



1 **WHEREAS**, the Albany City Council, on February 22, 2005, after due public notice,  
2 held a public hearing on the proposed Subsection 20.20.090 to regulate wireless  
3 communication facilities, and introduced this Ordinance for a First Reading; and  
4

5 **WHEREAS**, on March 7, 2005 the Albany City Council adopted Resolution 05-3  
6 adopting a Negative Declaration in compliance with the California Environmental  
7 Quality Act (CEQA) regarding potential environmental effects of the proposed  
8 regulations.  
9

10 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS**

11  
12 SECTION 1: THAT CHAPTER XX OF THE ALBANY MUNICIPAL CODE IS  
13 HEREBY AMENDED TO INCLUDE A NEW SUBSECTION  
14 20.20.090 TITLED WIRELESS COMMUNICATION  
15 FACILITIES, WHICH SHALL CONSIST OF THE  
16 FOLLOWING TEXT:  
17

18 **20.20.090**      **Wireless Communication Facilities.**  
19

20 **A. Purpose and Intent.** The purpose and intent of this section are to:  
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- 22 1. Enact appropriate regulations, in accordance with the Telecommunications  
23 Act, for the provision of personal wireless service facilities for the benefit of  
24 the Albany community.  
25
- 26 2. Establish standards to regulate the placement and design of antennas and  
27 wireless communication facilities so as to preserve the visual and other  
28 characteristics of the City; to assure compatibility with properties adjacent to  
29 such facilities; to minimize negative impacts; and to protect the general safety,  
30 welfare, and quality of life of the community.  
31
- 32 3. Establish development standards that are consistent with federal law related to  
33 the development of wireless communication facilities.  
34
- 35 4. Pursue additional benefit to the public by encouraging the leasing of  
36 municipally-owned properties where feasible or desirable, for the  
37 development of wireless communications facilities;  
38
- 39 5. Allow antennas to be located according to demonstrated need; encourage the  
40 use of existing facilities, including co-location by multiple companies;  
41 encourage the placement of antennas on existing structures and encourage the  
42 use of smaller, less-obtrusive facilities such as repeaters and microcell  
43 facilities where they are feasible alternatives to base station facilities.  
44
- 45 6. Locate wireless communications facilities within non-residential zoning  
46 districts, according to a preferential ordering of zoning districts with an

1 objective of minimizing the impacts of such facilities upon neighboring land  
2 uses, except as otherwise provided in this Chapter.  
3

- 4 7. Require all wireless communication facilities to be consistent with all other  
5 applicable City of Albany plans and municipal code provisions, and  
6 applicable regulations and standards of other governmental agencies, and any  
7 applicable discretionary permits affecting the subject property except to the  
8 extent the Planning and Zoning Commission or City Council shall modify  
9 such requirements.  
10

11 **B. Definitions.** Unless otherwise specifically provided, the terms used in this  
12 section shall have the meanings stated in the Definitions section of this Chapter,  
13 under the general heading of “Wireless Communications Facility”.  
14

15 **C. Exempt Facilities.** Except as specifically noted, the following types of facilities  
16 shall be exempt from the permit requirements of this section.  
17

- 18 1. **Exempted by State and/or Federal Regulations.** An antenna or wireless  
19 communications facility shall be exempt from the provisions of this section if  
20 and to the extent that a permit issued by the California Public Utilities  
21 Commission (CPUC) or the rules and regulations of the Federal  
22 Communications Commission (FCC) specifically provides that the antenna  
23 and/or wireless communications facility is exempt from local regulation.  
24

- 25 2. **Exempted Subject to Locational Requirements.** The following types of  
26 antennas are exempted provided that installations are entirely on-site and are  
27 not located within required front yard or side yard setback areas. Installations  
28 may be located in that portion of a rear yard where accessory buildings are  
29 permitted to be located. Such locational requirements are necessary to ensure  
30 that such antenna installations do not become public or private nuisances  
31 adversely impacting adjacent properties, and/or result in hazards if located  
32 adjacent to a street or other public right of way.  
33

