



**ORDINANCE 2022-12**

**AN ORDINANCE TO AMEND PART NINE, TITLE THREE OF THE CODIFIED ORDINANCES OF POWELL, OHIO TO ADOPT A NEW CHAPTER 931 ADDRESSING SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY, AND TO RELOCATE CHAPTER 1153, RELATED TO TELECOMMUNICATIONS, FROM THE CITY'S ZONING CODE TO TITLE THREE AS NEW CHAPTER 941.**

**WHEREAS**, it is necessary from time to time to amend the Codified Ordinances of Powell to protect the health, safety and welfare of the citizens of the City of Powell, and

**WHEREAS**, municipal leaders and telecommunications industry representatives collaborated on legislation in 2018, Ohio House Bill 478, concerning the regulation of certain wireless equipment within the rights-of-way of Ohio's municipalities, and

**WHEREAS**, a cross-department team has been preparing the code amendment to Chapter 931 and the accompanying design guidelines for specifications and aesthetic requirements that all small cell facilities and wireless support structures must meet prior to installation in the City's right of way, and

**WHEREAS**, the design guidelines, which may be approved and adopted administratively without any further Council action, are intended to allow sufficient flexibility to respond to and integrate future advances in small cell facilities technology as well as innovations that improve the ability for these facilities to integrate into the surrounding environment, and;

**WHEREAS**, pursuant to proposed Section 931.04, the City Manager or his/her designee is given the authority to promulgate detailed small cell design guidelines, and

**WHEREAS**, the proposed code amendments and the proposed design guidelines do not affect existing regulations of macro-towers for wireless service or any wireless facilities outside of the City's right-of-way, but will give the City maximum authority and regulation of its right of way; and

**WHEREAS**, the City's Telecommunications chapter, which is currently located in the City's Zoning Code under Chapter 1153, would be better placed under Part Nine, Title Three as it addresses utilities.

**NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, COUNTY OF DELAWARE, STATE OF OHIO AS FOLLOWS:**

**Section 1:** Chapter 931 of the Codified Ordinances of Powell, Ohio is hereby amended as set forth in Exhibit A, attached to this Ordinance, or in a manner that is substantially similar to the language set forth in Exhibit A.

Section 2: Current Chapter 1153 of the Codified Ordinances of Powell, Ohio shall be relocated to new Chapter 941 under Part Nine, Title Three – Utilities, in the same form as it currently exists under Chapter 1153, and as set forth in Exhibit A, attached to this Ordinance, or in a manner that is substantially similar to the language set forth in Exhibit A.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 4: That this Ordinance shall take effect on the earliest period allowed by law.

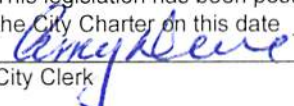
  
\_\_\_\_\_  
Daniel Swartwout  
Mayor

5-23-22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Amy Deere  
City Clerk

5-15-2022  
\_\_\_\_\_  
Date

**EFFECTIVE DATE:** June 7, 2022

This legislation has been posted in accordance with the City Charter on this date \_\_\_\_\_  
  
\_\_\_\_\_  
City Clerk



**PART NINE**  
**STREETS, UTILITIES AND PUBLIC SERVICES CODE**

**TITLE THREE UTILITIES**

**CHAPTER 931 - SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES  
WITHIN THE RIGHT-OF-WAY**

**931.01 DEFINITIONS**

(a) *General use of terms.*

(1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.

(2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.

(3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.

(4) The words "shall" and "will" are mandatory and "may" is permissive.

(5) Words not defined shall be given their common and ordinary meaning.

(b) *Defined terms.*

(1) *"Abandoned"* means any small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the City and receiving the City's approval.

(2) *"Alternative Tower Structure"* includes, but is not limited to, man-made trees, clock towers, bell steeples, light poles, power poles, and similar alternative-design mounting structures or other buildings or structures that are intended to camouflage or conceal the presence of antennas, towers, and other wireless communications facilities.

(3) *"Antenna"* means any transmitting or receiving device used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals, or other communication signals.

(4) *"Antenna Support Structure"* means any building or structure other than a tower which can be used for the location of wireless communications facilities.

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(5) *“Applicant”* means any person that applies for administrative review, conditional use review, certificate of zoning plan approval, or other permit or approval according to the requirements of this chapter.

(6) *“Application”* means the materials and process by which an applicant submits a request as authorized by the property owner and indicates a desire to be granted approval of an antenna, tower, antenna support structure, or any other wireless communications facility under the provisions of this chapter. An application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning the request, but shall not include materials submitted as part of a request for non-binding pre-application review.

(7) *“Backhaul Network”* means the infrastructure that connects a provider's wireless communications facility sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

(8) *“CFR”* means the Committee of the Federal Register, established under section 1506 of title 44 of the United States Code.

(9) *“City”* means the City of Powell, Ohio.

