
2018-71 (1ST READING): AN ORDINANCE TO AMEND ARTICLE 2, SECTION 203 IN DEFINITIONS; AND SECTION 1301 WIRELESS COMMUNICATION FACILITIES IN THE ZONING CODE OF THE CITY OF MYRTLE BEACH.

Applicant/Purpose: Staff / to amend the zoning ordinance to permit small cell wireless deployment

Brief:

- City Council adopted M2018-157 on 10/23/18 approving “safe harbor” designs for small cell facility deployment (5G) in rights-of-way for area #1. Area #1 is:
 - Ocean Boulevard, from 31st N southward to the intersection w/ King’s Highway.
 - 3rd S from King’s Highway to its terminus beyond Ocean Blvd.,
 - Mr. Joe White from King’s Hwy to Ocean Boulevard.
 - All street ends from 31st N to 29th S that extend eastward beyond Ocean Boulevard, & contain 1 or more signal light poles.
- Safe harbor designs intend to preserve the esthetic improvements made along Ocean Blvd., while improving cellular connectivity of residents & guests.
- The purpose & intent of amending the zoning code is to:
 - Provide for the appropriate location & development of wireless facilities.
 - Minimize adverse visual effects of wireless facilities through careful design, siting & vegetative screening.
 - Avoid potential damage to adjacent properties from structure failure thru engineering & careful siting of wireless support structures.
 - Maximize use of any new or existing wireless support structure by encouraging collocation of multiple antennas on a single wireless support structures.
- This ordinance requires a Public Hearing before the Planning Commission prior to 2nd reading.

Issues:

- The FCC approved sweeping regulations in September 2018 limiting the authority of state & local governments in regulating 5G wireless infrastructure.
- The FCC established a 60-day ‘shot-clock’ time limit cities have to process 5G applications.
- To assist providers & the City to meet these tight restraints & maintain esthetics the City has taken or is taking the following actions:
 - M2018-157 approved safe harbor designs;
 - amending the zoning code to permit small cell facilities & infrastructure; and
 - adopting a Wireless Telecommunications Facilities Manual.

Public Notification: Normal meeting notification

Alternatives:

- To modify the proposed ordinance.
- To deny the proposed ordinance.

Financial Impact:

- The FCC regulations limits what cities can charge for review to \$500 for an initial application fee covering 5-small cells & \$270 for an annual right-of-way access fee per small cell.
- The City may levy a higher fee, but would need to establish the reasonableness of that fee.

Manager’s Recommendation: I recommend 1st reading & referral to the Planning Commission for a public hearing (12/11/18).

Attachment(s): Proposed ordinance.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE TO AMEND ARTICLE 2,
SECTION 203 IN DEFINITIONS; AND
SECTION 1301 WIRELESS
COMMUNICATION FACILITIES IN THE
ZONING CODE OF THE CITY OF
MYRTLE BEACH

NOW THEREFORE, IT IS HEREBY ORDAINED THE AMENDMENTS ARE ENACTED, WITH DELETED
MATTERS BEING SHOWN AS STRICKEN THROUGH, AND ENACTED MATTERS SHOWN AS
UNDERLINED.

Article 2, Section 203 of the City of Myrtle Beach Zoning Code is amended to read as follows:

Public Utility: A business or service which is engaged in regularly supplying the public with some
commodity or service and which is a government agency, a City franchisee, or an entity
regulated by a state or federal commission. For the purposes of this ordinance, a public
utility shall include providers of the following services: electricity, gas, water, sewer,
transportation, telephone and cable TV, but shall not include wireless facilities as that term
is defined in Section 1311.M of the City of Myrtle Beach Zoning Code.

1311. WIRELESS COMMUNICATIONS FACILITIES

1311.A. *Intent.* The purpose of this Wireless Communications Facilities Ordinance is to provide
for public health, safety and welfare by ensuring that tourists, residents, businesses
and public safety operations have reliable access to wireless communications
networks and state of the art mobile broadband communications services while also
ensuring that this objective is accomplished according to the City of Myrtle Beach's
zoning, planning and design standards. To accomplish the above stated objectives
and to ensure that the placement, construction, or modification of wireless facilities
complies with all applicable local, state and federal laws, the City of Myrtle Beach
adopts this single, comprehensive ordinance. By enacting this ordinance it is the City
of Myrtle Beach's intent to ensure that there is sufficient wireless infrastructure to
support public safety communications, to ensure access to reliable wireless
communications services and to provide standards relative to the construction and
location of wireless facilities necessary to support the needs of the wireless
communication industry and the various wireless users within the City.

This Ordinance is further established to:

1. Provide for the appropriate location and development of wireless facilities
to serve the tourists, residents and businesses of the City;
2. Minimize adverse visual effects of wireless facilities through careful
design, siting and vegetative screening;
3. Avoid potential damage to adjacent properties from structure failure
through engineering and careful siting of wireless support structures; and

- 1 4. Maximize use of any new or existing wireless support structure by
2 encouraging collocation of multiple antennas on a single wireless support
3 structure where consistent with other goals of this ordinance.

4 1311.B. *Applicability.*

- 5 1. *Generally.* The standards established herein shall apply to all wireless
6 facilities not excluded in 1311.C below. Except for landscaping and
7 screening review, including the security fence, the scope of Community
8 Appearance Board review as to location, appearance and placement are
9 preempted by this ordinance.
10 2. *Waivers.* Any design or placement standards set forth herein may be
11 waived, subject to a finding that a special exception should be granted;
12 or a finding that an application must be granted under applicable law,
13 and that there is no alternative that would permit the provision of services
14 as required by law while conforming more closely to the requirements of
15 the Code. In the case of any waiver, City may establish conditions so that
16 any wireless facility conforms to the requirements of the Code as closely
17 as possible

