

Article 6: Wireless Communication

6.1 PURPOSE AND LEGISLATIVE INTENT

- A. The Telecommunications Act of 1996 affirmed the Town of Sunset Beach's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. This ordinance provides for the safe and efficient integration of Wireless Facilities. Necessary for the provision of wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare. The goal of universal coverage is encouraged.
- B. The Town of Sunset Beach finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the town and its inhabitants. The town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the town and of significant benefit to the town and its residents. To assure that the placement, construction or modification of a facility is consistent with the town's land use policies, the town is adopting a single, comprehensive, Wireless Telecommunications facility application and permitting process. The intent of this article is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the town.

6.2 SEVERABILITY

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this article or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this article, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B. Any special use permit issued under this article shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total.

6.3 DEFINITIONS

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application in administering the wireless communication provisions provided herein. The definitions provided herein shall apply to this article. Where conflicting terms are found in Article 7, the terms in Section 6.3 shall apply specifically to wireless communication facility regulations, whereas the definitions in Article 7 shall apply to the UDO in its entirety and to those terms not defined herein.

Accessory facility or structure

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

Applicable codes

The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Antenna

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

Applicant

Any wireless service or tower provider submitting an application for wireless telecommunications facilities.

Application

All necessary and appropriate documentation that an applicant submits in order to receive a special use permit for a wireless telecommunications facility.

Base station

A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, backup generator and batteries, and other associated electronics.

Building permit

An official administrative authorization issued by the town prior to beginning construction consistent with the provisions of G.S. 160D-1110.

Collocation

The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, town utility poles, or wireless support structures.

Commercial impracticability or commercially impracticable

The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Communications facility

The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communications service

Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

Communications service provider

Cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Completed application

An application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

DAS or distributive access system

A technique using antenna combining that allows for multiple carriers or wireless service providers to use the same set of antennas.

Eligible facilities request

A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment and does not include a substantial modification or new tower. This includes a small wireless facility.

Facilities

The term is otherwise modified or limited in context of a particular provision in which the term appears in this article, means all and any forms of wireless telecommunications-related equipment, devices, buildings, structures and accessories in the broad sense of those terms and includes and is not necessarily limited to the terms "wireless telecommunications facility," "accessory facility or structure" and "wireless facility" and "wireless support structure" as defined in NCGS 160D-931.

FAA

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

FCC

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

Height

When referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

Micro wireless facility

A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Modification or modify

The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a collocation is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Need

Anything that is technically required for the wireless service to be provided primarily and essentially within the town and creates the least physical and visual impact. This does not necessarily mean the internal design standards of the applicant, as companies' standards can vary greatly and normally reflect preferences. Rather, the term "need" relates to the ability of the user-equipment to function as designed. The goal of universal coverage is encouraged.

NIER

Non-ionizing electromagnetic radiation.

Person

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

Personal wireless services

PWS or *personal telecommunications service* or *PTS* shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Repairs and maintenance

The repair or replacement of any component of a wireless facility where the component is effectively identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

Search ring

The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility

A wireless facility that meets both of the following qualifications:

- A. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six (6) cubic feet.

- B. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Special use permit

The official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the town in the course of the town's quasi-judicial process.

State

The State of North Carolina.

Stealth or stealth techniques

To minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. The term "stealth techniques" expressly includes such techniques as DAS or its functional equivalent.

Substantial modification

The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

- A. Increasing the existing vertical height of the structure by the greater of (i) more than 10% or (ii) the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- B. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- C. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications

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

Temporary

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

Town

The Town of Sunset Beach, North Carolina.

Town right of way

A right of way owned, leased, or operated by a town, including any public street or alley that is not a part of the State highway system.

Town utility pole

A pole owned by a town in the Town right of way that provides lighting, traffic control, or a similar function.

Tower

Any monopole or self-supporting structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal. Guyed towers shall not be permitted anywhere in the town.

Utility pole

A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, or electricity, lighting, or wireless services.

Wireless facility

Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

- A. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- B. Wireline backhaul facilities.
- C. Coaxial or fiber-optic cable that is between wireless structures or utility poles or town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider

Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider

A wireless infrastructure provider or a wireless services provider.