(10) *“Clear Zone”* means the unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

(11) *“Cellular-On-Wheels or COW”* means a temporary mobile wireless communications facility that consists of a wireless antenna tower and associated equipment on a truck, trailer, or other mobile structure designed to be part of a wireless network.

(12) *“Chief Building Official”* means the Chief Building Official of the City.

(13) *“Code”* means the Codified Ordinances and all regulations of the City of Powell, Ohio.

(14) *“Collocation”* means the use of, or ability to use, a wireless communications facility or support structure by more than one wireless communications provider or more than one wireless antenna array.

(15) *“Conditional Use”* means a use allowed in a zoning district after approval of the Board of Zoning Appeals of the City of Powell, Ohio according to the provisions of Chapter 1129 of the Codified Ordinances.

(16) *“Council”* means the City Council of the City of Powell, Ohio.

(17) *“Decorative Pole”* means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

- A. Electric lighting; or
- B. Specially designed informational or directional signage; or
- C. Temporary holiday or special event attachments.

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(18) *"Design Guidelines"* means those detailed design guidelines, specifications, requirements, and examples promulgated by the City for the design and installation of small cell facilities and wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations, or with the provisions of the Codified Ordinances.

(19) *"Eligible Facilities Request"* means the same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended.

(20) *"Emergency"* means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action, mitigation, or abatement.

(21) *"Engineer"* means any engineer currently licensed by the State of Ohio.

(22) *"Equipment Shelter, Equipment Structure, or Equipment Cabinet"* means the structure in which the electronic receiving and relay equipment or other necessary equipment for a wireless communications facility is located.

(23) *"FAA"* means the U.S. Federal Aviation Administration, and any legally appointed, designated, or elected agent or successor.

(24) *"FCC"* means the U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

(25) *"Height or Above Ground Level or AGL"* means, when referring to a tower or other structure, the distance measured from the finished grade at the base of the tower or structure to the highest point on the tower or structure, including the base pad and any antenna, but not including lightning arrest devices.

(26) *"Monopole"* means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

(27) *"Nonconforming Tower"* means any tower or antenna lawfully existing at the effective date of or amendment to this chapter which does not currently conform to the requirements of this chapter.

(28) *"Occupy or Use"* means, with respect to the right-of-way, to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

(29) *"Ohio Manual of Uniform Traffic Control Devices or OMUTCD"* means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation.

(30) *"Operator"* means a wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of the foregoing sections, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(24), and services that are fixed in nature or use unlicensed spectrum.

(31) *"Person"* means any individual, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit.

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(32) *"Public Utility or Utility"* means a facilities-based provider of wireless service to one or more end users in this state, or any company described in section 4905.03 of the Ohio Revised Code and as further defined in section 4905.02 of the Ohio Revised Code, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, water-works, and sewage disposal systems

(33) *"Right-of-Way"* means the surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bike path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the City. "Right-of-way" shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

(34) *"Small Cell Facility"* means a wireless facility that meets the following requirements:

A. Each antenna is located inside an enclosure of not 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 could fit within an enclosure of not more than six cubic feet in volume, and

B. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services; and

C. The facilities are mounted on structures fifty (50) feet or less in height including antennas; or, the facilities are mounted on structures no more than ten percent (10%) taller than other adjacent structures; or, the facilities do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater.

(35) *"Stealth"* means a wireless communications facility designed to appear as another natural or artificial object that exists in the surrounding environment or which is architecturally integrated into a building or other structure, and designed to be minimally obtrusive and to camouflage or conceal the presence of antennas or towers, at the determination of the required reviewing body.

(36) *"Substantial Change"* has the same meaning as described in 47 C.F.R. 1.6100(b)(7).

(37) *"Temporary Wireless Communications Facilities"* means a cellular-on-wheels unit; an antenna on a bucket truck, crane, crank-up tower, tower; or another wireless communications facility required to evaluate a site for a temporary placement of a wireless communications facility as permitted by this chapter or for providing communications during an emergency, special event, conference, or other situations for limited periods while the use of a permanent wireless communication facility is temporarily interrupted.

(38) *"Tolling or Toll Period"* means the pausing or delaying of the running of a required time period.

(39) *"Tower"* means any structure designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, wireless communications towers, alternative tower structures, and the like. The term includes the structure and any necessary supports.

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(40) *“Utility Pole”* means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. “Utility pole” excludes street signs and decorative poles.

(41) *“Video Service Provider”* means a person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.

(42) *“Wireline Backhaul Facility”* means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

(43) *“Wireless Communications Facilities or WCF”* includes, but shall not be limited to, towers, poles, cables, wires, lines, wave guides, antennas, microwave dishes, small cell facilities and wireless support structures, and/or any other equipment or facilities associated with the transmission or reception of communications as regulated by the FCC (or other unregulated wireless communication facility). The term shall not include:

A. Any satellite earth station antenna 6.6 feet or less in diameter or diagonal measurement located in a non-residential district.