18 1311.C. *Exemptions and Uniform Conditions.*

- 19 3. *Exemptions.* The following categories of wireless facilities are exempt
20 from all City of Myrtle Beach zoning approval processes and
21 requirements:
22 a. Any wireless support structure and/or antenna below 65 feet when
23 measured from ground level which is owned and operated by an amateur
24 radio operator licensed by the Federal Communications Commission and
25 used exclusively for amateur radio operations.
26 b. Any device designed for end-user over-the-air reception, not transmission,
27 of television broadcast signals, multi-channel multi-point distribution
28 service, or direct broadcast satellite service; or for end user reception of
29 signals from an Internet service provider and end user transmission of
30 signals to an Internet service provider, so long as:
31 i. if a "dish" antenna, the dish is one meter (39.37") or less in diameter
32 ii. For other antennas, the antenna is one meter or less in diameter or
33 diagonal measurement.
34 iii. The antenna is mounted on a mast no higher than necessary to
35 maintain line of sight contact with a transmitter.
36 c. Any wireless facility located on property owned, leased or otherwise
37 controlled by the City of Myrtle Beach, provided a license or lease
38 authorizing the wireless facility has been approved by the governing body.
39 Wireless facilities within the right-of-way on, or proposed to be placed upon
40 structures within the right-of-way that are not owned, leased or otherwise
41 controlled by the City of Myrtle Beach are not exempt.
42 d. Except where the same are on or affect a historic property, or an
43 environmentally sensitive area, wireless facilities placed mid-strand
44 between two existing utility poles, where the cumulative volume of all
45 equipment associated with the wireless facilities does not exceed 2.5 cubic
46 feet; the installation does not touch or interfere with other facilities; does
47 not cause excessive strand sag; and does not require excavation,
48 replacement of the strand, or modification or replacement of the utility
49 poles.
50 e. Removal or replacement of equipment on an existing wireless support
51 structure or base station that does not change the physical dimensions of

- the wireless support structure or base station, or make the wireless support structure or base station more visible to the ordinary observer.
- f. Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in this ordinance.
 - g. In all zoning districts except those zoned Residential, wireless facilities placed on existing wireless support structures outside of the rights-of-way that do not extend more than fifteen (15') feet above the pole or three (3') feet from the sides of the existing wireless support structure.
 - h. A COW, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City of Myrtle Beach designees; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.

4. *Uniform Conditions.*

- a. Nothing in this Ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this Ordinance do not permit placement of wireless facilities in the rights of way without a franchise or license authorizing such placement issued by the City of Myrtle Beach, or permit placement of wireless facilities on private property without the permission of the property owner.
- b. From and after adoption of this provision, any application for approval of a wireless facility or modification of a wireless facility (other than a modification pursuant to 1311.F.2 Eligible Facilities Requests) and any approval shall include concealment elements designed to minimize the visual impact of the facility. Where practicable and consistent with the surrounding area the wireless facility shall be a concealed wireless facility.
- c. A wireless facility shall be treated as a utility, and a for purposes of:
 - i. Section 902, Landscaping Regulations
 - ii. Section 903.L, Tree Protection During Clearing, Grubbing and Development
 - iii. Section 1702.C.1 Utility lines; and
 - iv. Section 1902, Sustainability and Conservation Development.

1311.D. *Administrative Review and Special Exceptions*

- 1. *Administrative Review and Approval.* The following types of applications are subject to the review process as provided in Section 1311.F *Application and Review*. Except for the requirements in section 1311.D.1 *Administrative Review and Approval*, no other type of zoning or site plan review is necessary. The decision of the Zoning Administrator on administrative review shall be subject to appeal to the Board of Zoning Appeals.
 - a. Monopoles in any Industrial District. Industrial Districts shall include the following zoning districts: AP, LI, and WM.
 - b. Replacement Towers in any zoning district that maintain or decrease the footprint and physical dimensions of the tower being replaced, and do not defeat any concealment elements associated with the tower.
 - c. Monopoles within a utility easement or right-of-way, in any zoning district, subject to the following additional requirements:
 - i. The utility easement or right-of-way shall be a minimum of seventy-five (75') feet in width.

- ii. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are at least seventy (70') feet or greater in height.
 - iii. The height of the monopole may not exceed by more than twenty (20') feet the height of existing utility transmission and/or support structures. If those structures are no longer occupied or are removed, the monopole must also be removed.
 - iv. Monopoles and the base station equipment shall be set back a minimum of twenty-five (25') feet from all boundaries of the easement or right-of-way or match the setback of the existing utility structures, whichever is greater.
 - v. Notwithstanding the requirements of section 1311.J, single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed.
 - d. Concealed wireless support structures or concealed wireless facilities in all MUH, MUM, HC, C (except those listed in 1311.D.1.a Monopoles in any Industrial District), MP, CG, and BP zones, and in commercial portions of a PUD.
 - e. COWs in any zoning district, but only permitted in the case of equipment failure, equipment testing, equipment maintenance and/or replacement; or in the case of emergency or extraordinary service demand situations, upon good cause shown to the Zoning Administrator, or where the placement is permitted, and complies with, applicable FCC regulations for temporary placement of wireless facilities. Except as FCC regulations may require, placement of COWs shall be limited to ninety (90) days unless extended in writing by the Zoning Administrator. COWs are also allowed during events in which Special Event permits have been issued and shall be limited to the duration of the Special Event Permit.
 - f. Eligible Facilities Requests, as defined in the Federal Communications regulation 47 C.F.R. §1.40001 (b) (3), implementing federal law, 47 U.S.C. §1455.
 - g. Wireless facilities placed on electrical transmission towers, including the right to extend and/or replace existing electrical transmission towers not suitable to accommodate wireless facilities by a height not ten (10') feet greater than the height of the existing electrical transmission tower.
 - h. Pre-approved designs, where the application is for placement in the area for which the designs have been approved.
2. *Conditions for approval.* For applications fitting one of the categories described in 1311.D.1., *Administrative Review and Approval*, the Zoning Administrator may approve an application if it finds:
 - a. the application has the necessary certifications;
 - b. the wireless facility proposed will satisfy all applicable safety codes
 - c. for facilities other than an eligible facilities request, the application includes a showing that the installation is not speculative, and will meet an immediate service requirement; and
 - d. for facilities other than an eligible facilities request, the placement and design otherwise comply with the requirements of the City Code, including but not limited to those provisions with respect to collocation.
3. *Special Exceptions.* Any application for wireless facilities and/or wireless support structures not subject to administrative review and approval pursuant to this Ordinance, and which are not exempt from this ordinance, shall be permitted in any zoning district upon the granting of a special exception from

the Board of Zoning Appeals. Regardless of the provisions of section 502. E. *Meetings and Notices*, in cases involving a special exception for permitting of a wireless facility, the applicant shall publish, in a newspaper of local and general circulation, a legal notice of the application for the special exception that shall appear not less than three (3) times, and shall be published not less than seven (7) days before the application is scheduled to appear on the Board of Zoning Appeals' agenda, identifying the applicant, specifying the proposed location of the facility and the location, date and time of the zoning hearing, and the City shall notify by mail all property owners within 500 feet of the boundaries of the property on which the wireless facility is proposed. Financial cost of the published notice and the mailing notification are to be paid by the applicant prior to the Board of Zoning Appeals meeting at which the request is to be heard. Advertising and conspicuous notice requirements of 502.E. *Meetings and Notices* shall also apply.