Wireless services

Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider

A person who provides wireless services.

Wireless support structure

A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a town utility pole is not a wireless support structure.

Wireless telecommunications facilities

Includes without limitation the following in connection with wireless telecommunications:

- A. A telecommunications site;
- B. A personal wireless facility and any facility in connection with personal wireless services or PWS or personal telecommunications service (PTS);
- C. A primary or accessory structure, facility or location of all types and kinds designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices, including, but not limited to towers, buildings, church steeples, silos, water towers, and signs.

6.4 GENERAL POLICIES AND PROCEDURES FOR APPLICATIONS UNDER THIS ORDINANCE

- A. In order to ensure that the location, placement, construction and modification of a facility or the components of a Complex do not endanger or jeopardize the town’s health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this ordinance, the town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administrative approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:
 - 1. The town shall not be required to issue a permit for a carrier to achieve its goal from a single location and facility only, and instead may require that multiple smaller and less intrusive facilities be used to achieve the applicant’s goal.
 - 2. Requiring a special use permit for any new complex, facility, or any substantial modification of a facility;
 - 3. Requiring administrative approval and a properly issued building permit for any collocation or modification of a facility that is not a substantial modification or substantial collocation.
 - 4. Implementing an application process and requirements;
 - 5. Establishing a policy for examining an application and issuing a special use permit or administrative approval that are fair and consistent;
 - 6. Promoting, and requiring wherever possible, the sharing and/or collocation of support structures among service providers;
 - 7. Requiring, promoting, and encouraging, wherever possible, the placement, height, and quantity of attachments to a facility in such a manner as to minimize

- the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
8. Requiring that the facility and complex shall be the least visually intrusive among those options that are not technologically impracticable given the facts and circumstances.
 - 9.
 10. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record, unless the owner is the town, in which case, to prevent a conflict of interest, the town shall not be a party to the application.
 11. Within 30 days of the date of submission of an application the applicant shall be notified in writing of any deficiencies related to the completeness of the application. Remediation of deficiencies in an application shall be deemed an amendment of the application that was received.
 12. No work of any kind on or at a facility shall be started until the application is reviewed and approved and the special use permit or administrative approval, as applicable, has been issued, and a building permit has been issued in accordance with the town's code.
 13. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a facility shall be issued where the facility is not in full compliance with all applicable local, state, and federal laws, rules, regulations and orders. A facility not in full compliance with this ordinance shall be required to be brought into full compliance before any permit of any kind will be issued.
 14. Where a certification is called for in this ordinance, such certification shall bear the signature and seal of a professional engineer licensed in the state.
 15. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the town.
 16. At a facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. The use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
 17. All work at a facility shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the town, state, or United

States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

18. Unless such is proven to be technologically impracticable, the town encourages the collocation of new antenna arrays on existing structures, as opposed to the construction of a new complex or support structure or increasing the height, footprint, or profile of a facility beyond the conditions of the approved special use permit for an existing facility. In instances not qualifying as an eligible facility, the applicant shall submit a comprehensive report inventorying all existing structures more than 50 feet in height within one-half (1/2) mile of the location of any proposed new facility.
19. Collocated equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
20. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this ordinance, regardless of the location or whether the facility or any of its components is located inside or outside a structure or building.
21. All costs associated with the preparation and submission of an application and/or necessitated by the requirements for obtaining and maintaining any and all town permits shall be borne by the applicant or permittee.
22. Vegetative buffering of the site shall be installed to screen and/or mitigate the impacts of the wireless facility on surrounding areas, properties, or rights-of-way. In order to provide spatial separation and create a visual block from adjacent properties and streets, a vegetative buffer shall be installed around the outside of all improvements on the site, including the tower, any ground buildings or equipment, and security fencing.
23. Given that wireless service is deemed primarily an essential service, all new towers or other vertical support structures containing wireless antennas shall be designed to an EIA-TIA 222 G Class III standard or any subsequently adopted more stringent standard.

