

1 **ATTACHMENT TO RESOLUTION NO. PZ 05-01**

2 (Approved by Albany Planning and Zoning Commission, January 25, 2005)

3
4 *Italic typeface indicates informational notations by staff; includes notes on*
5 *Commission votes where there was not 5-0 agreement.*

6
7 *Changes (from 1-19-05 draft ordinance) as directed by the Commission are indicated*
8 *by underline and ~~strikethrough~~.*

9
10 *Additional editorial changes suggested by staff are indicated by double underline and*
11 *~~double strikethrough~~*

12
13 **20.20.090 Wireless Communication Facilities.**

14
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25
26
27 **A. Purpose and Intent.** The purpose and intent of this section are to:

28 *[P&Z vote on this subsection: 4-1]*

- 29
30 1. Establish standards to regulate the placement and design of antennas and
31 wireless communication facilities so as to preserve the visual and other
32 characteristics of the City; to assure compatibility with properties adjacent to
33 such facilities; to minimize negative impacts; and to protect the general safety,
34 welfare, and quality of life of the community.
35
36 2. Establish development standards that are consistent with federal law related to
37 the development of wireless communication facilities.
38
39 3. Acknowledge the community benefit associated with the provision of wireless
40 communication services within the City, and encourage well-designed and
41 well-located antennas and wireless communications facilities;

42
43 add something about “necessary and desirable” to be drafted by RZ

44

- 1 4. Pursue additional benefit to the public by encouraging the leasing of
2 municipally-owned properties where feasible or desirable, for the
3 development of wireless communications facilities;
4
- 5 5. Allow antennas to be located according to demonstrated need; encourage the
6 use of existing facilities, including co-location by multiple companies;
7 encourage the placement of antennas on existing structures and encourage the
8 use of smaller, less-obtrusive facilities such as repeaters and microcell
9 facilities where they are feasible alternatives to base station facilities.
10
- 11 6. Locate wireless communications facilities only within non-residential zoning
12 districts, according to a preferential ordering of zoning districts with an
13 objective of minimizing the impacts of such facilities upon neighboring land
14 uses.
15
- 16 7. Require all wireless communication facilities to be consistent with all other
17 applicable City of Albany plans and municipal code provisions, and
18 applicable regulations and standards of other governmental agencies, and any
19 applicable discretionary permits affecting the subject property except to the
20 extent the Planning and Zoning Commission or City Council shall modify
21 such requirements.
22

23 **B. Definitions.** Unless otherwise specifically provided, the terms used in this
24 section shall have the meanings stated in the Definitions section of this Chapter,
25 under the general heading of “Wireless Communications Facility”. *[See*
26 *“Attachment A” for listing of proposed definitions, to be included in Definitions section*
27 *of Zoning Ordinance (Section 20.08)]*
28

29 **C. Exempt Facilities.** Except as specifically noted, the following types of facilities
30 shall be exempt from the permit requirements of this section.
31

- 32 1. **Exempted by State and/or Federal Regulations.** An antenna or wireless
33 communications facility shall be exempt from the provisions of this section if
34 and to the extent that a permit issued by the California Public Utilities
35 Commission (CPUC) or the rules and regulations of the Federal
36 Communications Commission (FCC) specifically provides that the antenna
37 and/or wireless communications facility is exempt from local regulation.
38
- 39 2. **Exempted Subject to Locational Requirements.** The following types of
40 antennas are exempted provided that installations are entirely on-site and are
41 not located within required front yard or side yard setback areas. Installations
42 may be located in that portion of a rear yard where accessory buildings are
43 permitted to be located. Such locational requirements are necessary to ensure
44 that such antenna installations do not become public or private nuisances
45 adversely impacting adjacent properties, and/or result in hazards if located
46 adjacent to a street or other public right of way.
47