1311.E. *Prohibited Uses*. Subject to Section 1311.B.2, *Waivers*, the following uses shall not be permitted:

1. *Advertising*. Advertising messages or signs shall not be affixed to any wireless support structure, but this does not prohibit signage required by law or inclusion of non-commercial banners, or use of traffic signs as part of the design for a concealed wireless facility.
2. *Speculation*. No speculative wireless facilities or wireless support structures shall be permitted.
3. *Wireless support structures that are not concealed facilities*. Wireless facilities on wireless support structures that are not concealed facilities in any R, RM, MH, CS, or IR zones except as allowed in 1311.D.1.c Monopoles within a utility easement or right-of-way.
4. *Wireless facilities in underground areas*. Wireless facilities in rights-of-way or on wireless support structures in areas where utilities are underground except pre-approved designs or concealed wireless facilities where the concealed wireless facility would be of a design and can be placed consistent with existing permitted structures, or can be placed within existing permitted structures. This section does not preclude rooftop or building-side placement of wireless facilities in underground areas.

1311.F. *Application and Review*.

1. *Content of Application Package*. Except as specified herein, and with respect to applications that are not submitted pursuant to 1311.F.2 *Eligible Facilities Requests*, all application packages must contain the following:
 - a. Administrative review application form signed by applicant;
 - b. A copy of the lease or letter of authorization from the property owner evidencing the applicant's authority to pursue the zoning application. Such submissions need not disclose financial lease terms. In the rights-of-way, the application must identify the franchise it holds which it contends permits the occupancy of the rights-of-way to install a wireless facility. If not issued by the City, a copy of the franchise should be provided. If access to City-owned or controlled property other than the rights-of-way is sought, a copy of the lease or other agreement which permits the use of the property must be identified. Alternatively, where there is no lease, agreement or franchise in place, the applicant must affirm that it desires, and is willing to enter into a franchise and other required agreements with the City, and must submit any required application form for the same.
 - c. A description of the project, including and identifying:

- i. All facility related support and protection equipment; and
- ii. The type of facility, number of antennas, height of top of antenna(s), radio frequency range, wattage output of equipment, and a statement of compliance with current FCC requirements related to RF emissions for the project, which takes into account as may be required by FCC regulations existing facilities at or in proximity to the site.
- iii. For facilities subject to a special exception, or for uses proscribed by Section 1311.E, Prohibited Uses, a showing that denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless service, within the meaning of 47 U.S.C. § 332(c)(7), or otherwise violate applicable law, under circumstances such that the City is required to issue a permit.
- iv. For uses proscribed by Section 1311.E, Prohibited Uses, a showing that there are no other options for placement on or off the rights-of-way.
- d. For new sites only, documentation from a licensed professional engineer of calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this Ordinance.
- e. For modifications to wireless support structures or other structures, written verification from a licensed professional engineer certifying that the host wireless support structure or structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas and other equipment, extensions and appurtenances associated with the modification, and that the modification will not cause the facility to violate existing fall zone requirements.
- f. Identification of the owner(s) of the wireless support structure and all antennas and equipment to be located on the site. The owners include anyone who owns any interest in the wireless facility, or through any arrangement, controls the wireless facility.
- g. Copies of all pertinent licensing and/or certifications required by federal or state licensing authorities, which are required for said operators of said wireless support structure or facility. To the extent any such applications are still pending, to the extent the applicant meets all other requirements of this Ordinance, the application may be approved subject to the condition that such approvals are provided prior to the issuance of a building permit.
- h. For applications other than pre-approved designs, a current map showing the locations of all existing wireless support structures and proposed wireless support structures and any other existing wireless support structures within one (1) mile of the proposed location (measured from the base of the proposed wireless facility); and a current map showing all wireless facilities owned or controlled by applicant, or any wireless service provider that will be providing service via the proposed wireless facility that are within fifteen hundred (1500) feet of the proposed facility.
- i. For any application requiring a special exception, a current map showing all existing and proposed wireless facilities within one (1) mile of the proposed locations owned or controlled by applicant, or any wireless service provider that will be providing service via the proposed wireless facility, and a description of each facility.
- j. If the application is for a wireless facility that is being installed as part of a network, a description of the network, and an identification of all other work that will be associated with that network, including but not limited to, a description of additional wireless facilities that will be installed; wireline

connections that may be required; and a timeline for construction of the network. The network should be described as planned even if applications for the elements of the network have not been submitted to the City or other agencies with authority over the project.