B. Any satellite earth station antenna one meter or less in diameter or diagonal measurement that is designed to receive direct broadband satellite service, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite regardless of zoning category.

C. Any antenna that is 3.3 feet or less in diameter or diagonal measurement and is designed to receive video programming service via broadband video services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.

D. Any antenna that is designed to receive local television broadcast signals and does not use a mast higher than 15 feet above the tallest point of the roof of the tallest principal or accessory structure, excluding chimneys, cupolas, or other architectural elements.

E. Antennas used by amateur radio operators.

F. Towers, structures, antennas, or other equipment used for the purposes of operating a public safety voice or data radio network or an outdoor early warning system within the City limits. This includes directional and omnidirectional antenna equipment, as well as microwave and point-to-point equipment.

(44) *“Wireless Service”* means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

(45) *“Wireless Service Provider”* means a person who provides wireless service as defined herein.

(46) *“Wireless Support Structure”* means a pole, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

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## 931.02 SMALL-CELL FACILITIES IN MUNICIPAL RIGHTS-OF-WAY

(a) *General Requirements.* The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

(1) No person shall occupy or use the right-of-way except in accordance with law.

(2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.

(3) No person shall occupy or use the right-of-way without first obtaining any requisite consent of the City. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way permit under this Section. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the City.

(4) The foregoing provisions shall not be construed to permit the construction and operation of wireline backhaul facilities.

(b) *Pre-Application Conference.*

(1) *Purpose.* Applicants are strongly encouraged to contact the City and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations and design, and the application submittal and review process, to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the City.

(2) *Appointment Required.* An appointment is required for all pre-application conferences. Applicants must contact the designated City staff member as noted on the application form, who will provide applicants an appointment with all applicable City representatives in a timely manner.

(c) *Application Required.* In accordance with federal and state law and the Codified Ordinances, an operator may apply to the City to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/ or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City rights-of-way shall first duly file a written application with the City, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the City.

(d) *Required Application Materials.* Unless otherwise required by state or federal law, all applicants shall submit to the City materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.



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### 931.03 APPLICATION REVIEW TIMEFRAMES AND PROCESS

(a) *Permit Application Review Timeframes.*

(1) *Collocation of Small Cell Facilities on Existing Wireless Support Structures.* The City shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than ninety (90) days after the date of filing by an entity of a completed application.

(2) *New Wireless Support Structures and Associated Small Cell Facilities.* The City shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than one hundred twenty days (120) days after the date of filing by an entity of a completed application.

(3) *Wireless Support Structure and/or Small Cell Facilities Removal.* The City shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way not later than one hundred twenty days (120) days after the date of filing by an entity of a completed application.

(4) *Eligible Facilities Request.* The City shall approve Eligible Facilities Requests in accordance with Ohio Revised Code Chapter 4939, 47 C.F.R. 1.6100, and this Chapter not later than sixty (60) days after the date of filing by an entity of a submitted application.

(b) *Failure to grant or deny within prescribed timeframes.* If the City fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under Application Review Timeframes and Process Section 931.03(a) above, provided the time period is not tolled under Application Review Timeframes and Process Section 931.03(d) below, or extended with the written consent of the applicant and the City Manager or his/her designee, the request shall be deemed granted upon the requesting entity providing notice to the City that the time period for acting on the request has lapsed.

(c) *Application denials.*

(1) The City shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.

(2) If a request for consent is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(3) The applicant shall have the right to appeal a denial of an application. Any appeals provided for by this chapter and any notification to the City required by this Chapter shall be in writing and sent via certified mail to the BZA or the Director of Public Service as specified in this Chapter. Any appeal from a denial of a permit application shall follow the procedures and processes for proceedings before the BZA as outlined in Section 1133.10, et seq. of the City's Codified Ordinances.

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(4) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the City, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(d) *Tolling of required timeframes.*

(1) The time periods required in Application Review Timeframes and Process Section 931.03(a) above may be tolled only:

A. By mutual agreement between the entity requesting consent and the City; or

B. In cases where the City determines that the application is incomplete; or

C. If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in Application Review Timeframes and Process Section 931.03(a) due to the lack of resources of the City, then the City may toll the time limits as follows:

i. The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by the City once more than 15 applications are received by the City within any consecutive thirty-day period.

ii. Further, for every additional fifteen requests that the City receives above the thresholds provided above, the City may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (1)(C)(i) of this section.

iii. In no instance shall the City toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the City shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.

iv. The tolling provisions herein are set forth due to the corresponding number of applications causing legitimate overload of the City's resources to review applications.

(2) To toll the time period for incompleteness, the City shall provide written notice to the person requesting consent to collocate a small-cell facility not later than thirty (30) days after receiving the request, clearly and specifically delineating all missing documents or information. To toll the time period for incompleteness in an application to site a new wireless support structure, the City shall provide written notice of incompleteness, clearly and specifically delineating all missing documents or information, not later than thirty (30) days of receiving the request. The missing documents or

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information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0313 of the Ohio Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.