34 a. **Radio or Television Antenna.** A single ground-mounted or building-  
35 mounted receive-only radio or television antenna for the sole use of  
36 residential occupants of the parcel on which such antenna is located, with  
37 a height including any mast not exceeding ten feet (10’) over the basic  
38 maximum building height prescribed by the regulations for the district in  
39 which the site is located.  
40

41 b. **Satellite Dish Antenna.** A ground-mounted or building-mounted receive-  
42 only radio or television satellite dish antenna not exceeding twenty-four  
43 inches (24”) in diameter for the sole use of residential occupants of the  
44 parcel on which such antenna is located, provided that the highest point of  
45 such dish does not exceed the height of the highest roof ridge or parapet  
46 line of the primary structure on said parcel.  
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- c. **Citizens Band Antenna.** A ground-mounted or building-mounted citizens band radio antenna not exceeding thirty-five feet (35') 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 feet (35') 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 20.20.090.F.5 of this Chapter. The following permitted Districts

1 are listed in a descending order of preference for the location of wireless  
2 communication facilities, with the CMX District being the most preferred  
3 location:

- 4
- 5 a. Commercial Mixed Use District (CMX).
- 6
- 7 b. Public Facilities District (PF), except on sites occupied by schools and  
8 parks.
- 9
- 10 c. San Pablo Commercial District (SPC) or Solano Commercial District (SC).
- 11
- 12 3. In all districts where wireless communication facilities are permitted, any such  
13 facility shall be located on a site that provides for, in order of priority,  
14
- 15 a. the maximum achievable setback from any permitted child care facility or  
16 school; and
- 17
- 18 b. the maximum achievable setback from any property line abutting a  
19 residential district.
- 20
- 21 4. In the San Pablo Commercial District and the Solano Commercial District any  
22 wireless communication facility that abuts a residential district shall be set  
23 back from a property line that is contiguous to the residential district a  
24 minimum distance of fifty (50') feet, provided that such distance may be  
25 reduced by the Planning and Zoning Commission based on a determination  
26 that the lesser distance will not have perceptibly greater noise impact or  
27 greater visual impact with respect to properties in the abutting residential  
28 district, and further provided that there be no less than ten (10') feet of  
29 separation between a property line that is contiguous to the residential district  
30 and the subject wireless communication facility (with the exception of such  
31 elements as transmission cables and meter boxes.)

32

33 **E. Development Requirements and Standards.**

34

- 35 1. **Basic Development Requirements.** The following basic development  
36 requirements shall be met by all new or modified wireless communications  
37 facilities.
- 38
- 39 a. Applicable Goals, Objectives, and Policies of the Albany General Plan
- 40
- 41 b. Permit requirements of any agencies having jurisdiction over the project;
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- 43 c. Requirements established by the Albany Municipal Code;
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- 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 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. 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

1 interference with views from neighboring properties, and where their  
2 visual impact is least detrimental to scenic vistas.

3  
4 d. Wireless communications facilities placed on vacant sites shall be  
5 considered temporary and the Planning and Zoning Commission may  
6 impose a condition that when the site is developed, these facilities shall be  
7 removed, and if appropriate, replaced with building-mounted antennas;

8  
9 e. All wireless communications facilities shall be screened in one of the  
10 following ways:

11  
12 1) Substantially screened from the view of surrounding properties and the  
13 public view or co-located with existing facilities or structures so as not  
14 to create substantial visual, noise, or thermal impacts;

15  
16 2) Sited within areas with substantial screening by existing vegetation;

17  
18 3) Designed to appear as natural features found in the immediate area,  
19 such as trees or rocks, so as to be unnoticeable (stealth facilities); or

20  
21 4) Screened with additional trees and other native or adapted vegetation  
22 which shall be planted and maintained around the facility, in the  
23 vicinity of the project site, and along access roads in appropriate  
24 situations, where such vegetation is deemed necessary to screen the  
25 facilities. Such landscaping, including irrigation, shall be installed and  
26 maintained by the project sponsor, as long as the permit is in effect or  
27 to the extent permitted by law.