- k. Site plans at a scale no less than one (1) inch = one hundred (100') feet, and include at least the following:
 - i. For facilities that will not be located in a public right of way in whole or in part, a boundary survey of the proposed wireless support structure location site. The site of the wireless support structure shall meet all survey requirements of the City of Myrtle Beach Regulations for Final Plats; for facilities that will be located within the rights of way, a drawing showing the precise location of the proposed facility and its relationship to other utility structures.
 - ii. Drawings must depict improvements related to the applicable requirements including property boundaries, setbacks, existing improvements, elevation sketch, and dimensions of all elements of the wireless facility and base station (including any associated accessory equipment, fencing and parking), and landscape plan. For a modification, the drawings should include drawings of the wireless support structure and base station as approved by the City (or as the facility existed on February 22, 2012, if approved prior to that date); and detailed drawing of the modifications proposed to the wireless support structure or base station).
 - iii. For new facilities only, the location of any existing structure within fifty (50') feet of the proposed wireless support structure or those existing structures that may be within the fall zone of any proposed wireless support structure;
 - iv. For new facilities only, an identification of the setbacks/fall zone for any wireless support structure; and
 - v. Screening and Landscaping, subject to approval by the Community Appearance Board.
- l. Elevation drawings and/or photographs of all elements of the proposed wireless facility and appurtenances, and composite elevations from the street(s) showing the proposed project and all buildings on the site.
- m. Specifications for any proposed wireless facility, including description of design characteristics and materials of the structure which will support the wireless facility.
- n. A line of site analysis, photo simulations, photo-montage, story, poles, elevations and/or other visual or graphic illustrations which shows the potential visual and aesthetic impacts of the proposed project. Visual impact demonstrations shall include accurate scale and coloration of the proposed facility. The visual simulation shall show the proposed structure as it would be seen from surrounding properties from perspective points to be determined in consultation with the community development department prior to preparation. The City may also require the simulation analyzing stealth designs, and/or on-site demonstration mockups before the public hearing. For pre-approved designs, the City may waive the requirements of this section in whole or in part on request, except that a line of site analysis must be provided.
- o. Except for pre-approved designs, where the application would involve installation of a new wireless support structure, evidence that no existing wireless support structure or other existing structure can be used to accommodate the applicant's proposed use and also meet its coverage and

capacity objectives in the stated geographical area; or a showing that because of the technology utilized, the installation of the wireless support structure will be less intrusive than collocation or location on another structure.

- p. Except for pre-approved designs, or rooftop mounted designs, if a wireless support structure is to be located within an R, RM, RMH-MH, PRC, or IR district, or a residential portion of a PUD, the application shall include evidence that facilities located within a commercial zone cannot be used to accommodate the applicant's proposed use and also meet its coverage and capacity objectives in the stated geographical area. In the case of a monopole request the application shall also include evidence that concealed poles cannot be used to accommodate the applicant's proposed use and also meet its coverage and capacity objectives in the stated geographical area.
- q. Except for pre-approved designs, a statement that any proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates, provided space is available; or alternatively, a showing that given the nature of the wireless support structure proposed, collocation is not practical.
- r. Special Exception applications must also meet the requirements set forth in section 503.c Special Exceptions.
- s. For any application seeking approval of COW, pursuant to subsection 1311.C.1.g. A COW, the other documentation required are those items set forth in subsection 1311.F.1. *Content of Application Package* subsections g, h, i, n, o, r and t.
- t. Complete applications and fees associated with any permit that the applicant contends must be acted upon by the same date as the wireless application must be filed on the same date as the wireless application, and if any is not included, or the application for any permit is incomplete, all applications may either be denied or declared incomplete.

2. *Eligible Facilities Requests.*

- a. An application shall be submitted for approval of eligible facilities requests containing at least the following:
 - i. A completed application form signed by applicant, and identifying a person who may be contacted regarding the application, and that person's mail and email addresses and telephone number.
 - ii. A clear statement that the request is being made as an eligible facilities request pursuant to this ordinance and complies with all requirements set forth therein.
 - iii. A clear description of the work proposed, including but not limited to, a description of the excavation that may be associated with the work, and a description of the base station elements or wireless support structure elements that may be modified, and the modifications that will be made; and the date(s) and time(s) during which the work will take place, which description shall demonstrate that the application qualifies as an eligible facilities request.
 - iv. Photographs and scale drawings showing the dimensions and location of the base station, wireless support structure and accessory facilities prior to performance of the work proposed, and photo simulations and scale drawings showing the dimensions and locations of the same after the work is performed.
 - v. A statement certifying that, before commencing, during performance of and upon completion of, the work proposed, the permitted wireless facility will comply with all applicable laws, regulation, practices or other

requirements under federal, state or local law, including but not limited to, building and electrical codes.

vi. The certification required by 1311.F.1.e For modifications.

b. Action Upon Receipt.

i. Upon receipt of an application for approval of an eligible facilities request, the Zoning Administrator or its designee shall review such application to determine whether the application qualifies as an eligible facilities request and is complete, and shall promptly notify applicant if the application is incomplete or is not an eligible facilities request within the time frames specified in 47 C.F.R. §1.40001. An application is incomplete if it omits or withholds any required information, or fails to provide information in sufficient detail to determine whether the application is for an eligible facilities request, or to determine whether the work will be performed in accordance with, and will result in a wireless facility that complies with applicable safety codes.

ii. Approval. If the application is an eligible facilities request and the application is complete, the Zoning Administrator shall approve the application subject to this section. This section shall be operative, and any permit issued pursuant to this section shall remain in effect only so long as federal law, 47 U.S.C. § 1455, and implementing Federal Communications Commission regulations, 47 C. F. R. §1.40001 regulations require approval of an eligible facilities request as defined herein. By approval, the City solely intends to comply with a requirement of federal law and not to grant any property rights or interests except as compelled by federal law.

iii. Denial. If the application does not satisfy requirements for an eligible facilities request, or if applicant fails to submit a complete application after being notified that the application is incomplete by a time specified by the Administrator; or the application would otherwise result in a wireless facility that does not comply with applicable federal state or local laws, the application shall be denied within sixty (60) days of receipt unless the Zoning Administrator and applicant agree to a different date for action on the application.

iv. Exceptions; Effect of Approval. City may except particular applications from approval, or may condition approval as appropriate consistent with federal law. Without limitation, approval does not exempt applicant from, or prevent City from opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Protection Act.

c. Because an eligible facilities request application is for modification of a base station or tower previously approved by the City, a permit issued pursuant to this section 1311.F.2 *Eligible Facilities Request*, is subordinate to, and shall be of no force and effect if the approval of the underlying wireless facility is revoked or expires.