(3) For applications to construct a new wireless support structure, the time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the City's notice of incompleteness. For applications to collocate a small-cell facility, the time period for granting or denying consent restarts when the entity makes a supplemental submission in response to the City's notice of incompleteness.

(4) If a supplemental submission is inadequate, the City shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(e) *Consolidated application for multiple small cell facilities and/or wireless support structures.*

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

(A) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.

(B) The City may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and the City's fee schedule may be cumulative. However, the City, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code and Tolling of Required Timeframes Section (931.03(d)) herein. A

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request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.

(f) *Timeframe for completion of work authorized by permit.*

(1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:

A. The City and the operator agree to extend this period; or

B. A delay is caused by make-ready work for a City-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:

i. The operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and

ii. The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.

(2) If divisions (1)(A) and (B) of this section cannot be met, the permit shall be void unless the City grants an extension in writing to the operator.

(g) *Small Cell Facility and Wireless Support Structure activities not requiring consent.*

(1) City consent shall not be required for either of the following activities conducted in the right-of-way:

A. Routine maintenance of wireless facilities;

B. The replacement of wireless facilities with wireless facilities that are consistent with the City's current design requirements and guidelines and that are either:

i. Substantially similar to the existing wireless facilities; or

ii. The same size or smaller than the existing wireless facilities.

#### **931.04 DESIGN GUIDELINES**

(a) The City Manager or his/her designee shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the City shall consider in reviewing an application:

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- (1) The location of any ground-mounted small cell facilities;
  - (2) The location of a small cell facility on a wireless support structure;
  - (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;
  - (4) The design and appearance of a wireless support structure.

(b) The Design Guidelines shall provide examples of small cell facilities preferences including visual depictions.

(c) The provisions in this section shall not limit or prohibit the City Manager's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.

(d) The City Manager, or his/her designee, shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in this Chapter of the City of Powell Codified Ordinances, the language of this Chapter shall take precedence over the language of the Design Guidelines.

### **931.05 STANDARD CONDITIONS OF PERMIT APPROVAL**

(a) *Standard conditions of approval.* Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this Section. The City Manager or his/her designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.

(b) *Small Cell Facility Permit duration.* The City's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the City, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under Section 931.07(a) below or the City's fee schedule.

(c) *Compliance with all applicable laws.*

(1) Permittees shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

(2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this chapter shall bring

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any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(d) *Inspections; emergencies.* The City or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

(e) *Relocation or adjustment as requested by City.* If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost to the City, as long as such request similarly binds all users in or on such right-of-way. Such relocation or adjustment shall be completed in accordance with law.

(f) *Contact information for responsible parties.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the City Manager, or his/her designee.

(g) *Indemnification.* Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

(h) *Interference with public safety radio services.* In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 C.F.R. 22.970-973 and 47 C.F.R. 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.

(i) *Adverse physical impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.

(j) *Good condition required.* Small cell facilities and wireless support structures shall at all times be kept and maintained in good condition, order, and repair by qualified

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maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers. Notices of violation shall be served as provided in the Property Maintenance code, Chapter 1323 of the City's codified ordinances. If the time to remedy the violation of the City's codified ordinances expires without appeal or remedy to the satisfaction of the City pursuant to Chapter 1323, the City may remedy the violation and charge the costs of said remedy to the operator.

(k) *Graffiti abatement.* Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.

(l) *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

(m) *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the City.

(n) *Removal of small cell facilities if use discontinued or abandoned.*

(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/ or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in Application Review Timelines and Process Section 931.03(a)(3), which shall serve as the notice required to the City of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/ or wireless support structure shall be considered abandoned and the City may remove it at the owner's expense.

(2) Small cell facilities and wireless support structures determined by the City to be abandoned without notice from the owner may be removed by the City at the owner's expense to ensure the public health, safety, and welfare.

(3) The City reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.

### **931.06 SAFETY REQUIREMENTS**

(a) *Prevention of failures and accidents.* Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

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(b) *Compliance with fire safety and FCC regulations.* Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(c) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the City a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this Chapter. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities and/ or wireless support structures or damage to City property caused by an operator or its agent of each small cell facility and/ or wireless support structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

### **931.07 RECOVERY OF COSTS**

(a) *Application processing fee.* For processing an application for consent, the City may charge a fee for each small cell facility and wireless support structure requested that is a reasonable approximation of the City's reasonable costs of reviewing the application, not to exceed the levels prescribed under section 4939.0316 of the Ohio Revised Code and as listed on the associated application forms which shall be made available by the City Manager, or his/her designee. The City may adjust this maximum fee ten per cent every five years, rounded to the nearest five dollars.

(b) *Annual collocation fee.* For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the right-of-way, the City may charge an annual fee of two hundred dollars (\$200.00).

(c) *Tax liabilities and assessments not applicable.* Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the City to any state or local tax liabilities or assessments.

### **931.08 SEVERABILITY**

The provisions of the above sections of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.