6.5 RESPONSIBLE PARTY(S)

With the exception of the town itself, the owner(s) of a facility, any support structure used to accommodate wireless facilities, and of the land upon which a facility support structure is located, shall at all times be jointly and individually responsible for:

1. The clean, neat, non-littered and safe condition of the facility, support structure and all components on the site related to the facility;
2. Assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and
3. Assuring the proper permitting as required by this article and other town regulations by all lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the facility is operated in compliance with this ordinance, other town regulations and any special use permit.

6.6 FEES

- A. All fees and charges, including but not limited to application fees, expert assistance fees, inspection fees and permit fees, shall be as set forth in the town's schedule of fees and charges. For new towers or other support structures or for substantial modifications, the expert assistance fee shall be as set forth in the town's fee schedule. The town may choose to waive their application fee if the applicant locates on town-owned property, not including in the town's public rights-of-ways.
- B. For collocated small wireless facilities, the town may charge an application fee that shall not exceed the lesser of
 1. The actual, direct, and reasonable costs to process
 2. The amount charged by the town for permitting of any similar activity; or
 3. \$100 per facility for the first five (5) small wireless facilities addressed in an application, plus \$50 for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of this subsection.

6.7 EXISTING FACILITIES AND COMPLEXES

- A. Any legally permitted facility, tower or other support structure that exists on the effective date of this ordinance of the town's codes shall be allowed to continue as it presently exists, provided that
 1. All work was properly permitted;
 2. The facility is in compliance with all applicable local, state and federal laws, rules regulations, orders and permit conditions; and
 3. The site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the site.
- B. Any work not properly previously permitted prior to the adoption of this ordinance must be properly permitted within 90 days of the effective date of this ordinance or prior to any modification of, on or at the site or facility.
- C. Any new collocation and/or modification of a facility, Tower or other support structure or a carrier's equipment located on the tower or facility, must be permitted under this ordinance and the entire facility and any new collocation or modification shall comply with all applicable laws, rules, and regulations, including obtaining a valid COC.

6.8 CERTIFICATE OF COMPLETION

No work shall be allowed to be done at or on any facility, excepting normal repair and maintenance work as defined in this ordinance, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the facility, tower or other support structure shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the facility does not pass the initial final inspection, the owner shall be required to pay for any subsequent re-inspection prior to the re-inspection being conducted. A passing final inspection is required prior to the issuance of a COC.

6.9 EXCLUSIONS

- A. The following shall be exempt from this ordinance:
1. Any facilities expressly exempt from the town's zoning, land use, siting, building, and permitting authority.
 2. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
 3. A facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 50 feet above ground level.
 4. Facilities used exclusively for providing wireless service(s) or technologies where
 - a) There is no charge for the use of the wireless service;
 - b) The facility does not require a new tower or increase the height or profile of the structure being attached to; and
 - c) The service is not intended to be useable more than 75 feet from the antenna.

6.10 NEW TOWER, NEW SUPPORT STRUCTURE, OR SUBSTANTIAL MODIFICATION – APPLICATION REQUIREMENTS

- A. All applicants for a special use permit for a new wireless facility, including for a new tower or other new support structure or that constitutes a substantial modification, shall comply with the requirements set forth in this section. In addition to the required information set forth in this section, all applications involving the construction of a new support structure or a substantial modification shall contain the information hereinafter set forth prior to the issuance of a building permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant. The requirements for submission of a special use permit as provided in Appendix A shall be met in addition to the following:
1. Ownership and Management.
 - a) The name, address, phone number and e-mail address of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name, e-mail address and all necessary contact information shall be provided;