- 1 a. **Radio or Television Antenna.** A single ground-mounted or building-
2 mounted receive-only radio or television antenna for the sole use of
3 residential occupants of the parcel on which such antenna is located, with
4 a height including any mast not exceeding ten feet (10') over the basic
5 maximum building height prescribed by the regulations for the district in
6 which the site is located.
7
- 8 b. **Satellite Dish Antenna.** A ground-mounted or building-mounted receive-
9 only radio or television satellite dish antenna not exceeding twenty-four
10 inches (24") in diameter for the sole use of residential occupants of the
11 parcel on which such antenna is located, provided that the highest point of
12 such dish does not exceed the height of the highest roof ridge or parapet
13 line of the primary structure on said parcel.
14
- 15 c. **Citizens Band Antenna.** A ground-mounted or building-mounted citizens
16 band radio antenna not exceeding thirty-five feet (35') above grade
17 including any mast.
18
- 19 d. **Amateur Radio Antenna.** A ground-mounted, building-mounted or
20 tower-mounted antenna operated by a federally licensed amateur radio
21 operator as part of the Amateur Radio Service. Such antennas shall require
22 building permit approval and approval of placement by the Community
23 Development Director to ensure maximum safety is maintained. Height of
24 antenna and support structure shall not exceed thirty-five feet (35') above
25 grade, except that an extendable structure may, when fully extended,
26 exceed by no more than fifteen (15') feet the height limit prescribed by the
27 regulations for the district in which the site is located.
28
- 29 3. **Pre-existing Citizens Band and Amateur Radio Antennas.** All citizens
30 band radio antennas and antennas operated by a Federally-licensed amateur
31 radio operator as part of the Amateur Radio Service that existed at the time of
32 adoption of this section.
33
- 34 4. **Mobile Services.** Mobile services providing public information coverage of
35 news event of a temporary nature.
36
- 37 5. **Hand-Held Devices.** Hand-held devices such as cell phones, business-band
38 mobile radios, hand-held amateur radios, family service band radios, walkie-
39 talkies, cordless telephones, garage door openers, and such other devices as
40 the Community Development Director may find to be similar.
41
- 42 6. **Government Antennas.** Receive and/or transmit telemetry station antennas
43 owned and operated by the City of Albany and other public agencies including
44 Federal, state, county and special district entities, for supervisory control and
45 data acquisition systems for such functions as water, flood alert, traffic control

1 devices and signals, storm water, and sanitary sewer, with heights not
2 exceeding sixty (60') feet.

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6 **D. Location by Zoning Districts.**
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8 1. No wireless communication facilities that both transmit and receive
9 electromagnetic signals shall be permitted in any residential zone, except for
10 those facilities designated in paragraph C. above to be exempt from City
11 review, unless substantial technical evidence acceptable to the Planning and
12 Zoning Commission is submitted showing a clear need for this facility ~~to close~~
13 ~~a significant gap in wireless coverage~~ and the infeasibility of locating it
14 elsewhere.
15

16 2. Wireless communication facilities may be located within the following
17 Districts, subject to approval of a use permit, with the findings required by
18 Subsection 20.20.090.F.5 of this Chapter. The following permitted Districts
19 are listed in a descending order of preference for the location of wireless
20 communication facilities, with the CMX District being the most preferred
21 location:
22

- 23 a. Commercial Mixed Use District (CMX).
- 24
- 25 b. Public Facilities District (PF), except on sites occupied by schools and
26 parks.
27

28 Exception: The City may authorize the location of a facility within
29 Albany Hill Park, due to the unique qualities of the location, size and
30 elevation of that park, provided that any such facility is situated with
31 the maximum achievable setback from any abutting residential district.
32 *[Exception recommended by P&Z on a 4-1 vote.]*
33

34 c. San Pablo Commercial District (SPC).
35

36 d. Solano Commercial District (SC).
37 *[P&Z vote: Four tiers of preference as shown: 1*
38 *Three tiers, with SPC and SC treated equally: 2*
39 *No tiers: 2]*
40

41 3. In all districts where wireless communication facilities are permitted, any such
42 facility shall be located on a site that provides for, in order of priority,
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- 44 a. the maximum achievable setback from any permitted child care facility or
45 school; and
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- 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 communications 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 communications 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 communications facilities:
- a. ~~Without exceeding a maximum of three (3) wireless communication facility providers per location,~~ New wireless communications 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 D. above.
 - c. Wireless communications 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 communications 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;

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- e. All wireless communications 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 communications 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 communications facilities shall be designed, located and operated to avoid 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 communications facility (building or ground mounted) shall not exceed ten feet (10') 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.