28  
29 f. Where the Community Development Director finds that proposed wireless  
30 communications facilities have the potential to create a significant impact  
31 to the surrounding area or neighborhood, the Community Development  
32 Director may require an independent, third-party review, at the expense of  
33 the project sponsor, to identify potential impacts on the surrounding area,  
34 to confirm the radio frequency needs of the project sponsor and to identify  
35 potential alternative solutions;

36  
37 g. All wireless communications facilities shall be designed, located and  
38 operated to avoid interference with the quiet enjoyment of abutting  
39 residential properties, and at a minimum shall be shall be subject to the  
40 City-adopted noise standards contained in Section 8-1 of the Albany  
41 Municipal Code. Where the Community Development Director finds that  
42 noise associated with such facilities may have a detrimental effect at a  
43 location off the site, the Director may require an independent acoustic  
44 analysis, at the expense of the project sponsor, to identify appropriate  
45 mitigation measures. Failure to institute any such required measures, or  
46 any violation of noise standards, may be cause for the Community



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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.
- 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.

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:  
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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.  
23

24 c. Guy wires or support structures shall not be allowed; monopoles shall be  
25 self-supporting structures. Design and safety considerations are subject to  
26 approval by the Community Development Director;  
27

28 d. A monopole or other tower facility shall be designed to allow co-location  
29 of additional antennas, if deemed desirable by the Planning and Zoning  
30 Commission; and  
31

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

## 38 **F. Permit Approval Process**

39  
40 1. **Types of Permits.** Except as specifically exempted in Subsection  
41 20.20.090.C. above, all wireless communications facilities, and facility  
42 modifications that involve any change in the specifications or conditions stipulated  
43 in the approved use permit, including but not limited to, changes in power input  
44 or output, number of antennas, antenna type or model, number of channels per  
45 antenna above the maximum specified in a use permit, repositioning of  
46 antennas, increase in proposed dimensions of tower or support structure, or

1 any other facility upgrades, shall be subject to the following permit  
2 requirements:

3  
4 a. **Minor Use Permit.** Administrative Approval. At the discretion of the  
5 Community Development Director, an application for a proposed wireless  
6 communications facility may be considered administratively with a  
7 noticed public hearing where the proposed facility will be co-located on an  
8 existing pole, monopole, or similar support structure other than a building,  
9 that has been approved by the City as a wireless communication site.

10  
11 b. **Major Use Permit.** Commission Approval. All facilities not exempted  
12 by Section 20.20.090.C. above, or which are not eligible for consideration  
13 for a minor use permit, including all building-mounted facilities, shall be  
14 considered by the Planning and Zoning Commission in a noticed public  
15 hearing and may be approved subject to conditions deemed appropriate by  
16 the Commission.

17  
18 c. **Design Review.** All wireless communication facilities shall be subject to  
19 design review and approval, according to procedures and standards stated  
20 in Subsection 20.100.050. The reviewing body shall consider all  
21 structures, materials, colors, and landscaping associated with any proposal  
22 to establish a wireless communication facility. Review shall be the  
23 responsibility of the Community Development Director in cases where  
24 Minor Use Permits are required. The Planning and Zoning Commission  
25 shall have responsibility in cases of Major Use Permits.

26  
27 d. **Building Permit.** Unless otherwise specifically exempted by this Chapter,  
28 a Building Permit shall be required for all wireless communication  
29 facilities.  
30

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

33  
34 3. **Notice Requirements.** Public notice shall be provided for any public hearings  
35 on applications or appeals, pursuant to procedures stated in Section  
36 20.100.010.  
37

38 4. **Application Submittal.**

39  
40 a. **General Submittal Requirements.** Applications for minor or major use  
41 permits and design review of wireless communication facilities shall  
42 submitted and processed in accordance with the Common Procedures  
43 stated in Section 20.100.010. The applicant shall provide project  
44 information and plans as required by forms and checklists established by  
45 the Community Development Director. The Community Development  
46 Director may establish and maintain a list of additional information that  
47 must accompany each application for a wireless communications facility.