- b) A copy of the FCC license(s) applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands to be used;
 - c) The applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the applicant to share any new telecommunication tower or support structure that it constructs or has constructed for it;
2. Zoning and Planning.
- a) The location, size of the footprint and height of all existing and proposed structures, enclosures, and cabinets on the property on which the structure is located and that are related to the subject of the application;
 - b) A site plan to scale, not a hand drawn sketch, showing the footprint of the support structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with the town's building or development code, including but not limited to fencing and any other requirements of site plans;
 - c) Elevation drawings showing the profile or the vertical rendition of the tower or support structure at the facility and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
 - d) The type of tower or support structure, the number of antenna arrays proposed to be able to be accommodated and the basis for the calculations of the tower's or support structure's capability to accommodate the required number of antenna arrays for which the structure must be designed;
 - e) Pre-construction photos of the existing facility and post construction landscaped photo simulations, both as directed at the time of pre-application meeting.
 - f) Disclosure in writing of any agreement in existence prior to the submission of the application that would limit or preclude the ability of the applicant to share any new telecommunication tower that it constructs.
 - g) A certified statement of i) the total cost of construction for the work associated with the application; and ii) the total cost of all equipment of the applicant at the facility. To verify the accuracy of the information, the town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.
3. Safety.
- a) The age of the tower or support structure and complex stated in years, including the date of the grant of the original permit;
 - b) A description of the type of tower;
 - c) For a tower, the make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations,

- certified by a professional engineer licensed in the state, proving the tower or support structure's capability to safely accommodate the facilities of the applicant without change or modification.
- d) If a substantial modification of a facility is needed, a detailed narrative explaining what changes are needed and why they are needed;
 - e) A complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the facility;
 - f) If substantially modifying an existing tower or other support structure, a complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the town regarding the physical condition and/or safety of the facility, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the UDO Administrator;
 - g) In an instance involving a tower with only a single array of antennas, or for the first antenna array to be attached to a tower where the array will be 33 feet or more above ground level, and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the town, signed documentation in the form of the FCC's "Checklist to Determine whether a facility may be Categorically Excluded" may in certain cases be allowed to be used and shall be provided to verify that the facility and complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
 - h) In certain instances, the town may deem it appropriate to have a post-construction on-site RF survey of the facility done after the construction or modification and activation of the facility, such to be done under the direction of the town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings, or levels of all active RF equipment at the Site;
 - i) In the event the town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection g of this section, the town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the town, itself, may be prohibited from determining.

- j) If not submitted in a previous application, a signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
- 4. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any facility where the application proposes to increase the height of the existing tower or support structure.
- 5. All applications for a proposed facility applicable to this section shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the town expressly reserves the right to require the use of stealth or camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System), a small cell facility or a functional equivalent as regards size, and such shall be subject to approval by the town.
- 6. If proposing a new tower or support structure, or a substantial collocation or modification of an existing structure, the applicant shall be required to submit clear and convincing evidence that there is no alternative solution within the search ring of the proposed site that would be less visually intrusive and that not to permit the proposed new tower or support structure, or a substantial collocation or modification would result in the prohibition of service or the perpetuation of a significant gap in service.
- 7. An applicant proposing a new tower or support structure shall use the largest search ring technically possible and may be required to prove with certified technical/engineering documentation that the search ring used is the largest that could be used.
- 8. The applicant shall provide certified documentation in the form of a structural analysis and report certified by a licensed professional engineer, including all calculations, showing that the facility will be constructed to meet all local, state, and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent standards shall apply.

6.11 SMALL FACILITIES - ELIGIBLE FACILITIES AND OTHER SMALL FACILITY INSTALLATIONS OR MODIFICATIONS – APPLICATION REQUIREMENTS

- A. For a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be contained in an application. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.
 - 1. Safety.

- a) Pre-construction photos of the existing facility from at least two (2) directions, and post construction landscaped photo simulations from at least two (2) directions from a distance no further than 50 feet;
 - b) the age of the Tower or other non-utility pole support structure in years, including the date of the grant of the original permit;
 - c) a description of the type of tower;
 - d) if attaching to a tower or any type of non-utility pole structure, certified documentation in the form of a structural analysis and report done by a professional engineer licensed in the State of North Carolina. Said analysis and report shall include all supporting calculations, showing that the facility, as it exists, will meet all local, state, and federal structural requirements for loads, including wind and ice loads and including, but not limited to, the North Carolina Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.
 - e) If attaching to a utility pole in the public right-of-way, written evidence or certification by the pole owner that the pole is structurally rated to accommodate the new loading;
 - f) a copy of i) the installed foundation design, including a geotechnical sub-surface soils investigation report; and if necessary ii) a foundation remediation design and recommendation for the tower or other structure;
 - g) for an existing wireless facility, a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.
 - h) a copy of the FCC licenses for each frequency band applicable for the intended use of the wireless telecommunications transmission and/or receive equipment;
 - i) a list of all frequencies, to be used at the facility;
 - j) the number, type and model of the antenna(s) proposed, along with a copy of the manufacturer's specification sheet(s), i.e. cut sheet(s), for the antennas;
 - k) certification from the owner of the facility certifying that the facility and all attachments thereto are currently in compliance with the conditions of the approved special use permit or administrative approval or identifying any non-compliant situation.
2. Ownership and Management.

- a) the name, address and phone number of the person preparing the application;
 - b) the name, address, and phone number of the property owner and of the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
 - c) the postal address and tax map parcel number of the property;
 - d) a copy of the FCC license(s) applicable for the intended use of the Wireless Telecommunications Facilities.
3. Construction.
- a) A certified statement of i) the total cost of construction for the work associated with the application; and ii) the total cost of all labor and equipment of the applicant at the facility. To verify the accuracy of the information, the town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.
4. In certain instances, the town may deem it appropriate to have an on-site RF survey of the facility performed after the construction and activation or modification and activation of the facility, such to be done under the observation and supervision of the town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings, or levels of all active RF equipment at the site;
5. In the event the town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, the town expressly reserves the right to seek the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the town, itself, may be prohibited from determining.
6. Attachments to Existing Structures Other Than Towers
- a) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
 - b) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than 10% of the existing height beyond the top of the structure as originally permitted and no equipment other than cabling shall be lower than 15 feet above the

ground. Only one (1) increase of the height of a utility pole or light standard shall be allowed.

- c) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere less visually intrusive on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.
- d) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

6.12 LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

- A. For structures not located in the public right-of-way, no new tower or other new support structure taller than 50 feet shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right and shall be the maximum permissible height subject to the independently verifiable proof of technical need for height information submitted.
- B. If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood and is proven by verifiable clear and convincing technical information to be a technical necessity for the applicant's service to be provided in the intended service area of the proposed facility, the support structure shall not be taller than the shorter of i) 10 feet above the tallest obstruction between the proposed support structure and a residential neighborhood; or ii) the shortest height that will not effectively serve to prohibit the provision of service to a substantial portion of the intended area.
- C. Applicants shall locate, site, and erect all facilities and associated equipment in accordance with the following order of priority:
 - 1. On existing structures outside the public right-of-way without increasing the dimensions or size of the structure;
 - 2. On existing structures, more than 1,000 feet from the nearest boundary of the public right-of-way without increasing the height or size of the profile of the tower or structure by more than is allowed for an eligible facility.
 - 3. On existing structures in the public right-of-way;
 - 4. On existing structures outside the public right-of-way without increasing the height of the structure by more than is technically needed, as such need can be proven by clear and convincing verifiable technical evidence using information provided by the applicant.
 - 5. On nonresidential zoning districts.

6. In areas residential zoning districts in the public right-of-way, but without increasing the height of the size or dimensions of the support structure, and only if camouflaged or stealthed to the satisfaction of the UDO Administrator.
 7. In residential zoning districts, in the public right-of-way if camouflaged or stealthed to the satisfaction of the town.
- D. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the town may disapprove an application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and fall zone requirements;
 2. Non-compliance with zoning, land use or safety regulations;
 3. The placement and location of a facility would create an unacceptable risk, or the reasonable possibility of such, for physical or financial damage to any person or entity, or of trespass on private property;
 4. The placement and location of a facility would not be harmonious with or would result in a negative change in the nature or character of the adjacent and surrounding area, expressly including but not limited to loss in value of property as measured over the 12 months preceding the application having been filed;
- E. Notwithstanding anything to the contrary in this ordinance, for good cause shown such as the ability to utilize one or more shorter, smaller or less intrusive facilities elsewhere and still serve a substantial portion of the intended service area, the town may require the relocation of a proposed site if relocation could result in a less intrusive facility singly or in combination with other locations, including allowing for the fact that relocating the site chosen by the applicant may require the use of more than one (1) facility to serve substantially the same area.

6.13 TYPE AND HEIGHT OF TOWERS

- A. No new towers of a lattice or guyed type shall be permitted. Only new monopole towers shall be permitted.
- B. Except in the public rights-of-way and in residential zoning districts, the maximum permitted total height of a new tower or other proposed support structure, shall be 50 feet above pre-construction ground level, unless it can be shown by clear and convincing verifiable technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service to at least a substantial portion of the intended service area within the town. The maximum permitted height is permissive and is expressly not as-of-right.
- C. If the applicant chooses to provide evidence in the form of propagation studies, to enable verification of the need for the requested height or location, such must include all modeling information and support data used to produce the studies at the requested height and at a minimum of 10 feet lower.
- D. At no time shall a tower or other support structure be of a height that requires lighting by the FAA.

- E. Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a tower or other support structure.
- F. New Structures within Rights-of-Ways – Required Design Characteristics. The following shall govern new poles and other support structures in the rights-of-way.
 - 1. Wireless installations shall be consistent throughout the town limits and any extraterritorial jurisdiction (ETJ);
 - 2. Wireless installations shall be on non-conductive poles or structures;
 - 3. Wireless installations shall utilize a “concealed” design, including all cabling being inside a hollow pole;
 - 4. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, in a pole-mounted cabinet or under a pole-mounted shroud;
 - 5. Cabinets should be consistent in size and no larger than standard DOT streetlight signal cabinets;
 - 6. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new additional poles, any wireless installation in the public right-of-way shall replace a pre-existing utility pole or light standard;
 - 7. Wireless installations in the public right-of-way shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222;
 - 8. Any new poles installed shall be environmentally “green” and not leach any volatile organic compounds or toxic materials into the ground; and
 - 9. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be of a corrodible type of metal or concrete.

6.14 VISIBILITY AND AESTHETICS

- A. No tower, nor any support structure that is not a building and is constructed after the effective date of this section, shall be tall enough to require lighting by the Federal Aviation Agency (FAA).
- B. Stealth: All new facilities, including but not limited to towers, shall utilize stealth or camouflage siting techniques that are acceptable to the town, unless such can be shown to be either commercially or technologically impracticable.
- C. Finish/Color: Towers and other non-building support structures shall be of an appropriate color to harmonize with the surroundings.
- D. Lighting: Notwithstanding the prohibition against lighting, in the event lighting is subsequently required by the Federal Aviation Agency (FAA), the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and federal regulations. For any facility for which lighting is required under the FAA’s regulations, or that for any reason has lights attached, all such lighting shall be of the minimum wattage needed, and if required to be lighted by the FAA shall be affixed with equipment that enables the light to be seen as intended from the air, but that minimizes the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least one (1) mile in a level

terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

- E. Retrofitting: In the event a tower or other support structure that is lighted as of the effective date of this ordinance is modified, at the time of the first modification of the facility the town reserves the right to require that the tower be retrofitted so as to comply with the lighting requirements of the preceding Subsection D of this section or be reduced to a height that does not require lighting.
- F. Flush Mounting: Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted, or as close to flush-mounted on the support structure as is functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such would have the effect of prohibiting the provision of service to a substantial portion of the intended service area alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- G. Placement on Building: If attached to a building, all antennas shall be mounted on the fascia of the building, camouflaged to match the color and, if possible, the texture of the building, or in a manner that makes the antennas as visually innocuous and undetectable as is reasonably possible given the facts and circumstances involved. A false façade on the roof that is acceptable to the town may be used to camouflage roof-mounted antennas and equipment.