3. *Powers of Zoning Administrator.* The Zoning Administrator or appropriate designee:

a. Shall develop the forms required for an application for wireless facilities;

b. May issue notices of incompleteness, or deny an application for failure to submit information required;

- c. Shall review, or cause applications to be reviewed on a schedule so that applicable deadlines for action on applications are satisfied,
- d. May adopt regulations implementing this ordinance and pre-approve designs;
- e. May waive any requirements of the City Code, including procedural and notice requirements that are inconsistent with the procedural or substantive requirements of federal laws or regulations;
- f. May request additional materials during review as needed to determine compliance with this state, federal and local laws and regulations; and
- g. May agree to dates for action on an application, and agree to extensions of time so long as such agreement does not result in violation of any deadline for action on an application.
4. *Special Appeals Period.* Because federal regulations require action on permits within specified periods of time:
- a. where the City must act on the application in sixty (60) days or less an appeal must be filed within three (3) business days of the decision of the Zoning Administrator;
- b. for other applications, an appeal must be filed within seven (7) business days of the decision of the Zoning Administrator; and
- c. special meetings of the Zoning Board of Appeals may be called by Zoning Administrator as may be required to comply with federal law.
- d. provided that, the Zoning Administrator may extend the time for appeal, up to the time otherwise permitted under the City Code, if there is an agreement that extends the time permitted for City action on an application. In determining the appropriate extension, the Zoning Administrator must ensure that the extension will permit timely action on the appeal by the Zoning Board of Appeals.
- 1311.G. *Use Discontinuance and Removal.* If a wireless support structure fails to be utilized for its intended and permitted purpose for a period of twelve (12) consecutive months, except in the event of damage to the structure and with notice of such damage to the Zoning Administrator, the special use permit or administrative zoning approval issued in association with such structure may be revoked by the Zoning Administrator only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the wireless support structure within sixty (60) days of receipt of said written notice. In the event the owner of the wireless support structure fails to reclaim the wireless support structure within the sixty (60) day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. If the owner fails to remove said structure within such period, the structure is declared a public nuisance, and the City shall abate the nuisance according to law, and the cost of abatement shall be assessed against the owner who was responsible for such removal.
- 1311.H. *Administration.* Prior to the issuance of a building permit for a wireless support structure or a wireless facility, the Zoning Administrator or designee shall review the building permit application to ensure compliance with applicable zoning requirements.
- 1311.I. *Specific Design Requirements.* All wireless support structures permitted for construction, including those allowed by Special Exception, shall adhere to the following except as required by applicable law, and then must adhere to the following as closely as possible:
1. *Height.* Wireless facilities on ground-mounted wireless support structures, including concealed wireless facilities, shall be exempt from the height restrictions

- contained elsewhere in the Ordinance, and instead shall adhere to the requirements of section 1311.
2. *Maximum Height.* All new ground-mounted wireless support structures shall be limited to one hundred ninety nine (179') feet or less in height. Height is the distance from the base of the wireless support structure, at grade level, to the top of the wireless facility; provided that, wireless facilities on wireless support structures permitted in the rights of way other than concealed wireless facilities should be no higher, including the antenna, than utility poles used to support the electric distribution system or the facilities of the local exchange carrier in the same corridor.
 3. *Facility Types:* The following types of ground-mounted wireless support structures are allowed in the following zoning districts:
 - a. WM, AP, LM, MU-H, MU-M, MP, A, HC-1, HC-2, C-6, C-7, C-8, CG, BP, IN, and commercial portions of a PUD: Monopoles, concealed wireless facilities.
 - b. R, RM, RMH-MH, PRC, and residential portions of a PUD:
 - i. Concealed wireless facilities only if satisfactory evidence is provided that facilities located within a commercial zone cannot be used to accommodate the applicant's proposed use and also meet its coverage and capacity objectives in the stated geographical area; and
 - ii. Monopoles only if satisfactory evidence is provided that concealed wireless facilities cannot be used to accommodate the applicant's proposed use and also meet its coverage and capacity objectives in the stated geographical area.
 4. *Illumination.* Wireless support structures and base stations shall only be illuminated as required by the Federal Communications Commission (FCC) and/or the Federal Aviation Administration (FAA), unless the lighting is part of the concealments elements, as would be the case with a private light in a parking lot. If allowed under FAA and other governmental regulations, alternatives to strobe lighting shall be used at night and lighting shall be shielded to ensure that lighting is focused toward the top of the wireless support structure or base station.
 5. *Color.* Excluding concealed wireless facilities, and unless otherwise required by the FCC or FAA, monopoles and towers shall have a galvanized finish or be painted with a silver or gray finish. All monopoles and towers over one hundred fifty (150') feet in height shall have a thirty-six (36") inch minimum stripe of either reflective tape and/or paint centered on the one hundred fifty (150') foot mark of the monopole or tower.
 6. *Signs.*
 - a. Commercial messages shall not be displayed on any non-concealed wireless facility.
 - b. The only signage that is permitted upon a non-concealed wireless facility, shall be informational, and for the purpose of identifying the wireless support structure (such as ASR registration number), as well as the parties responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs that may be required by the City or under applicable law, and property manager signs (if applicable).
 - c. Where signs are otherwise permitted, a concealed wireless facility may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed wireless facility are met.
 7. *Security.* Wireless support structures and any associated base station other than wireless support structures in the rights of way or on rooftops, or concealed wireless facilities, shall be secured by a fence or wall measuring at least eight (8')

1 feet in height. Unless otherwise established by the Community Appearance Board,
2 the fence shall be chain link coated in black or green vinyl.

3 8. *Equipment Compound.*

- 4 a. Equipment compounds shall not be used for the storage of any excess
5 equipment or hazardous waste (e. g. discarded batteries). No outdoor storage
6 yards shall be allowed in an equipment compound.
7 b. Equipment compounds shall not be used as habitable space.
8 c. A site plan proposal shall be provided to demonstrate how potential colocation
9 equipment cabinets, pads and/or buildings will be accommodated within the
10 equipment compound.