1 Said information may include but need not be limited to the additional  
2 submittal requirements listed in paragraph b. below. Any required study or  
3 report, performed at the request of the City or by engineers or experts  
4 retained by the City, shall be at the expense of the applicant.  
5

6 All applications for approval of wireless communication facilities shall  
7 include, at a minimum, the items listed below:  
8

- 9 1) Identification of the proposed operator of the facility, if a different  
10 entity from the applicant, and the identification of and contact  
11 information for the person to whom communications from the City  
12 should be delivered.  
13
- 14 2) Site plan for the location of the facility, drawn to scale, showing all  
15 existing and proposed features, in compliance with the checklist  
16 submittal requirements as established by the Community Development  
17 Director.  
18
- 19 3) Plans and elevations, drawn to scale, for façade- or roof-  
20 mounted antennas, including plans and elevations of the existing  
21 building. (See paragraph 3.e. below for specific requirements  
22 for new towers and modifications to towers.)  
23
- 24 4) Floor Plans, elevations and cross sections of any proposed  
25 communications equipment shelter or other appurtenant structure at a  
26 scale of no smaller than 1/4" = 1' (1:48) with representation of all  
27 exterior materials.  
28
- 29 5) Description of proposed approach for screening all facilities  
30 from public view including plans for installation and  
31 maintenance of landscaping, sample exterior materials and  
32 colors. Where applicable, a plan showing existing surrounding  
33 landscaping, proposed landscaping, a landscape protection plan  
34 for construction, and a maintenance plan including an irrigation  
35 plan.  
36
- 37 6) Description of the number, manufacturer, model number and type,  
38 catalog number, power output, frequency range, and dimensions of  
39 antennas, equipment cabinets, and related wireless communications  
40 facilities proposed to be installed.  
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- 42 7) A narrative description and map showing the coverage area of the  
43 provider's existing facilities and the proposed coverage area of the  
44 specific site that is the subject of the application.  
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- 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 antenna 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

1 c) Written notification of refusal of the existing structure owner to  
2 lease space on the structure.  
3

4 b. **Additional Submittal Requirements.** The Community Development  
5 Director shall have the authority to require additional information,  
6 including but not limited to the following:  
7

8 1) A report by an approved radio frequency engineer or licensed electrical  
9 engineer specializing in radio frequency radiation (RFR) studies  
10 (hereinafter, "an approved engineer"), retained by the City, verifying  
11 that the site is necessary for the purpose stated in the provider's  
12 explanation of reasons for seeking the permit. If deemed necessary by  
13 the engineer, such information shall include documentation of any  
14 facility sites, in Albany and abutting jurisdictions, in which the  
15 provider has a legal or equitable interest, whether by ownership,  
16 leasehold or otherwise. For each such facility site identified by the  
17 engineer, at the request of the engineer, the provider shall demonstrate  
18 that these sites are not already providing wireless coverage in the city  
19 of Albany.  
20

21 2) An Alternatives Analysis, either submitted by the applicant and subject  
22 to independent engineering review by the City, or obtained by the City  
23 from its retained engineer, which shall at a minimum:  
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25 a) Identify and indicate on a map, at a minimum, two (2) viable  
26 technically feasible, and potentially environmentally equivalent or  
27 superior alternative locations outside the prohibited and restricted  
28 areas which could eliminate or substantially reduce the need to  
29 locate in a restricted area. If there are fewer than two such  
30 alternative locations, the applicant must provide evidence  
31 establishing that fact. The map shall also identify all locations  
32 where an unimpaired signal can be received to eliminate or  
33 substantially reduce the need for such a location. Where  
34 appropriate the applicant shall be required to evaluate the potential  
35 use of one or more microcell sites (i.e., smaller facilities often  
36 mounted upon existing or replacement utility poles), and the use of  
37 repeaters in lieu of the proposed facility. Radial plots of all  
38 repeaters or other alternative facilities considered for use in  
39 conjunction with these facility sites shall be provided as part of the  
40 alternatives analysis. For each alternative location so identified,  
41 the applicant shall describe the type of facility and design measures  
42 that could be used at that location so as to minimize negative  
43 impacts (e.g., the use of stealth camouflaging techniques).  
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45 b) Evaluate the potential for co-location with existing wireless  
46 communication facilities as an alternative to the proposed facility.

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- 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.

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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 Section 20.100.030. <sup>(1)</sup>
- 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 Section 20.20.090.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.