6.15 SECURITY

- A. All facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - 1. All facilities, including antennas, towers, and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be easily climbed or collided with and shall expressly include removing the climbing steps for the first 10 feet from the ground on a monopole; and
 - 2. Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

6.16 SIGNAGE

- A. Facilities shall contain a sign no larger than four (4) square feet and no smaller than one (1) foot square in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of at least two (2) square feet shall also to be installed bearing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s).
- B. The contact information sign shall be located on the equipment shelter or cabinet of the applicant, must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet and contain a 24 hour/365 day emergency contact phone number. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

- C. For wireless facilities in the public rights-of-way the RF Radiation Warning sign may be
 - 1. The standard warning symbol for RF Radiation;
 - 2. Be of a size no smaller than 6" x 6" and
 - 3. Placed no less than four feet (4) nor more than six feet (6) from ground level.

6.17 SETBACK AND FALL ZONE

- A. All proposed towers and any other proposed wireless support structures not located in the public rights-of-way shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances:
 - 1. A distance equal to the height of the proposed tower or support structure plus 10%, otherwise known as the fall zone or pre-designed collapse zone plus 10%;
or
 - 2. The existing setback requirement of the underlying zoning district.
- B. For any facility located within a fenced compound, any accessory structure shall be located within the compound as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the public right-of-way and any occupied building or domicile and any property boundary lines.
- C. The nearest portion of any private access road leading to a facility shall be no less than 10 feet from the nearest property line.
- D. There shall be no development of habitable buildings within the setback area or fall zone.

6.18 PROCEDURAL REQUIREMENTS FOR A GRANTING A SPECIAL USE PERMIT

- A. Prior to issuance of a special use permit, all requirements and procedures for issuance therefore as provided in Article 2 shall be met in addition to all applicable provisions of this article.
- B. The town shall schedule any required hearing(s) once it finds the application is complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The town shall not be required to set a date for a hearing if the application is not complete or if there are unresolved issues of non-compliance by the applicant or a party to the application. The town may, at any stage prior to issuing a special use permit, require such additional information as it deems necessary and that is not expressly prohibited from being required by applicable law as relates to the issues of the siting, construction or modification of or at a wireless telecommunications facility.
- C. Upon Board of Adjustment approval, a special use permit shall be issued for a new tower or substantially modified facility. Notwithstanding the preceding, the building permit for such shall not be issued until an applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this ordinance.

6.19 ACTION ON AN APPLICATION

- A. The town will undertake, or have undertaken, a review of an application pursuant to this article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. The town may refer any application or part thereof to any advisory committee and/or consultant for a non-binding recommendation.
- C. Either after the public hearing if a hearing is required, or after administrative review for a non-substantial modification or an eligible facility application, the town may
 1. Approve;
 2. Approve with conditions; or
 3. Deny for cause a permit or administrative approval application. Any decision shall be in writing. Throughout the application and permitting process, the burden of proof with respect to compliance with this article shall always be upon the applicant.

6.20 TRANSFER OR ASSIGNMENT

- A. The extent and parameters of a special use permit or administrative authorization for a facility shall be as follows:
 1. Such special use permit or administrative authorization shall not be assigned, transferred, or conveyed without the express prior written notification to the town, such notice to be not fewer than 60 business days prior to the intended assignment, transfer, or conveyance.
 2. A transfer, assignment or other conveyance of the special use permit or administrative authorization shall require the written commitment of the proposed new holder of the special use permit or administrative authorization to abide by all applicable laws, rules, and regulations, including but not limited to this ordinance.

6.21 VIOLATIONS

Violations of this article shall be subject to enforcement sections contained in Article 2.

6.22 REMOVAL AND PERFORMANCE SECURITY

- A. Removal and Performance: The applicant and the owner of record of any proposed new tower or other support structure shall, at its sole cost and expense, be required to execute and file with the town a bond or other form of security that is acceptable to the town as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower or other support structure and with such sureties as are deemed adequate by the town to assure the faithful performance of the terms and conditions of this ordinance and the conditions of any special use permit issued pursuant to this ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or, if abandoned, until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original special use permit. The amount of the bond is, in part, determined by the current cost of demolition, removal and site

restoration multiplied by the compounding or cumulative effect of a 3% annual cost escalator over a 30-year projected useful life of the structure.