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- i. For properties developed under a Planned Unit Development procedure, the maximum height for a proposed wireless communications 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
 - l. 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.
 - ~~m. For the protection of emergency response personnel, at any wireless communication facility location where there is the possibility that RF radiation levels in excess of the FCC public exposure limit could be experienced by emergency response personnel working in close proximity to antennas/radio frequency emitting devices, said location shall have a single on-site emergency power shut off to de-energize all radio-frequency-related circuitry/componentry at all facilities at the site, or some other method acceptable to the Fire Chief for de-energizing the facility.~~
3. **Development Standards for Building and Roof-Mounted Antennas.** In addition to all other applicable development standards, wireless communications 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

1 d. Antennas mounted on such structures as utility poles, light standards or
2 flagpoles shall be placed on the structure in a way to reduce visibility, and
3 shall be painted to blend into the structure.
4

5 4. **Additional Development Standards for Monopoles.** In addition to all other
6 applicable development standards, monopoles shall comply with the
7 following:
8

9 a. The project sponsor shall demonstrate that the proposed facility cannot be
10 placed on an existing building or co-located on an existing monopole or
11 other tower. Where the Community Development Director finds that such
12 demonstration has not been made, the Community Development Director
13 may require an independent, third-party review, at the expense of the
14 project sponsor, to identify the obstacles to co-location or building
15 placement, to confirm the electromagnetic frequency needs of the project
16 sponsor, and to identify alternative solutions;
17

18 b. The maximum height of the proposed monopole or other tower shall be no
19 higher than ten (10') feet above the height limit for the main structure
20 allowed by the zoning district within which the facility is located, as
21 provided by Subsection 20.24.080.B, and shall be subject to applicable
22 daylight plane restrictions. ~~Where the General Plan or zoning district does~~
23 ~~not specify a height limit, the proposed monopole or other tower shall be a~~
24 ~~maximum height of fifty five (55') feet, or as approved by the Planning~~
25 ~~and Zoning Commission. [Deleted because all districts in which wireless~~
26 ~~facilities would be permitted have a stated height limit]~~
27

28 c. Guy wires or support structures shall not be allowed; monopoles shall be
29 self-supporting structures. Design and safety considerations are subject to
30 approval by the Community Development Director;
31

32 d. A monopole or other tower facility shall be designed to allow co-location
33 of additional antennas, if deemed desirable by the Planning and Zoning
34 Commission; and
35

36 e. Exterior lighting shall not be allowed on commercial wireless
37 communications facilities except for that required for use of authorized
38 persons on site during hours of darkness or where antenna structure owner
39 or registrant is required to light the antenna structure by the terms of the
40 FAA Antenna Structure Registration applicable to the facility.
41

42 **F. Permit Approval Process**

43

44 1. **Types of Permits.** Except as specifically exempted in Subsection
45 20.20.090.C. above, all wireless communications facilities, and facility
46 modifications that involve any change in the specifications or conditions stipulated

1 in the approved use permit, including but not limited to, changes in power input
2 or output, number of antennas, antenna type or model, number of channels per
3 antenna above the maximum specified in a use permit, repositioning of
4 antennas, increase in proposed dimensions of tower or support structure, or
5 any other facility upgrades, shall be subject to the following permit
6 requirements:

7
8 a. **Minor Use Permit.** Administrative Approval. At the discretion of the
9 Community Development Director, an application for a proposed wireless
10 communications facility may be considered administratively ~~without a~~
11 with a noticed public hearing where the proposed facility will be co-
12 located on an existing pole, monopole, or similar support structure other
13 than a building, that has been approved by the City as a wireless
14 communication site.

15
16 b. **Major Use Permit.** Commission Approval. All facilities not exempted
17 by Section 20.20.090.C. above, or which are not eligible for consideration
18 for a minor use permit, including all building-mounted facilities, shall be
19 considered by the Planning and Zoning Commission in a noticed public
20 hearing and may be approved subject to conditions deemed appropriate by
21 the Commission.

22
23 c. **Design Review.** All wireless communication facilities shall be subject to
24 design review and approval, according to procedures and standards stated
25 in Subsection 20.100.050. The reviewing body shall consider all
26 structures, materials, colors, and landscaping associated with any proposal
27 to establish a wireless communication facility. Review shall be the
28 responsibility of the Community Development Director in cases where
29 Minor Use Permits are required. The Planning and Zoning Commission
30 shall have responsibility in cases of Major Use Permits.

31
32 d. **Building Permit.** Unless otherwise specifically exempted by this Chapter,
33 a Building Permit shall be required for all wireless communication
34 facilities.

35
36 2. **Permit fees:** Fees for permits, including permits for all modifications, shall be
37 listed in the City’s Master Fee Schedule.

38
39 3. **Notice Requirements.** Public notice shall be provided for any public hearings
40 on applications or appeals, pursuant to procedures stated in Section
41 20.100.010.

42 *[Three Commissioners would support a change to 20.100.010 to expand the radius*
43 *for direct notification of public hearings to 500 feet; two Commissioners prefer the*
44 *existing 300-foot requirement. Any such change would require an amendment to the*
45 *Zoning Ordinance, which would be subject to public hearings by both the Planning*
46 *and Zoning Commission and the City Council.]*

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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 Section 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. and radio frequency exposure studies, title report, and security considerations. Any additional required study or report, performed by engineers or other parties, 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) Plans and elevations, drawn to scale, for façade- or roof-mounted antennas, including plans and elevations of the existing building. (See paragraph 3.e. below for specific requirements for new towers and modifications to towers.)
- 3) 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.
- 4) Description of proposed approach for screening all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials and colors.
- 5) Where applicable, a plan showing existing surrounding landscaping, proposed landscaping, a landscape protection plan for construction, and a maintenance plan including an irrigation plan.
[Staff suggests combining of 4) and 5), in the interest of streamlining the list of requirements.]

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- 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 communications 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:

[The following paragraphs a) through c) relate to the “preferential tiering” of zone districts described in Subsection D. If the City opts for no tiers, the following would be deleted. In the case of 3 tiers, reference to SC and SPC would be combined. In addition, staff recommends modifications to eliminate reference to “significant gap”]

- 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 necessary ~~to close a significant gap in wireless coverage~~ for the provision of wireless service that cannot be ~~closed~~ 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 must explain why that location within the SPC zone is necessary ~~to close a significant gap in wireless coverage~~ for the provision of wireless service that cannot be ~~closed~~ achieved by locating a facility in the CMX or PF zones.
- c) An applicant seeking to locate Wireless Communications Facilities in the Solano Commercial (SC) district must explain why that location within the SC zone is necessary ~~to close a significant gap in wireless coverage~~ for the provision of wireless service that cannot be ~~closed~~ achieved by locating a facility in the CMX, PF or SPC zones.