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<sup>(1)</sup> The key finding required by 20.100.030 for a use permit reads as follows:  
“**Necessity, Desirability, Compatibility.** That the size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and 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) 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

**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;
  - 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:

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- 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.

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- 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.

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- 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 born 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

1 measure the radio-frequency radiation of the approved facility and  
2 determine if it meets the FCC requirements. A report of these  
3 measurements and the engineer's findings with respect to  
4 compliance with the FCC's radio-frequency limits shall be  
5 submitted to the Community Development Director. If the report  
6 shows that the facility does not comply with applicable FCC  
7 requirements, the owner or operator shall cease operation of the  
8 facility until the facility complies with, or has been modified to  
9 comply with, this standard. Proof of compliance shall be a  
10 certification provided by the engineer who prepared the original  
11 report. In order to assure the objectivity of the analysis, the City  
12 may require, at the applicant's expense, independent verification  
13 of the results of the analysis.

- 14
- 15 b. Once every two years, the City shall retain, at the operator's  
16 expense, an approved engineer to conduct an unannounced spot  
17 check of the facility's compliance with applicable FCC radio-  
18 frequency standards, utilizing the Monitoring Protocol (See  
19 definition, Section 20.08). This monitoring shall measure levels of  
20 radio-frequency radiation from the facility site's primary antennas  
21 as well as from repeaters, if any.
- 22
- 23 c. The City shall require inspection of tower and antenna structural  
24 integrity by a structural engineer following significant storms and  
25 seismic events, within thirty days of such events, at applicant's cost.
- 26
- 27 d. In the event of a change in the FCC's limits for radio-frequency strength  
28 and power density for transmitters, the operator of each wireless  
29 communications facility shall be required to submit to the Community  
30 Development Director written certification by an approved engineer of  
31 compliance with applicable FCC radio-frequency standards within 90  
32 days of any change in applicable FCC radio-frequency standards or of  
33 any modification of the facility requiring a new submission to the FCC  
34 to determine compliance with emission standards. If calculated levels  
35 exceed 50% of the FCC's limits, the operator of the facility shall hire an  
36 approved engineer to measure the actual exposure levels. If calculated or  
37 measured levels are not in compliance with the FCC's limit, the operator  
38 shall cease operation of the facility until the facility is brought into  
39 compliance with the FCC's standards and all other applicable  
40 requirements. A report of these calculations, required measurements, if  
41 any, and the engineer's findings with respect to compliance with the  
42 current FCC limits shall be submitted to the Community Development  
43 Director.
- 44
- 45 e. If the Community Development Director at any time finds that there  
46 is good cause to believe that a wireless communication antenna is  
47 not in compliance with applicable FCC radio-frequency standards,

1 he/she may require the operator to submit written certification that  
2 the facility is in compliance with such FCC standards.  
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- 4
- 5 2. The owner or operator of any wireless communication facility that was  
6 approved by the City before the effective date of this chapter, shall submit  
7 within six (6) months from the date of notification, to the Community  
8 Development Director, written certification by an approved engineer that the  
9 facility's radio-frequency emissions are in compliance with the approved  
10 application and any required conditions. The engineer shall measure the radio-  
11 frequency radiation of the approved facility and determine if it meets the FCC  
12 requirements. If the report shows that the facility does not comply with  
13 applicable FCC requirements, the owner or operator shall cease operation of  
14 the facility until the facility is brought into compliance. In order to assure the  
15 objectivity of the analysis, the City may require, at the applicant's expense,  
16 independent verification of the results of the analysis.
- 17
- 18 3. Any facility that was approved by the City prior to the effective date of this  
19 chapter and which does not comply with this chapter on the date of its adoption  
20 shall be considered a lawful non-conforming use provided that the owner or  
21 operator submits the information required in subsection 2 of this section. A  
22 lawful non-conforming wireless communication service facility shall be  
23 subject to the requirements of Section 20.44 except to the extent that they are  
24 modified herein.
- 25
- 26 4. Failure to submit the information required in this section will be considered a  
27 violation of the Zoning Ordinance. Any facility found in violation may be  
28 ordered to terminate operations by the Planning Commission following a duly  
29 noticed public hearing.