11 9. *Setbacks/Fall Zone.*

- 12 a. For wireless support structures other than facilities in the rights-of-way,
13 wireless setbacks shall be equal to one (1') foot for every one (1') foot of
14 wireless support structure height or one hundred (100%) percent of the
15 wireless support structure's fall zone, plus a safety factor of ten (10%) percent;
16 whichever is less. Fall zones shall be certified in the form of a letter from a
17 licensed engineer that includes the engineer's original signature and seal.
18 b. For wireless facilities other than facilities within rights-of-way, the fall zone
19 shall not encroach onto adjacent properties unless the owner of the adjacent
20 property signs a waiver. The waiver shall be a recordable waiver document
21 and shall require the owner of the wireless support structure to indemnify and
22 hold the City of Myrtle Beach harmless. In no case shall the fall zone encroach
23 into a public right-of-way.
24 c. For wireless facilities in the rights-of-way, the elements of the wireless facility
25 shall be set back from the curb, sidewalk and property lines consistent with
26 other facilities of similar character and design.

27 10. *Screening and Landscaping.*

- 28 a. Any equipment compound shall be landscaped and maintained with a buffer
29 of plant materials that effectively screens the view of all accessory structures,
30 equipment and other improvements at ground level. The buffer shall consist
31 of evergreens no less than twenty-four (24) inches in height at the time of
32 planting and spaced two and one-half (2 1/2) feet on center along the fenced
33 enclosure. Such plants shall be capable of reaching a height of no less than
34 eight (8') feet within two (2) years of planting. Buffer plantings may be modified
35 at the discretion of the Zoning Administrator to avoid conflicts with site
36 triangles and site lines.
37 b. In locations where the visual impact of the wireless support structure would be
38 minimal, or where the requirements of this section are otherwise
39 impracticable, the landscaping and screening requirements of this section may
40 be reduced or waived by the appropriate approving body. The appropriate
41 reviewing body may establish shielding requirements for base stations that are
42 not part of an equipment compound appropriate to the location of the wireless
43 facility and any prior zoning approvals. Existing mature vegetation and natural
44 landforms on the site shall be preserved to the maximum extent possible, or
45 replaced to present a natural, undisturbed appearance in keeping with the
46 intent of this section. For example, if the equipment compound is in a wooded
47 area the applicant may choose to retain a natural vegetated buffer strip of
48 undisturbed trees that is at least twenty-five (25') feet in depth, and at least six
49 (6') feet in height, around the perimeter of the equipment compound. The
50 appropriate approving body could waive the landscaping requirements
51 provided the area should remain undisturbed in appearance, except where
52 minimally necessary to allow for an access drive.

- 1 1311.J. *Collocation on Existing Wireless Support Structures.* To reduce the need for additional
2 wireless support structures throughout the City of Myrtle Beach, new structures shall
3 be engineered and constructed to accommodate a minimum number of collocations
4 based upon their height except where these appropriate approving body finds that
5 collocation at the site is not essential to the public interest, or that community
6 compatibility requirements will be promoted by waiving the requirements:
7 1. Support structures sixty (60') feet to one hundred (100') feet shall support at least
8 two (2) telecommunications providers.
9 2. Support structures greater than one hundred (100') feet but less than one hundred-
10 fifty feet (150') shall support at least three (3) telecommunications providers.
11 3. Support structures greater than one hundred-fifty (150') feet in height shall support
12 at least four (4) telecommunications providers.
- 13 1311.K. *Additional Requirements for Wireless Facilities Mounted On Structures Other Than*
14 *Ground-Mounted Wireless Support Structures.* Building mounted wireless facilities
15 shall meet the following additional requirements:
16 1. *Height.*
17 a. The structure upon which the wireless facility is located is greater than twenty
18 (20') feet in height.
19 b. As a concealment element, the height of the wireless facility shall not extend
20 more than fifteen (15') feet above the roofline or perimeter wall (whichever is
21 higher) of the existing structure to which it is to be mounted.
22 2. *Setbacks.* A wireless facility and its accessory equipment shall be subject to the
23 setbacks of the underlying zoning district. When a wireless facility is to be located
24 on a nonconforming building or structure, then the existing permitted
25 nonconforming setback shall prevail.
26 3. *Visibility.*
27 a. If base station equipment described at 1311.M.5 *Base Station* subsections a-
28 b or accessory equipment is installed on a structure other than a wireless
29 support structure, then base station and accessory equipment visible from the
30 street level must be of a color that is identical to, or closely compatible with,
31 the color of the structure so as to make the base station and accessory
32 equipment as visually unobtrusive as possible. Roof mounted wireless
33 facilities shall be made visually unobtrusive by screening or painting to match
34 existing air conditioning units, stairs, elevator towers or other background, and
35 any wireless support structure, other than a concealed wireless facility, shall
36 not be visible from street level when standing ten (10') feet from the base of a
37 building.
38 b. Building-mounted equipment cabinets and structures housing electronic
39 equipment associated with a base station shall not be visible from street level
40 when standing ten (10') feet from the base of a building.
41 c. Wireless facilities shall not alter or change the intent of the structure or building
42 design. Where feasible, wireless facilities shall be placed directly above,
43 below or incorporated with vertical design elements of a structure or building
44 to help in concealment.
45 4. *Standards.* All *wireless* facilities shall be designed to meet current building
46 standards and wind load requirements.
- 47 1311.L. *Wireless Facilities and Wireless Support Structures in Existence on the Date of*
48 *Adoption of this Ordinance.*
49 1. *Continued Lawful Use.* Wireless facilities and wireless support structures that were
50 legally permitted on or before the date this Ordinance was enacted shall be
51 permitted and lawful use.

- 1 2. *Activities at Non-Conforming Wireless Support Structures.* Notwithstanding any
2 provision of this Ordinance:
3 a. Ordinary maintenance may be performed on a nonconforming wireless
4 support structure or wireless facility.
5 b. Collocation or modification of wireless facilities on an existing non-conforming
6 wireless support structure shall not be construed as an expansion,
7 enlargement or increase in intensity of a non-conforming structure and/or use
8 and shall be permitted through the administrative approval process defined in
9 Section 1311.D.2 *Special Exceptions*; provided that the collocation constitutes
10 an eligible facilities request.
11 c. Other collocations or modifications may be made to non-conforming wireless
12 support structures utilizing the special exception process defined in Section
13 1311.D *Administrative Review and Special Exceptions of this Ordinance.*

14 1311.M. *Definitions.* In addition to and not in contravention of any definitions contained in other
15 sections of the Zoning Ordinance for Myrtle Beach, the following definitions shall apply
16 to this Ordinance. References to federal laws or regulations refer to the same as they
17 may be amended or renumbered:

- 18 1. *Accessory Equipment.* Any equipment installed and owned by a third party used
19 to deliver a service to a wireless facility, such as an electric meter.
20 2. *Administrative Approval.* Approval that the Zoning Administrator or
21 designee is authorized to grant after administrative review.
22 3. *Administrative Review.* Evaluation of an application by the Zoning Administrator
23 or designee. This process is not subject to a public hearing, but is subject to
24 appeal.
25 4. *Antenna.* A device, dish, array or similar device used for the sending and/or
26 receiving electromagnetic waves for FCC licensed or authorized wireless
27 communications.
28 5. *Base Station.* A structure or equipment at a fixed location that enables FCC-
29 licensed or authorized wireless communications between user equipment and a
30 communications network. The term does not encompass a wireless support
31 structure as defined in this subpart or any equipment associated with a wireless
32 support structure.
33 a. The term includes, but is not limited to, equipment associated with wireless
34 communications services such as private, broadcast, and public safety
35 services, as well as unlicensed wireless services and fixed wireless services
36 such as microwave backhaul.
37 b. The term includes, but is not limited to, radio transceivers, antennas, coaxial
38 or fiber-optic cable, regular and backup power supplies, and comparable
39 equipment, regardless of technological configuration (including Distributed
40 Antenna Systems and small-cell networks).
41 c. The term includes any structure other than a wireless support structure that,
42 at the time the relevant application is filed with the City under this section,
43 supports or houses equipment described in paragraphs 5.a-b of this section
44 that has been reviewed and approved under the applicable zoning or siting
45 process, or under another State or local regulatory review process, even if the
46 structure was not built for the sole or primary purpose of providing such
47 support. However, for structures other than wireless support structures that
48 support equipment described in paragraphs 5.a-b, including but not limited to
49 the sides of buildings, water towers, or utility poles, the term includes only that
50 portion of a structure specifically approved to support the wireless equipment
51 described in paragraphs 5.a-b, and only relates to activities necessary to
52 permit the installation, maintenance, replacement or collocation of wireless

- equipment described in the preceding paragraph. The exemption of a structure from review is not an approval.
- d. The term does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 5.a-b.
6. *Carrier on Wheels or Cell on Wheels or Carrier on Light Truck (COW)*. A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom or lattice type tower as the antenna support structure, and be supported with temporary guy wires.
7. *Collocation*. The mounting or installation of transmission equipment on a wireless support structure or structure as described in subsection 5.c for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
8. *Concealed Wireless Facility*. Any wireless facility that is integrated as an architectural feature of an existing wireless support structure or any new wireless facility structure that is camouflaged or concealed so that the presence of the wireless facility is either:
- a. Virtually invisible to the casual observer, such as an Antenna behind louvers on a building, or inside a steeple or similar structure; or
 - b. Camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located
 - c. Examples of concealed wireless facilities include, but are not limited to, wireless facilities which are disguised as flagpoles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples, and chimneys. To qualify as "concealed" design, the item in question must match the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function and other attributes as closely as possible. The elements that make a facility a concealed wireless facility are concealment elements. Without limitation, for a concealed wireless facility to be approved, the application must show that the concealment will be effective for the location proposed considering all relevant elements, including the landscaping and shielding proposed; and must show that the concealment elements will not be defeated by weathering.
9. *Concealment Element*. Any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or Wireless Support Structure that are intended to make a Wireless Facility less visible to the casual observer. The design elements of a concealed wireless facility are concealment elements.
10. *Electrical Transmission Tower*. An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.
11. *Eligible support structure*. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.
12. *Equipment Compound*. An area surrounding or near the base of a wireless support structure within which are located wireless facilities.
13. *Fall Zone*. The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

14. *Monopole*. A single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennas. For the purposes of this Ordinance, a utility pole is not a monopole.
15. *Ordinary Maintenance*. Ensuring that wireless facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a wireless support structure's foundation or of the wireless support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing equipment compound and relocating the antennas to different height levels on an existing wireless support structure upon which they are currently located. Ordinary maintenance does not include substantial changes in a wireless facility.
16. *Replacement Tower*. A wireless support structure of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation. Requires removal of the wireless support structure it replaces.
17. *Speculative Wireless facilities*. A wireless facility built by any entity not providing FCC licensed or FCC authorized wireless services without the ability to demonstrate a binding commitment from a provider of such services to utilize the wireless facility of support structure at the time of application.
18. *Substantial Change*. Substantial change has the same meaning the term "substantial change" as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001 (b)(7).
19. *Tower*. A lattice-type structure, guyed or freestanding, that supports one or more antennas.
20. *Tree Survey*. A survey by a registered surveyor indicating the location and height of all trees within a thirty (30') foot radius of the proposed wireless support structure, as well as, on the basis of the previous findings, the calculated average height of the tree canopy within the aforementioned radius.
21. *Utility Pole*. A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
22. *Water Tower*. A water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.
23. *Wireless Facility or Wireless Facilities*. A facility consisting of a base station and accessory equipment, and the wireless support structure, if any, associated with the facility. When describing a proposed wireless facility, the term includes the structure to which the wireless facility will be attached, whether or not a wireless support structure.
24. *Wireless Support Structure*. Wireless support structure has the same meaning the term "tower" as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001 (b)(9). A freestanding structure, such as a monopole or tower, built for the sole or primary purpose described above is a wireless support structure. This definition does not include utility poles.