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## **CHAPTER 941 - TELECOMMUNICATIONS**

### **1153.01 LEGISLATIVE PURPOSES.**

The purpose of this chapter is to regulate the placement, construction and modification of towers and Wireless Telecommunications Facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the Municipality. Specifically, the purposes of this chapter are:

- (a) To direct the location of towers and Wireless Telecommunications Facilities in the Municipality.
- (b) To protect residential areas and land uses from potential adverse impacts of towers and Wireless Telecommunications Facilities.
- (c) To minimize adverse visual impacts of towers and Wireless Telecommunications Facilities through careful design, siting, and landscaping techniques.
- (d) To promote and encourage shared use/co-location of towers and antenna support structures as a primary option rather than construction of additional single-use towers.
- (e) To avoid potential damage to adjacent properties caused by towers and Wireless Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed.
- (f) To the greatest extent feasible, ensure that towers and Wireless Telecommunications Facilities are compatible with surrounding land uses.
- (g) To the greatest extent feasible, ensure that proposed towers and Wireless Telecommunications Facilities are designed in harmony with natural settings and in a manner consistent with current development patterns.

(Ord. No. 97-46, 12-2-1997)

### **1153.02 APPLICABILITY.**

- (a) All towers, antenna support structures and Wireless Telecommunications Facilities, any portion of which are located within the Municipality, are subject to this chapter.
- (b) Except as provided in this chapter, any use being made of an existing tower or antenna support structure on the effective date of this chapter (herein "Nonconforming Structures") shall be allowed to continue, even if in conflict with the terms of this chapter. Any tower site that has received Municipal approval in the form of either a special exception or building permit, but has not yet been constructed or located, shall be considered a Nonconforming Structure so long as such approval is current and not expired.

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(Ord. No. 97-46, 12-2-1997)

### **1153.03 DEFINITIONS.**

For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein: When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

*Antenna support structure* means any building or other structure other than a tower which can be used for location of Wireless Telecommunications Facilities.

*Applicant* means any person that applies for a Conditional Use Permit pursuant to Section 1153.07.

*Application* means the process by which an applicant submits a request and indicates a desire to be granted a Conditional Use Permit under the provisions of this chapter. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the Municipality concerning such a request.

*Municipality* means the Municipality of Powell, a municipal corporation, in the State of Ohio, acting by and through its Council.

*Code* means the Codified Ordinances of the City.

*Co-location* means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

*Council* means the Powell Municipal Council.

*Emergency* means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

*Engineer* means any engineer licensed by the State of Ohio.

*Equipment shelter* means the structure in which the electronic receiving and relay equipment for a Wireless Telecommunications Facility is housed.

*FCC* means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

*Monopole* means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

*Open space* means land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped (may be specified on a zoning map).

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*Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for profit.

*Tower* means a self-supporting lattice, guyed or monopole structure constructed from grade which supports Wireless Telecommunications Facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC.

*Viewshed* means the area surrounding a Wireless Telecommunications Facility or Antenna Support Structure, within which the Facility or Structure is visible from street level.

*Wireless telecommunications facilities* means any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC which a person seeks to locate or has installed upon a tower or antenna support structure. However, the term Wireless Telecommunications Facilities shall not include:

- (1) Any satellite earth station antenna two meters in diameter or less which are located in an area zoned industrial or commercial;
- (2) Any satellite earth station antenna one meter or less in diameter, regardless of zoning category, subject to the requirements of Section 1153.06(a)(5).
- (3) Antennas used by amateur radio operators are excluded from this definition.

(Ord. No. 97-46, 12-2-1997)

#### **1153.04 GENERAL REQUIREMENTS.**

- (a) Wireless Telecommunications Facilities are either permitted uses or conditional uses in a variety of zoning districts contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through buffering, siting, design and construction, and reduction of the need for new towers.
- (b) The following requirements apply to all Wireless Telecommunications Facilities regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential and residential districts as set forth in Sections 1153.05 and 1153.06 herein.
  - (1) When the proposed Wireless Telecommunications Facility or antenna support structure is to include a new tower, a plot plan at a scale of not less than one inch equals 100 feet shall be submitted. This plot plan shall indicate all building uses within 200 feet of the proposed facility. Aerial photos and/or renderings may augment the plot plan.
  - (2) A diagram or map showing the viewshed of the proposed Wireless Telecommunications Facilities or antenna support structure shall be provided.
  - (3) Photosimulations of the proposed facility from effected residential properties and public rights-of-way at varying distances shall be provided.
  - (4) The location of the tower and equipment shelter and antenna support structure shall comply with all natural resource protection standards established in the Zoning Code, including those for floodplain, wetlands and steep slopes.

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- (5) Security fencing eight feet in height may be required to surround the tower, equipment shelter and any guy wires, either completely or individually as determined by the Planning and Zoning Commission. No barbed or razor wire shall be permitted. The City and co-locators shall have reasonable access. No fence shall be required on top of a building or other structure if access to the roof or top of the structure or building is secure.
  - (6) Buffer plantings shall be located around the perimeter of the security fence as deemed appropriate by the Planning and Zoning Commission. Options are an evergreen screen to be planted that consists of either a hedge, planted three feet on center maximum, or a row of evergreen trees planted five feet on center maximum, or other screens determined to be appropriate by the Planning and Zoning Commission.
  - (7) Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.
  - (8) Compliance with co-location requirements.
  - (9) Any application to locate a Wireless Telecommunications Facility on a building or structure that is listed on an historic register, or is in the HD-Historic District Overlay, shall be subject to review by the City's Historic District Commission.
  - (10) The tower shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA). Except for tower or monopole structures, all appurtenances shall be aesthetically and architecturally compatible with the surrounding environment.
  - (11) No advertising is permitted anywhere on the Wireless Telecommunications Facility, with the exception of identification signage.
  - (12) No tower under 150 feet shall be artificially lighted except to assure safety or as required by the FAA.
  - (13) "No Trespassing" signs shall be posted around the Wireless Telecommunications Facility with a telephone number of who to contact in the event of an emergency.
  - (14) Underground equipment shelters are encouraged, and may be requested by the Planning and Zoning Commission.
  - (15) Towers must be designed and certified by an Engineer to be structurally sound and, at a minimum, in conformance with the Ohio Basic Building Code.
- (c) Any Wireless Telecommunications Facilities which are not attached to a tower shall be a permitted ancillary use to any commercial, industrial, or professional structure, regardless of the zoning restrictions applicable to the zoning district where the structure is located and a zoning certificate shall be required and issued provided that the person making such ancillary use files a written certification with the City establishing the following:
- (1) The total height of the antenna support structure and Wireless Telecommunications Facilities do not exceed the structural height limitations in the applicable zoning district by more than 20 feet;
  - (2) The antenna support structure and Wireless Telecommunications Facilities comply with the Ohio Basic Building Code;
  - (3) Any Wireless Telecommunications Facilities and their appurtenances, located on the roof of a building, are set back one foot from the edge of the roof, not including the penthouse, for each one foot in height of the Wireless Telecommunications Facilities. However, this setback

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requirement shall not apply to antennas less than two inches in thickness, which are mounted to the sides of antenna support structures, but which do not protrude more than six inches from the side of such an antenna support structure. This requirement is subject to change by the Planning and Zoning Commission upon review of the photosimulation provided in compliance with Section 1153.04(b)(3).

- (4) That the Wireless Telecommunications Facilities will utilize camouflaging techniques or will be side-mounted to an antenna support structure in order that the Wireless Telecommunications Facilities harmonize with the character and environment of the area in which they are located.

(Ord. No. 97-46, 12-2-1997)

### **1153.05 NONRESIDENTIAL DISTRICTS.**

- (a) Wireless Telecommunications Facilities shall be a permitted use within the PI-Planned Industrial District subject to the following conditions:

- (1) *Sole use on a lot:* A Wireless Telecommunications Facility is permitted as a sole use on a lot subject to the following:

- A. Minimum street frontage. 200 feet
- B. Minimum yard requirements.

Tower: The minimum distance to any single-family or two family residential use or zoning district lot line shall be 200 feet.

Equipment Shelter:

Side Yard: 50 feet

Rear Yard: 30 feet

Front yard: 60 feet

- C. Maximum height.

Tower: 200 feet (includes antenna)

Equipment Shelter: 35 feet and no more than 2 stories

- D. Maximum size of Equipment Shelter.

400 square feet for a single shelter, or, if there is more than one, 800 total square feet.

- (2) *Combined with another use:* A Wireless Telecommunications Facility is permitted on a property with an existing use subject to the following conditions:

- A. The existing or future use on the property may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the Wireless Telecommunications Facility will not be considered an addition to the structure or value of a nonconforming use.
- B. The Wireless Telecommunications Facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).

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- C. Minimum lot area.  
The minimum lot area shall be the area needed to accommodate the Tower (and guy wires, if used), the Equipment Shelter, security fencing and buffer planting.
  - D. Minimum yard requirements.  
Tower: The minimum distance to any single-family or two-family residential use or district lot line shall be 200 feet.  
Equipment Shelter: Shall comply with the minimum setback requirements for the primary lot.
  - E. Access. The service access to the Equipment Shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
  - F. Maximum height.  
Tower: 200 feet (includes antenna)  
Equipment Shelter: 35 feet or no more than two stories.
  - G. Maximum size of Equipment Shelter.  
400 square feet for a single shelter, or, if there is more than one, 800 square feet.
- (3) *Combined with an existing structure:* Where possible, an antenna for a Wireless Telecommunications Facility shall be attached to an existing structure or building subject to the following conditions:
- A. Maximum height.  
20 feet or 20 percent of the building height above the existing building or structure, whichever is greater.
  - B. If the applicant proposes to locate the telecommunications equipment in a separate equipment shelter (not located on, or attached to, the building), the equipment shelter shall comply with the following:
    1. The minimum setback requirements for the subject zoning district.
    2. A buffer yard may be planted in accordance with Section 1153.04(b)(5).
    3. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
    4. The maximum size of the equipment shelter shall not exceed 400 square feet, or, if there is more than one, 800 total square feet.

(Ord. No. 97-46, 12-2-1997)

#### **1153.06 RESIDENTIAL DISTRICTS.**

- (a) Wireless Telecommunications Facilities that include towers are not permitted in single-family or two-family residential districts with the exception of placement on any municipal property located in either of these two districts. However, antennas attached to existing buildings or structures are permitted. In applying for a permit in any residential district, the applicant must present sufficient evidence as to why it is not technically feasible to locate in a more appropriate nonresidential
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zone. Once those efforts have been exhausted, a Wireless Telecommunications Facility may be located in a residential district subject to the following conditions:

- (1) **General:** The Wireless Telecommunications Facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to subsections (2), (3), (4) and (5) below.
- (2) **Combined with a nonresidential use:** An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district; including, but not limited to, a church, a municipal or governmental building or facility, agricultural building, and a building or structure owned by a utility. The following conditions shall be met:
  - A. Maximum height: 20 feet above the existing building or structure.
  - B. If the applicant proposes to locate the telecommunications equipment in a separate equipment shelter, the equipment shelter shall comply with the following:
    1. The equipment shelter shall comply with the minimum setback requirements for the subject zoning district.
    2. The maximum size of the equipment shelter shall not exceed 400 square feet, or, if there is more than one, 800 total square feet.
    3. A buffer yard shall be planted in accordance with Section 1153.06(b)(5).
    4. Vehicular access to the equipment shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
- (3) **Located on a nonresidential use property:** A tower to support an antenna may be constructed on a property with a nonresidential use that is a permitted use within the district, including but not limited to a church, hospital, school, municipal or government building, facility or structure, agricultural use and a utility use, subject to the following conditions:
  - A. The tower shall be set back from any property line abutting a single-family or two-family residential lot by 200 feet.
  - B. Maximum height.  
Tower: 200 feet (includes antenna)  
Equipment Shelter: 35 feet or no more than two stories.
  - C. The maximum size of the equipment shelter shall not exceed 400 square feet, or, if there is more than one, 800 total square feet.
  - D. Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
  - E. In order to locate a telecommunications facility on a property that is vacant or with an agricultural use the tract shall be at least 2.5 acres, or as otherwise determined by the Planning and Zoning Commission.
- (4) **Located in open space:** A Wireless Telecommunications Facility is permitted on land that has been established as permanent open space, or a park subject to the following conditions:
  - A. The open space shall be owned by the municipality, county or state government, a homeowners association, charitable organization, or a private, non-profit conservation organization.

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- B. Maximum height.
    - Tower: 200 feet (includes antenna)
    - Equipment Shelter: 35 feet or no more than two stories
  - C. The maximum size of the equipment shelter shall not exceed 400 square feet, or, if there is more than one, 800 total square feet.
  - D. The tower shall be set back from any single-family or two-family property line 200 feet.
- (5) *Requirements for dish-type signal receiving antennas:* A Zoning Certificate is required to be issued for the installation of dish-type signal receiving antennas within a residential district pursuant to the following requirements:
- A. Dish-type antennas one meter or less in diameter shall be located at the rear 50 percent of the residence and obscured from view from the public right-of-way. If attached to a structure, the dish shall match the color of the structure at which it is attached. Dish-type antennas shall be secured so that they can withstand wind or other weather-related factors.

(Ord. No. 97-46, 12-2-1997)

#### **1153.07 CRITERIA FOR A CONDITIONAL USE.**

- (a) *Wireless Telecommunications Facility.* A Wireless Telecommunications Facility which includes a tower may be permitted as a conditional use in a PC-Planned Commercial District or in an open space as stated in Section 1153.06. In order to be considered for review, the applicant must prove that a newly-constructed tower is necessary because co-location on an existing tower is not feasible in accordance with Section 1153.08. The following steps must also be taken for the application to be considered for review in this category:
- (1) The applicant shall demonstrate that the Telecommunications Tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a tower and this proposed site is technically necessary.
  - (2) Where the Wireless Telecommunications Facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property supports the application and that the vehicular access is provided to the facility.
  - (3) The applicant shall present a site/landscaping plan showing the specific placement of the Wireless Telecommunications Facilities on the site; showing the location of existing structures, trees, and other significant site features; and indicating type and locations of plant materials used to screen the facilities and the proposed color of the facilities.
  - (4) Applicant shall present a signed statement indicating:
    - A. The applicant agrees to allow for the potential co-location of additional Wireless Telecommunications Facilities by other providers on the applicant's structure or within the same site location; and
    - B. The applicant agrees to remove the facility within 180 days after the site's use is discontinued.



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- (b) A Conditional Use Permit may be approved by the Board of Zoning Appeals with a subsequent Zoning Permit issued by the Zoning Administrator for construction of new towers in non-industrial districts. Co-location of antennas on a single tower, antennas attached to existing structures/buildings, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the Conditional Use permitting process.
  - (c) Any decision to deny a request to place, construct or modify a Wireless Telecommunications Facility and/or Tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Board of Zoning Appeals.

(Ord. No. 97-46, 12-2-1997)

### **1153.08 CO-LOCATION REQUIREMENTS.**

(a) *Public Property First.*

- (1) In order to encourage the location of Wireless Telecommunications Facilities on publicly-owned property, the City shall undertake an identification of publicly owned properties that the City determines are suitable for such use. The City shall regularly update such identification and make the results of such identification available to the public.
  - (2) Persons locating Wireless Telecommunications Facilities upon such identified publicly-owned properties shall be exempted from the requirements herein regarding presentation of proof that co-location of facilities on towers or structures owned by other persons or in other locations is not available. However, persons locating Wireless Telecommunications Facilities on publicly-owned properties shall continue to be subject to the requirements contained in subsection (b) below.
  - (3) In addition, persons locating Wireless Telecommunications Facilities on publicly owned properties identified by the City to be suitable for such purposes may request that the requirements of Section 1153.04(b)(1) through (b)(3) and Section 1153.07(a)(2) through (a)(4) be waived by the Zoning Administrator.
- (b) No new tower shall be constructed in the City unless such tower is capable of accommodating at least one additional Wireless Telecommunications Facility owned by other persons.
  - (c) A Conditional Use Permit shall be issued only if there is not technically suitable space reasonably available on an existing tower or structure within the geographic area to be served. With the permit application, the applicant shall list the location of every tower, building, or structure within such area that could support the proposed antenna. The applicant must demonstrate that a technically suitable location is not reasonably available on an existing tower, building or structure. If another communication tower is technically suitable, applicant must show that it has offered to allow the owner to co-locate an antenna on another tower within the city owned by applicant on reciprocal terms and the offer was not accepted or the other tower is presumed to be reasonably available.

(Ord. No. 97-46, 12-2-1997)

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### **1153.09 ABANDONMENT OF TOWER.**

- (a) All providers utilizing towers shall present a report to the Zoning Administrator notifying them of any tower facility located in the municipality whose use will be discontinued and the date this use will cease. If at any time the use of the facility is discontinued for 180 days, a designated local official may declare the facility abandoned. (This excludes any dormancy period between construction and the initial use of the facility.) The facility's owner/operator will receive written notice from the Zoning Administrator and be instructed to either reactivate the facility's use within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the municipality will remove or will contract to have removed the facility and assess the owner/operator the costs.
- (b) The City must provide the tower owner three months notice and an opportunity to be heard before the Commission before initiating such action. After such notice has been provided, the City shall have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the then fair market value, or in the alternative, order the demolition of the tower and all appurtenances.
- (c) The City shall provide the tower owner with the right to a public hearing before the Planning and Zoning Commission, which public hearing shall follow the three month notice required in subsection (b) hereof. All interested parties shall be allowed an opportunity to be heard at the public hearing.
- (d) After a public hearing is held pursuant to subsection (c) hereof, the Commission may order the acquisition or demolition of the tower. The City may require licensee to pay for all expenses necessary to acquire or demolish the tower.

(Ord. No. 97-46, 12-2-1997)

### **1153.10 VARIANCES AND SPECIAL EXCEPTIONS.**

Any request to deviate from any of the requirements of this chapter shall require variance approval in conformance with the procedures set forth in Chapter 1127 of the Codified Ordinances of Powell.

(Ord. No. 97-46, 12-2-1997)

### **1153.11 MISCELLANEOUS.**

- (a) *Non-Waiver.* Nothing in this chapter shall preclude the Municipality from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this chapter.
- (b) *Severability.* If any provision of this chapter or the application of any provision of this chapter to any person is, to any extent, held invalid or unenforceable by a tribunal of competent jurisdiction, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected by such holding. In case of such an event, this chapter and all of its remaining provisions shall, in all other respects, continue to be effective. In the event the law invalidating such a chapter provision is subsequently repealed, rescinded, amended or is otherwise changed so that the provision which had previously been held invalid or unenforceable, no longer conflicts with the laws, rules or regulations then in effect, the previously invalid or unenforceable provision shall return to full force and effect.

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(Ord. No. 97-46, 12-2-1997)

**1153.12 PENALTY.**

Penalties and fines set forth in Section 1135.20 of the Codified Ordinances apply to this chapter.

(Ord. No. 97-46, 12-2-1997)

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**1153.13 EFFECTIVE DATE.**

This chapter shall be in full force and effect from and after the date of its passage and approval.  
(Ord. No. 97-46, 12-2-1997) (Ord. No. 97-46, 12-2-1997)