons on site during hours of darkness or where antenna structure owner or registrant is required to light the antenna structure by the terms of the FAA Antenna Structure Registration applicable to the facility.

F. Permit Approval Process.

1. Types of Permits. Except as specifically exempted in subsection 20.20.100.C. above, all wireless communication facilities, and facility modifications that involve any change in the specifications or conditions stipulated in the approved use permit, including but not limited to, changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit, repositioning of antennas, increase in proposed dimensions of tower or support structure, or any other facility upgrades, shall be subject to the following permit requirements:

a. Minor Use Permit. Administrative Approval. At the discretion of the Community Development Director, an application for a proposed wireless communication facility may be considered administratively with a noticed public hearing where the proposed facility will be co-located on an existing pole, monopole, or similar support structure other than a building, that has been approved by the City as a wireless communication site.

b. Major Use Permit. Commission Approval. All facilities not exempted by subsection 20.20.100.C. above, or which are not eligible for consideration for a minor use permit, including all building-mounted facilities, shall be considered by the Planning and Zoning Commission in a noticed public hearing and may be approved subject to conditions deemed appropriate by the Commission.

c. Design Review. All wireless communication facilities shall be subject to design review and approval, according to procedures and standards stated in subsection 20.100.050. The reviewing body shall consider all structures, materials, colors, and landscaping associated with any proposal to establish a wireless communication facility. Review shall be the responsibility of the Community Development Director in cases where Minor Use Permits are

required. The Planning and Zoning Commission shall have responsibility in cases of Major Use Permits.

d. **Building Permit.** Unless otherwise specifically exempted by this Chapter, a Building Permit shall be required for all wireless communication facilities.

2. **Permit Fees:** Fees for permits, including permits for all modifications, shall be listed in the City's Master Fee Schedule.

3. **Notice Requirements.** Public notice shall be provided for any public hearings on applications or appeals, pursuant to procedures stated in Section 20.100.010.

4. **Application Submittal.**

a. **General Submittal Requirements.** Applications for minor or major use permits and design review of wireless communication facilities shall be submitted and processed in accordance with the Common Procedures stated in subsection 20.100.010. The applicant shall provide project information and plans as required by forms and checklists established by the Community Development Director. The Community Development Director may establish and maintain a list of additional information that must accompany each application for a wireless communications facility.

Said information may include but need not be limited to the additional submittal requirements listed in paragraph b. below. Any required study or report, performed at the request of the City or by engineers or experts retained by the City, shall be at the expense of the applicant.

All applications for approval of wireless communication facilities shall include, at a minimum, the items listed below:

1) Identification of the proposed operator of the facility, if a different entity from the applicant, and the identification of and contact information for the person to whom communications from the City should be delivered.

2) Site plan for the location of the facility, drawn to scale, showing all existing and proposed features, in compliance with the checklist submittal requirements as established by the Community Development Director.

3) Plans and elevations, drawn to scale, for façade- or roof-mounted antennas, including plans and elevations of the existing building. (See paragraph F.4.c. below for specific requirements for new towers and modifications to towers.)

- 4) Floor Plans, elevations and cross sections of any proposed communications equipment shelter or other appurtenant structure at a scale of no smaller than 1/4" = 1' (1:48) with representation of all exterior materials.
- 5) Description of proposed approach for screening all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials and colors. Where applicable, a plan showing existing surrounding landscaping, proposed landscaping, a landscape protection plan for construction, and a maintenance plan including an irrigation plan.
- 6) Description of the number, manufacturer, model number and type, catalog number, power output, frequency range, and dimensions of antennas, equipment cabinets, and related wireless communication facilities proposed to be installed.
- 7) A narrative description and map showing the coverage area of the provider's existing facilities and the proposed coverage area of the specific site that is the subject of the application.
- 8) Technical information explaining the reasons why a permit is being sought (for example, whether a new antenna is necessary to accommodate increased demand or to fill a "dead zone" in the provider's coverage area), why the subject site is considered necessary to accomplish the provider's coverage objectives, and why the proposed site is the most appropriate location under existing circumstances. The explanation shall address the following as appropriate to the proposed location:
 - a) An applicant seeking to locate a wireless communication facility on a public facilities site must explain why that location within the Public Facilities (PF) district is for the provision of wireless service that cannot be achieved by locating a facility in the Commercial Mixed Use (CMX) district.
 - b) An applicant seeking to locate a wireless communication facility in the San Pablo Commercial (SPC) district or the Solano Commercial (SC) district must explain why that location within the SPC zone or the SC zone is necessary for the provision of wireless service that cannot be achieved by locating a facility in the CMX or PF zones.
- 9) A visual analysis to assess the effects on views from public areas and from private residences, and address cumulative impacts of the

proposed facility and other existing and foreseeable wireless communications facilities. As required by the Community Development Director, the analysis may utilize a photomontage, field mock-up or other techniques. The analysis shall include feasible mitigations for any effects identified.

10) If co-location is not proposed and sites available for co-location exist, the applicant shall provide information pertaining to the feasibility of joint-use antennas facilities, and discuss the reasons why such joint use is not a viable option or alternative to a new facility site. Such information shall include:

a) Whether it is feasible to locate proposed sites where facilities currently exist;

b) Information on the existing structure that is closest to the site of the applicant's proposed facility relative to the existing structure's structural capacity, radio frequency interface, or incompatibility of different technologies, which would include mechanical or electrical incompatibilities; and

c) Written notification of refusal of the existing structure owner to lease space on the structure.

b. Additional Submittal Requirements. The Community Development Director shall have the authority to require additional information, including but not limited to the following:

1) A report by an approved radio frequency engineer or licensed electrical engineer specializing in radio frequency radiation (RFR) studies (hereinafter, "an approved engineer"), retained by the City, verifying that the site is necessary for the purpose stated in the provider's explanation of reasons for seeking the permit. If deemed necessary by the engineer, such information shall include documentation of any facility sites, in Albany and abutting jurisdictions, in which the provider has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such facility site identified by the engineer, at the request of the engineer, the provider shall demonstrate that these sites are not already providing wireless coverage in the city of Albany.

2) An Alternatives Analysis, either submitted by the applicant and subject to independent engineering review by the City, or obtained by the City from its retained engineer, which shall at a minimum:

a) Identify and indicate on a map, at a minimum, two (2) viable technically feasible, and potentially environmentally

equivalent or superior alternative locations outside the prohibited and restricted areas which could eliminate or substantially reduce the need to locate in a restricted area. If there are fewer than two (2) such alternative locations, the applicant must provide evidence establishing that fact. The map shall also identify all locations where an unimpaired signal can be received to eliminate or substantially reduce the need for such a location. Where appropriate the applicant shall be required to evaluate the potential use of one (1) or more microcell sites (i.e., smaller facilities often mounted upon existing or replacement utility poles), and the use of repeaters in lieu of the proposed facility. Radial plots of all repeaters or other alternative facilities considered for use in conjunction with these facility sites shall be provided as part of the alternatives analysis. For each alternative location so identified, the applicant shall describe the type of facility and design measures that could be used at that location so as to minimize negative impacts (e.g., the use of stealth camouflaging techniques).

b) Evaluate the potential for co-location with existing wireless communication facilities as an alternative to the proposed facility.

c) Evaluate the potential for use of inter-carrier roaming agreements as an alternative.

d) Compare, across the same set of evaluation criteria and to similar levels of description and detail, the relative merits of the proposed site with those of each of the identified technically feasible alternative locations and facility designs, and all technically feasible inter-carrier roaming agreements. Such comparison analysis shall rank each of the alternatives (i.e., the proposed location/facility and each of the technically feasible location/design alternatives) in terms of impacts (i.e., from least to most environmentally damaging), and shall support such ranking with clear analysis and evidence.

e) Include photo-simulations of each of the alternatives (i.e., the proposed location/facility and each of the technically feasible location/design alternatives).

f) Document good faith and diligent attempts to rent, lease, purchase or otherwise obtain the use of at least two (2) of the viable, technically feasible alternative sites which may be environmentally equivalent or superior to the proposed project site. The decision-making body may determine that an alternative site is

not viable if good faith attempts to rent, lease, purchase or otherwise obtain the site have been unsuccessful.

c. Specific Submittal Requirements for Towers. All applications for new tower construction, or major modification of an existing tower shall include:

1) A written, irrevocable commitment by the proposed operator, valid for the duration of the existence of the tower, to rent or lease available space for co-location on the tower at fair-market prices and terms to other personal wireless service providers without discrimination.

2) A professional structural engineer's written description of the proposed tower structure and its capacity to support additional antennas or other communications facilities at different heights and the ability of the tower to be shortened if future communications facilities no longer require the original height.

3) A description of available space on the tower, providing illustrations and examples of the type and number of wireless communication facilities that could be mounted on the structure.

d. Technical Review. The Community Development Director may employ, on behalf of the City, at the expense of the applicant, an independent technical expert to review the application submittal and provide determinations and recommendations on such issues as compliance with radio frequency emissions standards, the identification of alternative solutions or locations, and the justifications for installation of monopoles or for any requested exceptions to City standards. The costs of said review and any administrative costs shall be paid by the applicant.

5. Findings for Approval. The approving body may approve a use permit for a wireless communications facility only upon making written findings based on substantial evidence in the record.

a. All of the following findings shall be made for the approval of a use permit for a wireless communication facility:

1) Findings otherwise required for use permits by subsection 20.100.030.⁽¹⁾

2) The establishment or expansion of the facility demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse

impact on historic resources, scenic views, or other natural or man-made resources.

3) All applicable Development Standards in subsection 20.20.100.E. above have been met; or: Finding for an exception to the Development Standards: Strict compliance would not provide for adequate radio-frequency signal reception and that no other alternative solutions which would meet the Development Standards are feasible.

4) The placement, construction, or modification of a wireless telecommunications facility in the proposed location is necessary for the provision of wireless communication services to Albany residents and businesses, or their owners, customers, guests, or invitees, or other persons traveling in or about the City.

b. Findings required, in addition to those in paragraph a. above, for specific situations:

1) Finding for establishment of a satellite dish or parabolic antenna exceeding thirty-nine (39) inches in diameter: A smaller or different antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible.

2) Findings for the establishment of a wireless communications facility that is not co-located with other existing or proposed facilities or a new freestanding pole or tower (at least one (1) finding required):

a) Co-location is not feasible;

b) Co-location would have more significant adverse effects on views or other environmental consideration;

c) Co-location is not permitted by the property owner;

d) Co-location would impair the quality of service to the existing facility;

e) Co-location would require existing facilities at the same location to go off-line for a significant period of time; or

6. Standard Agreement.

a. Except for exempt facilities defined in subsection 20.20.100.C., a maintenance and facility removal agreement shall be executed by the operator, the property owner if other than the operator, and the City, for any wireless

communication facility that includes any one (1) or combination of the following elements:

- 1) A freestanding tower in excess of ten (10) feet in height,
 - 2) One (1) or more buildings or enclosures larger in the aggregate than three hundred (300) square feet;
 - 3) More than three (3) antennas or satellite dishes of any size;
- or
- 4) Any satellite dish larger than twenty-four (24) inches in diameter.

b. No use permit shall become effective until such agreement has been executed. Said agreement shall bind the operator, the property owner, and all successor parties to the following:

- 1) Maintain the exterior appearance of the facility;
- 2) Ultimately to remove the facility in compliance with this Chapter and any conditions of approval;
- 3) Pay all costs for monitoring for compliance with this agreement and all conditions and environmental mitigation measures;
- 4) Reimburse the City for all costs incurred for work the applicant had failed to perform;
- 5) Where applicable in the case of a freestanding tower, the agreement shall stipulate that the permittee will rent or lease available space on the tower, under the terms of a fair-market lease, to other wireless service communication providers without discrimination.

c. The Community Development Director shall develop a standard form for such agreement which shall include the provisions of this paragraph and other provisions which shall include, but not be limited to authorization for City agents to enter the property, and establishment of liability of the applicant for any pollution resulting from the facility.

G. Operation and Maintenance Standards. All wireless communication facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to enforcement pursuant to provisions of this Chapter.

1. After the granting of a use permit but before an approved facility begins transmission, the applicant shall pay for an independent consultant, hired by the City, to monitor the background levels of radio-frequency radiation around the facility site and/or any repeater locations to be utilized in connection with such facilities. The independent consultant shall use the Monitoring Protocol (See definition, Section 20.08). A report of the monitoring results shall be prepared by the independent consultant and submitted to the Community Development Director.

2. Any major modification of the existing facility, or the activation of any additional permitted channels, shall require new monitoring.

3. Each owner or operator of a wireless communication facility shall provide signage identifying the name and phone number of a party to contact in event of an emergency. Where a utility pole or light standard is utilized as a support structure, the signage shall be attached to the base of the pole or standard.

4. Wireless communication facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the city.

5. The owner or operator of a wireless communication facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan. Amendments or modifications to the landscape plan shall be submitted to the Community Development Director for approval.

6. Each wireless communication facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the property line shall be enclosed or equipped with noise attenuation devices. Backup generators shall only be operated during periods of power outages or for testing. At no time shall equipment noise from any source exceed the standards specified in the Albany Municipal Code.

7. All wireless communication facilities providing service to the government or the general public shall be designed to meet the following requirements:

a. The exterior walls and roof covering of all aboveground equipment shelters and cabinets shall be constructed of materials rated as nonflammable in the Uniform Building Code.

b. All structures shall meet wind load standards as specified by the Uniform Building Code.

c. Openings in all aboveground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the extent feasible.

d. Material used as supports for antennas shall be fire resistant, termite proof, and subject to all applicable requirements of the Uniform Building Code.

e. Wireless communication antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible. Building-mounted facilities shall be anchored so that a quake does not dislodge them or tip them over. All equipment mounting racks and attached equipment shall be anchored so that a quake would not tip them over, throw equipment off its shelves, or otherwise damage equipment.

f. All connections between various components of the wireless communications facility and necessary power and telephone lines shall, to the extent feasible, be protected against damage by fire, flooding, and earthquake. Reasonable measures shall be taken to keep wireless communication facilities in operation in the event of a natural disaster.

8. Vehicle and personnel access to sites for maintenance and repairs shall not be from residential streets or adjacent residential properties to the maximum extent possible.

H. Certification of Facilities.

1. No wireless communications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for radio-frequency strength and power density for transmitters. In order to ensure continuing compliance with all applicable emission standards, all wireless communications facilities shall be reviewed by an approved engineer in accord with the schedule and procedures set forth below. All reasonable costs of such inspections shall be borne by the owner or operator of the facility. The City may require, at the operator's expense, independent verification of the results of any analysis. If an operator of a communications facility fails to supply the required reports or fails to correct a violation of the Federal Communications Commission standard following notification, the Use Permit is subject to modification or revocation by the Planning and Zoning Commission following a public hearing.

a. Within forty-five (45) days of initial operation or modification of a communications facility, the operator of each communications antenna shall submit to the Community Development Director written certification by an approved engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions. The engineer shall measure the radio-frequency radiation of the approved facility and determine if it meets the FCC requirements. A report of these measurements and the engineer's findings with respect to compliance with the FCC's radio-frequency limits shall be submitted to the Community Development Director. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard. Proof of compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

b. Once every two (2) years, the City shall retain, at the operator's expense, an approved engineer to conduct an unannounced spot check of the facility's compliance with applicable FCC radio-frequency standards, utilizing the Monitoring Protocol (See definition, Section 20.08). This monitoring shall measure levels of radio-frequency radiation from the facility site's primary antennas as well as from repeaters, if any.

c. The City shall require inspection of tower and antenna structural integrity by a structural engineer following significant storms and seismic events, within thirty (30) days of such events, at applicant's cost.

d. In the event of a change in the FCC's limits for radio-frequency strength and power density for transmitters, the operator of each wireless communications facility shall be required to submit to the Community Development Director written certification by an approved engineer of compliance with applicable FCC radio-frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards. If calculated levels exceed fifty (50%) percent of the FCC's limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels. If calculated or measured levels are not in compliance with the FCC's limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current FCC limits shall be submitted to the Community Development Director.

e. If the Community Development Director at any time finds that there is good cause to believe that a wireless communication antenna is not in compliance with applicable FCC radio-frequency standards, he/she may require

the operator to submit written certification that the facility is in compliance with such FCC standards.

2. The owner or operator of any wireless communication facility that was approved by the City before the effective date of this Chapter shall submit within six (6) months from the date of notification, to the Community Development Director, written certification by an approved engineer that the facility's radio-frequency emissions are in compliance with the approved application and any required conditions. The engineer shall measure the radio-frequency radiation of the approved facility and determine if it meets the FCC requirements. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility is brought into compliance. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

3. Any facility that was approved by the City prior to the effective date of this Chapter and which does not comply with this Chapter on the date of its adoption shall be considered a lawful nonconforming use provided that the owner or operator submits the information required in paragraph 2. above. A lawful nonconforming wireless communication service facility shall be subject to the requirements of Section 20.44 except to the extent that they are modified herein.

4. Failure to submit the information required in this paragraph H. will be considered a violation of the Zoning Ordinance. Any facility found in violation may be ordered to terminate operations by the Planning Commission following a duly noticed public hearing.

I. Duration, Revocation and Discontinuance.

1. Duration of Permits and Approvals.

a. An approved use permit for a wireless communication facility must be activated within one (1) year from the date of final approval. If not activated within one (1) year from the date of final approval, the permit shall be deemed expired, as provided in subsection 20.100.010.K.1.

b. Once activated, all permit approvals for wireless communication facilities shall be valid for an initial maximum period of up to ten (10) years, or as specified by the approving body.

c. Permit approvals may be administratively extended without a public hearing for subsequent five (5)-year terms(s) by the Community Development Director upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other provisions provided for in the Municipal Code,

and Federal and State regulations which are in effect at the time of permit renewal.

d. In the event that the Community Development Director finds that the applicant has not maintained the facility in compliance with all applicable code requirements, conditions of approval and provisions of the maintenance agreement, the Director may initiate a revocation procedure as provided by subsection 20.100.010.M.

e. Costs associated with the process of verification of compliance and extension or revocation of approval shall be borne by the permit holder.

2. **Discontinuance of Use.** All equipment and improvements associated with a wireless communication facility shall be removed within thirty (30) days of the discontinuation of the use and the site shall be restored to its original, pre-construction condition, or as approved by the Community Development Director. For facilities located on City property, this removal requirement shall be included within the terms of the lease. For facilities located on private sites, the terms of private leases shall also require equipment removal as a provision of the lease. Written verification of the removal of wireless communication facilities on private property shall be provided to the Community Development Director within thirty (30) days of the discontinuation of the use.

a. If the operator fails to remove the wireless communication facilities from the site, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of this Chapter to do so. If such facilities are not removed, the site shall be deemed to be a nuisance and the City may call the bond for removal or take such other action as it deems appropriate.

b. Failure to inform the Community Development Director of cessation of operations of any existing facility shall constitute a violation of the Zoning Ordinance and be grounds for:

- 1) Prosecution;
- 2) Revocation or modification of the permit;
- 3) Calling of any bond or other assurance secured by the operator pursuant to the requirements of this Chapter; and/or
- 4) Removal of the facilities.

3. **Existing Uses.** All equipment and improvements associated with a wireless communications facility permitted as of the date of passage of this Chapter shall be allowed to continue as they presently exist, but will be considered legal

nonconforming uses insofar as they do not comply with standards stated in this subsection. Routine maintenance shall be permitted on existing, operational equipment and facilities. However, new construction, other than routine maintenance on existing towers, antennas, buildings, or other facilities shall comply with the requirements of this Chapter. In the event of the abandonment of the use of any equipment or facility for a continuous period of one hundred eighty (180) days, the provisions of subsection 20.44.040, Abandonment of Nonconforming Use, shall apply, the associated permits and approvals shall expire, and the site shall thereafter be maintained in conformity with the regulations for the district in which the site is located. The Community Development Director may require removal of such disused equipment or facilities, as provided in subsection 20.20.100.G.2 above.

(Ord. No. 05-02 § 1)