30 **I. Duration, Revocation and Discontinuance.**

31

32 **1. Duration of Permits and Approvals.**

- 33
- 34 a. An approved use permit for a wireless communication facility must be  
35 activated within one (1) year from the date of final approval. If not  
36 activated within one (1) year from the date of final approval, the permit  
37 shall be deemed expired, as provided in Subsection 20.100.010.K.1.  
38
- 39 b. Once activated, all permit approvals for wireless communication facilities  
40 shall be valid for an initial maximum period of up to ten (10) years, or as  
41 specified by the approving body.  
42
- 43 c. Permit approvals may be administratively extended without a public  
44 hearing for subsequent five (5) -year term(s) by the Community  
45 Development Director upon verification of continued compliance with the  
46 findings and conditions of approval under which the application was

1 originally approved, as well as any other provisions provided for in the  
2 Municipal Code, and Federal and State regulations which are in effect at  
3 the time of permit renewal.  
4

5 d. In the event that the Community Development Director finds that the  
6 applicant has not maintained the facility in compliance with all applicable  
7 code requirements, conditions of approval and provisions of the  
8 maintenance agreement, the Director may initiate a revocation procedure  
9 as provided by Subsection 20.100.010.M.  
10

11 e. Costs associated with the process of verification of compliance and  
12 extension or revocation of approval shall be borne by the permit holder.  
13

14 2. **Discontinuance of Use.** All equipment and improvements associated with a  
15 wireless communication facility shall be removed within thirty (30) days of  
16 the discontinuation of the use and the site shall be restored to its original, pre-  
17 construction condition, or as approved by the Community Development  
18 Director. For facilities located on City property, this removal requirement  
19 shall be included within the terms of the lease. For facilities located on private  
20 sites, the terms of private leases shall also require equipment removal as a  
21 provision of the lease. Written verification of the removal of wireless  
22 communications facilities on private property shall be provided to the  
23 Community Development Director within thirty (30) days of the  
24 discontinuation of the use.  
25

26 a. If the operator fails to remove the wireless communication facilities from  
27 the site, the property owner shall be responsible for removal, and may use  
28 any bond or other assurances provided by the operator pursuant to the  
29 requirements of this Chapter to do so. If such facilities are not removed,  
30 the site shall be deemed to be a nuisance and the City may call the bond  
31 for removal or take such other action as is it deems appropriate.  
32

33 b. Failure to inform the Community Development Director of cessation of  
34 operations of any existing facility shall constitute a violation of the Zoning  
35 Ordinance and be grounds for:  
36 1) Prosecution;  
37 2) Revocation or modification of the permit;  
38 3) Calling of any bond or other assurance secured by the operator  
39 pursuant to the requirements of this Chapter; and/or  
40 4) Removal of the facilities.  
41

42 3. **Existing Uses.** All equipment and improvements associated with a wireless  
43 communications facility permitted as of the date of passage of this Chapter  
44 shall be allowed to continue as they presently exist, but will be considered  
45 legal nonconforming uses insofar as they do not comply with standards stated  
46 in this Subsection. Routine maintenance shall be permitted on existing,



1 operational equipment and facilities. However, new construction, other than  
2 routine maintenance on existing towers, antennas, buildings, or other facilities  
3 shall comply with the requirements of this Chapter. In the event of the  
4 abandonment of the use of any equipment or facility for a continuous period  
5 of one hundred eighty (180) days, the provisions of Subsection 20.44.040,  
6 Abandonment of Nonconforming Use, shall apply, the associated permits and  
7 approvals shall expire, and the site shall thereafter be maintained in  
8 conformity with the regulations for the district in which the site is located. The  
9 Community Development Director may require removal of such disused  
10 equipment or facilities, as provided in Subsection 20.20.090.G.2 above.

11  
12 SECTION 2: THAT CHAPTER XX OF THE ALBANY MUNICIPAL CODE,  
13 SUBSECTION 20.08 TITLED “DEFINITIONS”, IS HEREBY  
14 AMENDED TO INCLUDE THE FOLLOWING TEXT:  
15

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

24  
25 The following terms related to Wireless Communications Facilities shall have the  
26 following meanings:  
27

- 28 *a. Antenna.* Any system of poles, panels, rods, reflecting disks, wire or similar  
29 devices used for the transmission or reception of electromagnetic signals. Does  
30 not include any support structure upon which an antenna is mounted.  
31
- 32 *b. Antenna Structure.* Any structure, including a pole, mast, or tower, whether free-  
33 standing or mounted on another building or structure, that supports an antenna or  
34 an array of antennas. The height of an antenna structure is measured to the highest  
35 point of any antenna mounted thereon.  
36
- 37 *c. Base Station:* The primary sending and receiving site in a wireless  
38 telecommunications network, including all radio-frequency generating equipment  
39 connected to antennas. More than one base station and/or more than one variety of  
40 telecommunications providers can be located on a single tower or structure.  
41
- 42 *d. Co-Location.* A situation in which a single support structure supports one (1) or  
43 more antennas owned or used by more than one (1) public or private entity.  
44
- 45 *e. Microcell site:* A small radio transceiver facility comprised of an unmanned  
46 equipment cabinet with a total volume of one hundred (100) cubic feet or less that

- 1 is either under or aboveground, and one omni-directional whip antenna with a  
2 maximum length of five feet, or up to three small (approximately 1'x 2' or 1'x 4')  
3 directional panel antennas, mounted on a single pole, an existing conventional  
4 utility pole, or some other similar support structure.  
5
- 6 **f. *Monitoring Protocol:*** An industry accepted radio-frequency (RF) radiation  
7 measurement protocol used to determine compliance with FCC RF radiation  
8 exposure standards, in accordance with the National Council on Radiation  
9 Protection and Measurements Reports 86 and 119 and consistent with the RF  
10 radiation modeling specifications of OET Bulletin 65 (or any superceding  
11 reports/standards), which is to be used to measure the emissions and determine  
12 radio-frequency radiation exposure levels from existing and new  
13 telecommunications facilities. RF radiation exposure measurements are to be  
14 taken at various locations, including those from which public RF exposure levels  
15 are expected to be the highest.  
16
- 17 **g. *Monopole.*** A type of free-standing antenna structure that is seventeen (17') feet or  
18 more in height and is designed to be self-supporting without the use of guy wires.  
19
- 20 **h. *Preferred wireless zoning district:*** A zone where the City has determined that the  
21 location of a Wireless Communications Facility would reduce the noise, aesthetic  
22 and visual impact of that facility relative to its placement in another zone. The  
23 City has determined that Wireless Communication Facilities may be located in the  
24 following order of preference: CMX, PF, and SPC or SC.  
25
- 26 **i. *Radio-Frequency (RF) Radiation.*** Radiation from the portion of the  
27 electromagnetic spectrum with frequencies below the infrared range  
28 (approximately 100 GHz and below), including microwaves, television VHF and  
29 UHF signals, radio signals, and low to ultra low frequencies.  
30
- 31 **j. *Receive-Only Antenna.*** Antenna for the reception of radio and television signals,  
32 without transmitting capabilities; may include pole or dish types of antennas.  
33
- 34 **k. *Repeater:*** A small receiver/relay transmitter of not more than 20 watts output  
35 designed to provide service to areas which are not able to receive Adequate  
36 Coverage directly from a Base Station.  
37
- 38 **l. *Satellite Dish.*** A bowl-shaped antenna used to receive and/or transmit  
39 electromagnetic signals to and from an orbiting satellite.  
40
- 41 **m. *Stealth Facility.*** A wireless communications facility located so as to be of  
42 minimal visibility, such as being incorporated within an architectural feature such  
43 as a steeple or parapet, or in the open but disguised as a tree or other natural  
44 feature.  
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SECTION 3: THIS ORDINANCE SHALL BE POSTED AT THREE PUBLIC PLACES WITHIN THE CITY OF ALBANY AND SHALL BECOME EFFECTIVE THIRTY DAYS AFTER THE DATE OF ITS POSTING.

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Robert Good  
Mayor of the City of Albany

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