- B. Performance: The owner of any equipment attached to a support structure or located in a complex shall be required to execute and file with the town a performance bond or other form of performance security that is acceptable to the town as to the type of security and the form and manner of execution, in the amount of \$25,000.

6.23 RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES

- A. In order to verify that the holder of a special use permit for a facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this ordinance, the town or its designee shall have the right to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.
- B. Refusal to allow or grant access to the town's representative upon reasonable notice shall be deemed a violation of this ordinance.

6.24 INDEMNIFICATION

- A. Any application for wireless telecommunication facilities that is proposed to be located on town property or in the town-owned or managed right-of-way shall contain a signed statement fully and completely indemnifying the town and to at all times defend, indemnify, protect, save, hold harmless and exempt the town and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility. Notwithstanding the preceding, there shall be no claim of indemnification with respect to any act attributable to the negligent or intentional acts or omissions of the town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the town.
- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the town itself, or an agency or department of the town, applies for and secures a special use permit for a wireless telecommunications facility.

6.25 MOVING OR REMOVAL OF COLLOCATED FACILITIES AND EQUIPMENT

- A. If attached to an existing tower or other support structure, unless the town deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or

carrier's equipment to be relocated from one structure to another without verifiable clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in a substantial portion of the intended service area.

- B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the town of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the town of the lack of impact on the neighborhood or area of the intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not commercially impracticable shall not be deemed a permissible reason for relocating.
- C. The owner of any facility shall be required to provide a minimum of 30 days written notice to the town clerk prior to abandoning any facility.
- D. Under the following circumstances, the town may determine that the health, safety, and welfare interests of the town warrant and require the removal of facilities.
 - 1. A facility that has been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a cumulative total of 180 non-consecutive days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 - 2. A support structure, facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3. A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or administrative approval, and the special permit or administrative approval may be revoked.
- E. If the town makes a determination as noted in Subsection D.2 or D.3 of this section, then the town shall notify the holder of the permit for the facility that said facility is to be removed.
- F. The holder of the special use permit or administrative approval, or its successors or assigns, shall dismantle and remove the facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is reasonably possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within 90 days of the receipt of a written notice from the town. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the town.
- G. If a facility has not been removed, or substantial progress has not been made to remove the facility, within 90 days after the permit holder has received notice, then the town may order officials or representatives of the town to remove or have removed the facility at the sole expense of the owner or special use permit holder.
- H. If the town removes, or causes a facility to be removed, and the owner of the facility does not claim and remove it from the site to a lawful location within 10 days, the town

may take steps to declare the facility abandoned and sell all remaining equipment and materials.

- I. Notwithstanding anything in this section to the contrary, the town may approve a temporary use permit/agreement for the facility, but for no more than 90 days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the town, and an agreement to such plan shall be executed by the holder of the special use permit or administrative approval and the town. If such a plan is not developed, approved and executed within the 90 day time period, then the town may take possession and dispose of the affected facility in the manner provided in this section and may utilize the bond in Section 6.23 of this ordinance.

6.26 RF EMISSIONS

- A. As may be deemed appropriate from time to time, to assure the protection of the public health and safety, the town expressly reserves the right under its police powers to require i) that a user of a facility or the owner of the facility, verify compliance with the FCC's regulations regarding cumulative RF emissions at the site under the observation of a qualified staff member or the town's consultant; and ii) that all users of the facility cooperate in a prompt and timely manner with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this section and subject the non-cooperating party to all applicable and permissible fines and penalties.
- B. In the event the town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection A of this section, the town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the town, itself, may be prohibited from determining.
- C. With respect to support structures other than towers, if any section or portion of the structure attached to or to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger. As deemed warranted by the town at any time, the right of the town is expressly reserved to do itself, or order done, an on-site RF emissions survey.

6.27 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS

- A. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative approval for wireless telecommunications facilities, then the holder of such a special use permit or administrative approval shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24

months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

6.28 CONFLICT WITH OTHER LAWS

Where this article differs or conflicts with other local laws, rules, and regulations, unless the right to do so is preempted or prohibited by the Town, state, or federal government, the more stringent shall apply.