1 9) A visual analysis to assess the effects on views from public areas and
2 from private residences, and address cumulative impacts of the
3 proposed facility and other existing and foreseeable wireless
4 communications facilities. As required by the Community
5 Development Director, the analysis may utilize a photomontage, field
6 mock-up or other techniques. The analysis shall include feasible
7 mitigations for any effects identified.
8

9 10) If co-location is not proposed and sites available for co-location exist
10 ~~with fewer than three (3) wireless communication facility providers~~
11 ~~per location~~, the applicant shall provide information pertaining to the
12 feasibility of joint-use antenna facilities, and discuss the reasons why
13 such joint use is not a viable option or alternative to a new facility site.
14 Such information shall include:

15
16 a) Whether it is feasible to locate proposed sites where facilities
17 currently exist;

18
19 b) Information on the existing structure that is closest to the site of the
20 applicant's proposed facility relative to the existing structure's
21 structural capacity, radio frequency interface, or incompatibility of
22 different technologies, which would include mechanical or
23 electrical incompatibilities; and
24

25 c) Written notification of refusal of the existing structure owner to
26 lease space on the structure.
27

28 b. **Additional Submittal Requirements.** The Community Development
29 Director shall have the authority to require additional information,
30 including but not limited to the following:
31

32 1) A report by an approved radio frequency engineer or licensed electrical
33 engineer specializing in radio frequency radiation (RFR) studies
34 (hereinafter, "an approved engineer"), retained by the City, verifying
35 that the site is necessary for the purpose stated in the provider's
36 explanation of reasons for seeking the permit. If deemed necessary by
37 the engineer, such information shall include documentation of any
38 facility sites, in Albany and abutting jurisdictions, in which the
39 provider has a legal or equitable interest, whether by ownership,
40 leasehold or otherwise. For each such facility site identified by the
41 engineer, at the request of the engineer, the provider shall demonstrate
42 that these sites are not already providing, ~~or do not have the potential~~
43 ~~by adjusting the site, to close the significant gap in~~ wireless coverage
44 in the city of Albany identified by the applicant.
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- 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 significant gap(s) in wireless coverage intended to be eliminated by the proposed facility. If there are fewer than two 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 significant gap(s). Where appropriate the applicant must also shall be required to evaluate the potential use of one or more microcell sites (i.e., smaller facilities often mounted upon existing or replacement utility poles), and the use of repeaters, to eliminate or substantially reduce said significant gap(s) 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 a means to eliminate or substantially reduce the significant gap(s) in the applicant carrier’s network intended to be eliminated by 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.

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- 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.

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

- 3
- 4 1) Findings otherwise required for use permits by Section 20.100.030. ⁽¹⁾
- 5
- 6 2) The establishment or expansion of the facility demonstrates a
7 reasonable attempt to minimize stand-alone facilities, is designed to
8 protect the visual quality of the City, and will not have an undue
9 adverse impact on historic resources, scenic views, or other natural or
10 man-made resources.
- 11
- 12 3) All applicable Development Standards in Section 20.20.090.E. above
13 have been met;
14 or:
15 Finding for an exception to the Development Standards: Strict
16 compliance would not provide for adequate radio-frequency signal
17 reception and that no other alternative solutions which would meet the
18 Development Standards are feasible.
- 19

20 *[P&Z deferred the determination of the appropriate content of the findings*
21 *to the City Council, as the issue involves legal considerations. Staff and*
22 *the City Attorney believe that the findings statements 1 through 3 above*
23 *are adequate, and recommends that the following findings 4 through 6 be*
24 *deleted.]*

- 25
- 26 ~~4) The placement, construction, or modification of a wireless~~
27 ~~telecommunications facility in the proposed location is necessary for~~
28 ~~the provision of wireless communication services to Albany residents~~
29 ~~and businesses, or their owners, customers, guests, or invitees, or other~~
30 ~~persons traveling in or about the City, to the extent that without such~~
31 ~~antenna or facility, the operator will be unable to *close a significant~~
32 ~~gap in wireless coverage.~~
- 33
- 34 ~~5) The facility located on a site that provides for the maximum achievable~~
35 ~~setback from childcare facilities, schools and from any property line~~
36 ~~abutting a residential district.~~
- 37
- 38 ~~6) No alternative site in a preferred wireless zoning district or an~~
39 ~~environmentally superior site (i.e., a site having fewer visual, aesthetic~~
40 ~~or other environmental impacts) within the same zoning district could~~
41 ~~close a significant gap in wireless coverage.~~
- 42

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 (1) The key finding required by 20.100.030 for a use permit reads as follows:
45 “Necessity, Desirability, Compatibility. That the size, intensity and location of the
46 proposed use will provide a development that is necessary or desirable for, and
47 compatible with, the neighborhood or the community.”

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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 39 inches in diameter: A smaller or different antenna can not 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 finding required):
 - ~~a) There are no sites with fewer than three (3) wireless communication facility providers per location;~~
 - a) Co-location is not feasible;
 - b) Co-location would have more significant adverse effects on views or other environmental considerations;
 - 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
 - ~~f) Co-location would not allow the applicant to *close a significant gap in wireless coverage in city of Albany, either with or without the use of repeaters.~~

6. Standard Agreement.

- a. Except for exempt facilities defined in Section 20.20.090.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 or combination of the following elements:
 - 1) A free-standing tower in excess of ten (10) feet in height,
 - 2) One or more buildings or enclosures larger in the aggregate than three hundred (300) square feet;

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- 3) More than three (3) antennas or satellite dishes of any size; or
- 4) Any satellite dish larger than twenty-four inches (24”) 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.

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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.

- 1 b. All structures shall meet wind load standards as specified by the
2 Uniform Building Code.
3
4 c. Openings in all aboveground equipment shelters and cabinets shall be
5 protected against penetration by fire and windblown embers to the
6 extent feasible.
7
8 d. Material used as supports for antennas shall be fire resistant, termite
9 proof, and subject to all applicable requirements of the Uniform
10 Building Code.
11
12 e. Wireless communication antenna towers shall be designed to
13 withstand forces expected during earthquakes to the extent feasible
14 building-mounted facilities shall be anchored so that a quake does
15 not dislodge them or tip them over. All equipment mounting racks
16 and attached equipment shall be anchored so that a quake would not
17 tip them over, throw equipment off its shelves, or otherwise damage
18 equipment.
19
20 f. All connections between various components of the wireless
21 communications facility and necessary power and telephone lines
22 shall, to the extent feasible, be protected against damage by fire,
23 flooding, and earthquake. Reasonable measures shall be taken to
24 keep wireless communication facilities in operation in the event of a
25 natural disaster.
26
27 8. Vehicle and personnel access to sites for maintenance and repairs shall
28 not be from residential streets or adjacent residential properties to the
29 maximum extent possible.
30

31 **H. Certification of Facilities.**
32

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

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- 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 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 ~~every 10 years, and~~ following significant storms and seismic events, within thirty 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 within 90 days of any change in 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 50% 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

1 requirements. A report of these calculations, required measurements, if
2 any, and the engineer's findings with respect to compliance with the
3 current FCC limits shall be submitted to the Community Development
4 Director.

5
6 e. If the Community Development Director at any time finds that there
7 is good cause to believe that a wireless communication antenna is
8 not in compliance with applicable FCC radio-frequency standards,
9 he/she may require the operator to submit written certification that
10 the facility is in compliance with such FCC standards.

11
12 2. The owner or operator of any wireless communication facility that was
13 approved by the City before the effective date of this chapter, shall submit
14 within six (6) months from the date of notification, to the Community
15 Development Director, written certification by an approved engineer that the
16 facility's radio-frequency emissions are in compliance with the approved
17 application and any required conditions. The engineer shall measure the radio-
18 frequency radiation of the approved facility and determine if it meets the FCC
19 requirements. If the report shows that the facility does not comply with
20 applicable FCC requirements, the owner or operator shall cease operation of
21 the facility until the facility is brought into compliance. In order to assure the
22 objectivity of the analysis, the City may require, at the applicant's expense,
23 independent verification of the results of the analysis.

24
25 3. Any facility that was approved by the City prior to the effective date of this
26 chapter and which does not comply with this chapter on the date of its adoption
27 shall be considered a lawful non-conforming use provided that the owner or
28 operator submits the information required in subsection 2 of this section. A
29 lawful non-conforming wireless communication service facility shall be
30 subject to the requirements of Section 20.44 except to the extent that they are
31 modified herein.

32
33 4. Failure to submit the information required in this section will be considered a
34 violation of the Zoning Ordinance. Any facility found in violation may be
35 ordered to terminate operations by the Planning Commission following a duly
36 noticed public hearing.

37
38 **I. Duration, Revocation and Discontinuance.**

39
40 **1. Duration of Permits and Approvals.**

41
42 a. An approved use permit for a wireless communication facility must be
43 activated within one (1) year from the date of final approval. If not
44 activated within one (1) year from the date of final approval, the permit
45 shall be deemed expired, as provided in Subsection 20.100.010.K.1.
46

- 1 b. Once activated, all permit approvals for wireless communication facilities
2 shall be valid for an initial maximum period of up to ten (10) years, or as
3 specified by the approving body.
4
- 5 c. Permit approvals may be administratively extended without a public
6 hearing for subsequent five (5) -year term(s) by the Community
7 Development Director upon verification of continued compliance with the
8 findings and conditions of approval under which the application was
9 originally approved, as well as any other provisions provided for in the
10 Municipal Code, and Federal and State regulations which are in effect at
11 the time of permit renewal.
12

13 *[P&Z vote on paragraphs b. and c.: 4-1]*
14

- 15 d. In the event that the Community Development Director finds that the
16 applicant has not maintained the facility in compliance with all applicable
17 code requirements, conditions of approval and provisions of the
18 maintenance agreement, the Director may initiate a revocation procedure
19 as provided by Subsection 20.100.010.M.
20
- 21 e. Costs associated with the process of verification of compliance and
22 extension or revocation of approval shall be borne by the permit holder.
23

24 2. **Discontinuance of Use.** All equipment and improvements associated with a
25 wireless communication facility shall be removed within thirty (30) days of
26 the discontinuation of the use and the site shall be restored to its original, pre-
27 construction condition, or as approved by the Community Development
28 Director. For facilities located on City property, this removal requirement
29 shall be included within the terms of the lease. For facilities located on private
30 sites, the terms of private leases shall also require equipment removal as a
31 provision of the lease. Written verification of the removal of wireless
32 communications facilities on private property shall be provided to the
33 Community Development Director within thirty (30) days of the
34 discontinuation of the use.
35

36 a. If the operator fails to remove the wireless communication facilities from
37 the site, the property owner shall be responsible for removal, and may use
38 any bond or other assurances provided by the operator pursuant to the
39 requirements of this Chapter to do so. If such facilities are not removed,
40 the site shall be deemed to be a nuisance and the City may call the bond
41 for removal or take such other action as is it deems appropriate.
42

43 b. Failure to inform the Community Development Director of cessation of
44 operations of any existing facility shall constitute a violation of the Zoning
45 Ordinance and be grounds for:
46 1) Prosecution;
47 2) Revocation or modification of the permit;

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- 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 20.20.090.G.2 above.

1 *Attachment "A" to Wireless Communications Facilities ordinance, as recommended*
2 *by Planning and Zoning commission, 1-25-05*

3
4 **Definitions.**

5
6 **Wireless Communications Facility.** Any device or system for the transmitting
7 and/or receiving of electromagnetic signals, including but not limited to radio waves
8 and microwaves, for cellular technology, personal communications services, mobile
9 services, paging systems and related technologies. Facilities include antennas,
10 microwave dishes, parabolic antennas and all other types of equipment used in the
11 transmission and reception of such signals; structures for the support of such
12 facilities, associated buildings or cabinets to house support equipment, and other
13 accessory development.

14
15 The following terms related to Wireless Communications Facilities shall have the
16 following meanings:

17
18 **a. Antenna.** Any system of poles, panels, rods, reflecting disks, wire or similar
19 devices used for the transmission or reception of electromagnetic signals. Does
20 not include any support structure upon which an antenna is mounted.

21
22 **b. Antenna Structure.** Any structure, including a pole, mast, or tower, whether free-
23 standing or mounted on another building or structure, that supports an antenna or
24 an array of antennas. The height of an antenna structure is measured to the highest
25 point of any antenna mounted thereon.

26
27 **c. Base Station:** The primary sending and receiving site in a wireless
28 telecommunications network, including all radio-frequency generating equipment
29 connected to antennas. More than one base station and/or more than one variety of
30 telecommunications providers can be located on a single tower or structure.

31
32 **d. Co-Location.** A situation in which a single support structure supports one (1) or
33 more antennas owned or used by more than one (1) public or private entity.

34
35 **e. Microcell site:** A small radio transceiver facility comprised of an unmanned
36 equipment cabinet with a total volume of one hundred (100) cubic feet or less that
37 is either under or aboveground, and one omni-directional whip antenna with a
38 maximum length of five feet, or up to three small (approximately 1'x 2' or 1'x 4')
39 directional panel antennas, mounted on a single pole, an existing conventional
40 utility pole, or some other similar support structure.

41
42 **f. Monitoring Protocol:** An industry accepted radio-frequency (RF) radiation
43 measurement protocol used to determine compliance with FCC RF radiation
44 exposure standards, in accordance with the National Council on Radiation
45 Protection and Measurements Reports 86 and 119 and consistent with the RF
46 radiation modeling specifications of OET Bulletin 65 (or any superceding

- 1 reports/standards), which is to be used to measure the emissions and determine
2 radio-frequency radiation exposure levels from existing and new
3 telecommunications facilities. RF radiation exposure measurements are to be
4 taken at various locations, including those from which public RF exposure levels
5 are expected to be the highest.
6
- 7 **g. Monopole.** A type of free-standing antenna structure that is seventeen (17') feet or
8 more in height and is designed to be self-supporting without the use of guy wires.
9
- 10 **h. Preferred wireless zoning district:** A zone where the City has determined that the
11 location of a Wireless Communications Facility would reduce the noise, aesthetic
12 and visual impact of that facility relative to its placement in another zone. The
13 City has determined that Wireless Communication Facilities may be located in the
14 following order of preference: CMX, PF, SPC and SC.
15 *[Order of preference may be adjusted, depending on City's final choice.]*
16
- 17 **i Radio-Frequency (RF) Radiation.** Radiation from the portion of the
18 electromagnetic spectrum with frequencies below the infrared range
19 (approximately 100 GHz and below), including microwaves, television VHF and
20 UHF signals, radio signals, and low to ultra low frequencies.
21
- 22 **j. Receive-Only Antenna.** Antenna for the reception of radio and television signals,
23 without transmitting capabilities; may include pole or dish types of antennas.
24
- 25 **k. Repeater:** A small receiver/relay transmitter of not more than 20 watts output
26 designed to provide service to areas which are not able to receive Adequate
27 Coverage directly from a Base Station.
28
- 29 **l. Satellite Dish.** A bowl-shaped antenna used to receive and/or transmit
30 electromagnetic signals to and from an orbiting satellite.
31
- 32 **m. Significant gap in wireless coverage:** Sufficiently poor wireless service such that
33 significant numbers of remote users of those services are unable connect with the
34 land-based national telephone network, or to maintain a reasonably uninterrupted
35 communication within City limits. Individual dead spots within a greater service
36 area do not constitute a significant gap in coverage.
37 *[This definition should be deleted if the term is not used in the ordinance.]*
38
- 39 **n. Stealth Facility.** A wireless communications facility located so as to be of
40 minimal visibility, such as being incorporated within an architectural feature such
41 as a steeple or parapet, or in the open but disguised as a tree or other natural
42 feature.
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