1311.N. *Wireless Facilities In Rights of Way*. Without limiting other applicable provisions of the Code:

1. *No Hazard*. No portion of a wireless facility may be placed in the right of way a manner that:

- a. obstructs or creates a hazard for pedestrians or vehicular access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference;
 - b. results in ground-mounted, aboveground equipment cabinets in the right of way associated with the support structure where there are no other aboveground cabinets associated with the support structure;
 - c. where there are existing ground-mounted, aboveground equipment cabinets, results in installation of cabinets that are 10% larger in height or overall volume than other equipment cabinets in the same area; or proposes locations that do not have a harmonious relationship to the neighboring properties or the site; or
 - d. involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than 8 feet above ground level, or if the pole-mounted equipment is on a structure that is adjacent to and extends over an elevated passageway, lower than 8 feet above that passageway
2. *Equipment Cabinets.* Equipment cabinets, whether pole-mounted or ground-mounted must provide an "enclosed" look free of protrusions and colored to "blend" into the existing area for all components of the facility. Each cabinet must have identifying marks to identify the owner and a unique number to identify the unit. These must be as non-intrusive as possible, while still being able to be easily read from the ground.
3. *Damaged Components.* Damaged or deteriorated components must be corrected within 48 hours of notification. If a wireless facility or portions of a wireless facility are taken out of service, the components must be removed within 5 business days of being taken out of service, and affected facilities restored to their prior condition.
4. *Placement.* Unless it is determined that another design is less intrusive or must be permitted under applicable law:
 - a. Antennas located at the top of public right of way support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
 - b. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts, particularly with respect to residential units.
 - c. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.
 - d. Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.
5. *Factors Considered.* As part of the review of an application for wireless facilities or the modification of structures in the rights of way to support wireless facilities, and establishing conditions on access, the City will consider the following:

- a. Placement of new support structures or equipment cabinets in the public rights of way should be avoided, except where the proposed facility will otherwise better satisfy the provisions of this ordinance.
 - b. Proposed wireless facilities should maintain the integrity and character of the neighborhoods and corridors in which the facilities are located.
 - c. Installations should be subject to periodic review to minimize the intrusion on the public rights of way.
 - d. The City should bear no risk or liability in connection with the wireless facilities.
 - e. The wireless facilities should not incommode the public, interfere with the primary uses of the public rights of way, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the public rights of way.
 - f. The wireless facilities should otherwise comply with the requirements of this Code.
6. *Use of Terms.* Notwithstanding Art. 2 Section 203, a wireless support structure shall be treated as a utility pole for purposes of:
- a. Section 804.B., Signs Exempt from Permit Procedures;
 - b. Section 807.C., Digital Billboard Exchange Program;
 - c. Section 1501.PP Food Vending;
 - d. Section 803.P, Prohibited Signs, except as specifically provided herein;
- 1311.O. *Compliance Proof; Revocation.*
1. *Proof of Authorizations.* No person may construct or modify a wireless facility or any portion thereof without all necessary state and federal authorizations required for such construction or modification, and without providing proof of the same to the Zoning Administrator.
 2. *Authorizations Must Be Maintained.* No person may maintain a wireless facility in place unless required state or federal authorizations remain in force.
 3. *Remedies In absence of Authorizations.* The Zoning Administrator may stop work that is performed without obtaining or providing proof of such authorizations; may revoke authorizations issued by City; and may require removal or alteration of any wireless facility that is constructed without such authorizations, fails to maintain necessary authorizations, or that does not comply with conditions on the authorizations that the City may enforce.
- 1311.P. *Pre-Approved Designs.*
1. *Manner of Pre-Approval.* Designs may be pre-approved for use on public or private property:
 - a. as part of a franchise agreement authorizing placement of wireless facilities
 - b. by the City, after review of designs on its own initiative or on petition of any person.
 2. *Petition for Approval.* A petition for pre-approval shall be submitted to the Zoning Administrator, specifying the design proposed; detailed specifications for the wireless facility (including information regarding the foundation that would be required for the facility, the dimensions of the facility; and the weight of the major elements of the facility); the areas where petitioner believes the pre-approval would be appropriate; and whether the design is useable by other entities that install wireless facilities.
 3. *Consideration of Petition.* The Zoning Administrator shall review the application considering

- a. whether the design is consistent with the design of other facilities in the areas proposed, and whether concealment elements minimize the intrusiveness of the facility and ensure that future changes in design will be subject to the City's discretionary approval;
 - b. whether it appears the proposed design can be installed safely, without undue disruption or interference with other uses of the property, or adjacent property;
 - c. whether the design can be used by others, so that, if approved as a standard, it will result in deployment of networks that are aesthetically harmonious;
 - d. the opinion of other departments and agencies whose activities may be affected by the design.
4. *Recommendation to City Council.* The Zoning Administrator shall recommend approval or denial to the City Council, which may approve, deny, or approve subject to conditions. Each approval shall identify areas within the City (by category or geographically) where deployment may be appropriate.
 5. *Amendment of Pre-Approved Designs.* Zoning Administrator may recommend removal of any pre-approved design from the pre-approved list if the design no longer appears appropriate for use, considering the same factors used in the approval; and considering actual experience in deployment of the design.

1311.Q. Use of City-Owned or Controlled Structures in the Rights of Way.

1. *Policy Statement.* The City, as a matter of policy, will negotiate agreements for use of city owned or controlled utility poles and traffic signal poles in the rights of way. While the placement of wireless telecommunications facilities on those structures is not subject to review under this section of the Code, the City finds that it is in its interests as proprietor that, the approval for use will only occur if placement is consistent with this ordinance and associated regulations, and that a proposed design is consistent with designs reviewed and approved by the City, and consistent with designs in use along the corridor where use of a City-owned or controlled utility pole or traffic signal is requested; or where it is demonstrated that placement is required by law or otherwise in the best interests of the City. In contracting for use of the structure, the City shall ensure that any use is consistent with the design of the facility to which it is to be attached, minimizes the overall impact on the structure and its surroundings, and does not in any respect interfere with current and future uses of the structure by, or as directed by, the City. The agreement shall specify the compensation to the city for use of the structures. The person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.
2. *Conflicting Applications.* If City receives conflicting applications for use of the same structure, it will decide, in its best interests, with which entities to negotiate for use, and it may from time to time establish by regulation such procedures for applying for use as it deems appropriate.
3. *Compliance With RF Standards.* No permit and no agreement for use of city owned or controlled utility poles and traffic signals poles, shall be issued or effective unless it is shown that the wireless facility will comply with Federal Communication Commission ("FCC") regulations governing radio frequency ("RF") emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease.

4. **Non-Interference.** No permit and no agreement for use of city owned or controlled utility poles and traffic signals poles, shall be issued or effective unless it is shown that the wireless facility will not interfere with City uses of the pole, including communications uses.

This ordinance shall become effective upon adoption.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading:

2nd Reading: