

Section 12.03.080 Communication Towers and Facilities

A. Purpose.

1. To establish clear guidelines and standards for the siting, location, compatibility, structural integrity, and design of communication facilities (wireless facility) that promote the availability of adequate public services while minimizing negative impacts of facilities on surrounding land uses and ensuring compatibility with adjacent land uses.
2. To employ the "General Authority" preserved to the County under 47 U.S.C. § 332(c)(7)(A) to the greatest extent the United States Congress intended while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C. § 332(c)(7)(B).

To employ the "General Authority" preserved to the County under Cal. Const. art. XI § 7 to the greatest extent the California Legislature intended to preserve those powers in Cal. Pub. Util. Code §§ 7901 - 7901.1.
3. To implement County regulations related to the provision of wireless telecommunications services, and the siting of their facilities.
4. To assure compliance with the Federal Communications Commission's (FCC) legislative rules for Communication Facilities including those for Radio Frequency human exposure limits in 47 C.F.R. Part 1, Subpart I standards and those addressing State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities, in 47 C.F.R. Part 1, Subpart U limitations associated with the regulation of the placement of towers that comply with those standards.
5. To establish clear guidelines, standards, and timeframes for the exercise of County authority to regulate wireless facilities that comply with FCC rules regarding reasonable timeframes for issuing decisions on communication facility permits.
6. Permit and manage access to the public rights of way of the County.
7. Ensure that all telecommunications carriers providing facilities or services within the County comply with the Nevada County Code.
8. Encourage the colocation of wireless facilities, thus helping to minimize adverse impacts on the community;
9. Recognize that technology and laws regarding these facilities have changed, so the County's regulations need to change accordingly;
10. Promote the health, safety, and general welfare of the people of Nevada County.

11. Conserve and enhance the unique natural beauty, irreplaceable natural resources, historical, natural, and man-made character and appearance of Wolf Creek, Deer Creek, Garden Bar, Yuba River, Truckee River and the Bear River areas and Nevada County.
12. Protect the rural, scenic and visual character of the County.

This Section is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide reasonable and necessary wireless communications services; (2) prohibit or effectively prohibit any entity's ability to provide reasonable and necessary interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities solely on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply in every instance and regard with all FCC's regulations concerning such emissions; (5) prohibit any eligible facility that the County may not deny under federal or state law; or (6) otherwise authorize the County to violate any applicable federal or state law.

B. Definitions.

1. Accessory Equipment or Antenna equipment: Equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. This includes but is not limited to, equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna. For purposes of an eligible facilities request as defined at 47 C.F.R. §1.6100(b)(3) only, the term includes "transmission equipment" as defined in 47 CFR. § 1.6100(b)(8), as may be amended or superseded.
2. Accessory Facility or Accessory Structure: A facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment, storage sheds or cabinets.
3. ACIP: The Federal Advisory Council on Historic Preservation.
4. Adequate Coverage: As determined by the County, adequate coverage means there is not a significant gap in coverage and sufficient network capacity exists to reasonably fulfill customer demand. "Significant gap" and "sufficient capacity" will be assessed on a case by case basis.

Any claimed service coverage gap must be truly significant before a conclusion there is not adequate coverage. Context-specific factors will be used to assess the significance of alleged coverage gaps, including the nature and character of the area, the number of potential users in that area who may be affected by the alleged

lack of service, whether facilities are needed to improve weak signals or to fill a complete void in coverage, whether gaps pose public safety risks, and the effects of gaps on roads, highways, railways, and commercial districts. Other factors include whether the alleged gap covers well-traveled roads on which customers lack roaming capabilities and drive tests. Inadequate or unreliable in-building service can be sufficient to show the existence of a significant gap in coverage, as can a gap in a provider's in-home coverage that consists of more than a few isolated pockets of inadequate in-home coverage. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

For claimed capacity shortfalls in an area that has coverage, the applicant must demonstrate through independently-verifiable data and analysis that users are consistently experiencing dropped voice calls (in contrast to dropped sessions involving non-voice communications) at an unacceptable level during peak periods, or user devices are consistently denied access to the network due to lack of overall capacity at peak periods.

If the applicant relies on signal strength data (whether network recorded or through drive tests) to demonstrate a lack of coverage or insufficient capacity the applicant must disclose all underlying data, its thresholds for acceptable quality in such fashion that all claims and conclusions are independently verifiable.

The County strongly encourages all applicants to use methods consistent with the FCC rules governing provider reports and mapping data in 47 C.F.R. Part 1, Subpart V (§§ 1.7000 – 1.7010).

5. Antenna: An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. This definition does not apply to antennas designed for amateur radio use or satellite dishes for residential or household purposes.
6. Antenna facility: An antenna and associated antenna equipment.
7. Applicant: Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a wireless telecommunication facility permit, site plan approval, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more wireless telecommunication facilities.
8. Application: Refers to all necessary and required documentation and evidence that an applicant must submit to receive a wireless telecommunications facility permit, building permit, or other County approval for personal wireless service facilities from the County.
9. Balloon Test: The raising of a balloon (or placement of a "crank up" tower, crane

or temporary structure) equal to the height of a proposed personal wireless services facility tower for a period of 4 hours on a pre-determined date and time prior to approval of a wireless facility permit application to assess the visual impact of a proposed tower.

10. Base Station: For purposes of eligible facilities requests, as defined in 47 C.F.R. §1.6100(b)(1) a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.
11. Batched Application: More than one application for a wireless facility submitted at the same time.
12. BOS: The Board of Supervisors of Nevada County.
13. CAL Fire: California Department of Forestry and Fire Protection.
14. Cell on Wheels (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 typically vehicle-mounted and contains a telescoping boom as the antenna support structure.
15. CEQ: Council on Environmental Quality as established under NEPA.
16. CEQA: The California Environmental Quality Act.
17. CFR: Code of Federal Regulations.
18. Code: Nevada County Code.
19. Colocation: Depending on context:
 - (1) Placement or installation of wireless facilities on or immediately adjacent to a wireless telecommunications facility- as defined by Cal. Gov't Code § 65850.6;
 - (2) Mounting or installing an antenna facility on a pre-existing structure or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, consistent with 47 C.F.R. §1.6002(g); or
 - (3) For Eligible Facilities Requests, mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes as provided in 47 C.F.R. §1.6100(b)(2).
20. Communication Facility: A facility that transmits and/or receives electromagnetic signals by way of towers, antennas and microwave dishes, and which includes equipment, buildings or structures, parking areas or other accessory development. It may include facilities staffed with employees in addition to occasional

maintenance and installation personnel, minor antennas, vehicle or outdoor storage yards, offices or broadcast studios. A Communication Facility can include a base station and a communication tower.

21. Communication Tower, Tower: A mast, pole, monopole, slim stick, guyed tower, lattice tower, freestanding tower, or other structure designed to support or employed to support antennas and other equipment, including but not limited to dishes, transceivers and arrays used to provide personal wireless services and wireless communications services. A ground- or building-mounted mast greater than ten feet tall and six inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a communications tower.
22. Complete Application, Completed Application: An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Section and the Planning Department or the County's expert or consultant determines that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Planning Department staff and all related reviewing County agencies. Every effort will be made to meet FCC and California shot clock requirements for completeness reviews provided that deemed complete status will not prevent the Reviewing Authority from denying an application on the merits due to lack of sufficient evidence to carry the applicant's ultimate burden of proof.
23. Complex: The entire site or facility, including all structures and equipment, located at the site.
24. County: The County of Nevada, California.
25. County Code: The Nevada County, California Code.
26. CPUC: California Public Utilities Commission.
27. DBM (dBm): Decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.
28. Distributed Antenna System, DAS: A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographical area.
29. Effective Prohibition: A finding by the County that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the County deems appropriate to afford same, an applicant has established that applicant or an identified wireless carrier

contracting with applicant does not have adequate coverage as defined in this Section, but suffers from a significant gap in its personal wireless services within the County and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the County. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon the preponderance of the evidence.

For discretionary permits the County reserves the right to deny an application based on aesthetic or other locational considerations such as unacceptable impact on the characteristics of the impacted neighborhood or any other “safe harbor” allowed by 47 U.S.C. §§253(b)-(c) and/or 332(c)(7)(B)(i)(II) even if the applicant has proven that there is a significant gap or lack of adequate capacity and the proposed location is the least intrusive alternative.

30. Eligible Facilities Request: A request for modification (co-location, removal or replacement of transmission equipment) as defined in 47 CFR § 1.6100(b)(3) of an existing tower or base station wherein automatic approval of modifications that does not substantially change the physical dimensions of such tower or base station are mandated by 47 U.S.C. § 6409(b)(2), involving:
 - a. Collocation of new transmission equipment;
 - b. Removal of transmission equipment; or
 - c. Replacement of transmission equipment.
31. FAA: The Federal Aviation Administration, or its duly designated and authorized successor agency.
32. Facility: A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
33. FCC: The Federal Communications Commission.
34. FCC Shot Clock: the presumptively reasonable time frame within which the County must act on a wireless application, as defined by the FCC shown below subject to amendment from the FCC. The shot clock begins when the applicant takes the first procedural step that the County requires.
 - a. Aggregate of 60 days:
 - 1) Standby emergency generators at previously permitted macro cell tower sites.
 - 2) Collocation of small wireless facilities at existing small wireless facility sites.

3) Eligible Facilities Requests.

b. Aggregate of 90 days:

1) New small wireless facilities.

2) Collocation applications for additions to existing communications facilities not defined as an eligible facilities request.

c. Aggregate of 150 days:

1) All other applications, such as development of a new communication tower or facility.

35. General Population/Uncontrolled Exposure Limits: The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).
36. Height: When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.
37. Historic Structure: Any structure that is either listed on the National Register of Historic Places or is eligible for inclusion in the National Register of Historic Places under 36 CFR §63.1 or is listed in the California Register of Historical Resources pursuant to Public Resources Code Section 5024.1.
38. Illegally Excessive RF Radiation or Illegally Excessive Radiation: RF radiation exposures (whether from an individual source or multiple sources) at levels that exceed the limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).
39. In-Kind Replacement: The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.
40. Macrocell: A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 300 feet in height.
41. NAHC: Native American Heritage Commission.
42. Maintenance or Routine Maintenance: Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates reliably and in a

safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

43. NCRCD: Nevada County Resource Conservation District.
44. Necessary or Necessity or Need: What is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. "Necessary" or "need" does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant's specific chosen design standards. Any situation involving a workable choice between or among alternatives or options is not a need or a necessity.
45. NEPA: The National Environmental Policy Act, 42 U.S.C. §4321 et seq.
46. NHPA: The National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800 et seq.
47. Node, DAS Node: A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.
48. Notice Address: An address, which is required to be provided by an applicant at the time it submits an application for a Wireless Telecommunications Facility Permit, at which the County can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Section, as well as any notice requirements of any other local, state and/ or federal law.
49. Notice of Effective Prohibition Conditions: A written notice which is required to be provided to the County at the time of the filing of any application for a wireless facility permit, by all applicants seeking any approval, of any type, for the siting, installation and/or construction of a wireless facility, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the County, would constitute an "effective prohibition" within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II).
50. Notice of Incompleteness, Notice of Incomplete Application: A written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a personal wireless services facility, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting forth the reason or reasons why the application is incomplete and/or defective.

51. NSAQMD: Northern Sierra Air Quality Management District.
52. Occupational/Controlled Exposure Limits: The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).
53. OHP: California Office of Historic Preservation.
54. Ordinance: Wireless Telecommunications Facility Ordinance of Nevada County.
55. Permit: Wireless Telecommunications Facility permit issued by Nevada County.
56. Permittee: "Permittee" means the person(s) or entity(ies) to which a wireless facility permit is issued.
57. Personal Wireless Service/Personal Wireless Services: Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.
58. Personal Wireless Service Facility, Personal Wireless Services Facility Or PWSF: A facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(C)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.
59. Probative Evidence: Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the County, as the finder-of-fact in determining whether to grant or deny applications for Wireless Telecommunication Facilities Permits under this provision of the County Code.
60. "Public Right of Way" or "Public ROW": the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the County.
61. Related Third Parties: Any entity contracting with applicant for the design, construction, maintenance, use or operation of the proposed wireless facility,

including such entity's officers, contractors, subcontractors, and agents or any subsidiaries, affiliates, successors in interest or legal assigns.

62. Repairs: The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusion of the facility or complex as originally permitted.
63. Residential Dwelling: Any dwelling unit that includes toilet or outhouse facilities, and facilities for food preparation and sleeping.
64. Residential Property: Any property that contains a residential dwelling.
65. RF: Radiofrequency.
66. RF Radiation: Radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both non-ionizing radiation and ionizing radiation.
67. Reviewing Authority: The body or official charged with taking final action on a permit. This can include the Planning Director, Planning Commission or the Board of Supervisors.
68. School: A public school, private school, or public preschool program as defined in Cal Health & Saf Code § 42301.9(a), or any other educational facility that serves children from prekindergarten to grade 12.
69. Section 106 Review: A review under Section 106 of the National Historic Preservation Act.
70. Setback: For purposes of a Wireless Telecommunications Facility Permit application, a setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a Wireless Telecommunications Facility Permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord. Setbacks from residential dwellings and school buildings shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the closest edge or corner of the residential dwelling or school

building and the closest permitted structure of the wireless service facility.

71. Shot Clock: The applicable period which is presumed to be a reasonable period within which the County is generally required to issue a final decision upon an application seeking wireless facility permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.
72. SHPO: California State Historic Preservation Officer.
73. Site Developer or Site Developers: Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.
74. Small Cell: A fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.
75. Small Wireless Facility (SWF): The same as defined in 47 CFR §1.6002(l), as may be amended or superseded, which defines the term as follows:
 - a. The facilities—
 - 1) Are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR §1.1320(d), or
 - 2) Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - 3) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - b. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 1.1320(d), is no more than three cubic feet in volume;
 - c. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 - d. The facilities do not require antenna structure registration under 47 CFR, Chapter 1;
 - e. The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x);

and
 - f. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR. § 1.1307(b).

Strand Mounted Antenna which meet these criteria are included in this definition of Small Wireless Facility.

76. State: The State of California.
77. Stealth or Stealth Technology (also called "Concealment Element"): Attributes not necessary to operation of the facility that is intended to make the facility look like something other than a wireless tower or base station. Stealth or concealment is distinguished from other aesthetic requirements intended to minimize the visual impact of a facility.
78. Strand Mounted Antenna or Strand Mounted Small Cells: Small wireless antenna(s) and equipment attached directly to the wire, that is, the metal strand, hanging between two utility poles. These are similar in size to cable operator's equipment that is placed on aerial cables.
79. Support Structure: A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service.
80. Thermal Runaway: Self-heating of an electrochemical system in an uncontrollable fashion.
81. Tolling or Tolloed: The pausing of the running of the time period permitted under the applicable shot clock for the respective type of wireless facility as per 47 CFR § 1.6003(a) per mutual agreement of the County and applicant.
82. Undertaking: Any application for a wireless facility permit seeking County approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.
83. Wireless Carriers or Carrier: Companies that provide personal wireless services to end-use consumers.
84. Wireless Telecommunications Facility or Wireless Facility: Any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.
85. Wireless Telecommunications Facility Permit or Wireless Facility Permit: The official document or permit granted by the County pursuant to which, along with any conditions an applicant is allowed to construct and operate a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of,

any such facility or complex, or to be used to provide personal wireless services in compliance with this Section.

C. Permitting Requirements.

1. Projects meeting the following criteria require a Use Permit approved by the Planning Commission, pursuant to Section 12.05.060, governing Use Permits of this Code.
 - a. All new communication facilities, including new Small Wireless Facilities.
 - b. All collocations that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - c. All equipment upgrades that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - d. All structural modifications that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - e. All base station expansions that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - f. All microwave dish antenna installations that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - g. All antenna modifications, or tower height increases that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - h. All tower height increases that do not comply with Eligible Facility Request requirements defined in this Section and 47 CFR § 1.6100(b)(3).
 - i. All other projects not covered by subsections C2, C3, C4, and C5
2. For any work in the public right-of-way, the applicant shall obtain an encroachment permit. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the County shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.
3. Eligible Facilities Request meeting the criteria established by 47 CFR § 1.6100(b)(3) shall be subject to an Administrative Development Permit, pursuant to Section 12.05.051, governing Administrative Development Permits of this Code, except that the deadline for decision shall be 60 days from the date a complete application is received, as allowed by 47 C.F.R. §1.6100(c)(2). The Design Review required by Section 12.05.051(B)(1) shall include independent verification that the submitted

plans demonstrate compliance with all generally-applicable health and safety codes, including but not limited to the Building Code, Electric Code and Fire Code.

4. The following are exempt from the permitting requirements of this Chapter, but may be subject to other provisions of this Code:
 - a. Radio, or television antennae, or communication antennae for non-commercial entertainment and hobby use, accessory to a residence, if located on property within a residential or rural zoning district within the exclusive use or control of the antenna user, and which comply with the maximum height requirements of the zoning district.
 - b. A ground or building-mounted, receive-only, citizens band or two-way radio antenna, including any mast that is operated on a non-commercial basis if located on property within a residential or rural zoning district.
5. A ground, building, or tower mounted antenna, operated on a non-commercial basis by a federally licensed amateur radio operator as part of the Amateur or Business Radio Service if located on property within a residential or rural zoning district. Emergency Deployment: In the event of a declared federal, state, or local emergency, the Planning Director may approve the installation and operation of a temporary wireless communications facility (e.g., a cell on wheels or "COW"), which is subject to such reasonable conditions that the Planning Director deems necessary.

D. Application Requirements.

1. Each application for new wireless telecommunications facilities permit, except Eligible Facilities Requests shall include the following information and materials, in addition to the requirements for all of the County applications. The absence of any item listed below shall render the application incomplete. Applications for permit approval shall include the following:
 - a. Application Form. The applicant shall submit a complete, duly executed Use Permit application form. The applicant shall state the type of wireless telecommunication facility being proposed (e.g. small cell, small wireless facility), and which FCC Shot Clock it asserts will apply to the proposed project and the basis for that assertion. The applicant shall state whether in the event of a permit denial applicant intends to claim Effective Prohibition and attach a written Notice Of Effective Prohibition explaining how a significant gap in coverage exists and why the proposed location is the least intrusive alternative to remedy said gap.
 - b. A list of the full names and contact information for all applicants, co-applicants, facility owner(s), facility operator(s), site developer(s), and wireless carrier(s), property owner(s) and other related third parties and their agent(s), if any, on whose behalf the application is being submitted.
 - c. Proof of Authorization of Site Occupancy. If the applicant is not the owner

of the real property where it seeks to install and operate its facility(ies) and is leasing all or a portion of the real property, the application shall provide a written copy of its lease with the owner of such property or other proof that applicant is authorized to occupy the site.

- d. Proof of Authorization of Structure Occupancy. The applicant must submit a written copy of proof that the applicant is authorized to install its facility(ies) on the support structure such as a utility pole, streetlight, or other structure.
- e. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
- f. Proof of Need for Facility: Coverage of significant gaps and capacity shortfalls. The applicant must prove the existence of a significant coverage gap/capacity shortfall and prove that the proposed facility is the least intrusive means to cover the gap or shortfall. The applicant must provide evidence to enable the County to reasonably and independently determine whether or not such gaps/shortfalls exist, the geographic location of any gaps, and the geographic boundaries of such gaps/shortfall. The applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which applicant claims need for facility for each frequency at which the carrier provides personal wireless and broadband services. The applicant shall submit the following materials:
 - i. Recorded data from a drive test: The applicant conducted or caused to be conducted within the specific geographical area where the alleged coverage gap exists. This data shall be submitted in a simple table format that shall include:
 - 1) Date and time of test or tests,
 - 2) the location, in longitude and latitude of each point at which signal strength was recorded and,
 - 3) each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
 - ii. Drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services.
 - iii. Denial of service and/or dropped calls records evidencing the number and percentage of calls that the carrier's customers were unable to initiate, maintain, and conclude the use of the carrier's personal wireless service without actual loss of service, or

interruption of service.

- iv. If the applicant relies on signal strength data (whether network recorded or through drive tests) to demonstrate a lack of coverage or insufficient capacity the applicant must disclose all underlying data, its thresholds for acceptable quality in such fashion that all claims and conclusions are independently verifiable.

The County strongly encourages all applicants to use methods consistent with the FCC rules governing provider reports and mapping data in 47 C.F.R. Part 1, Subpart V (§§ 1.7000 – 1.7010).

- g. Provide a written description identifying the geographic service area for the proposed facility along with a vicinity map of the geographic service area for the proposed facility, the service area of all existing sites in the local service network and showing anticipated future installations and modifications for the following two years.-Each coverage map presented must be signed by a licensed engineer, attesting that they are familiar with the coverage model used, that it is an appropriate coverage model for the purpose, and that the input data used to create the coverage maps was appropriate.
- h. Submit a list of existing facilities within the desired service range, a detailed explanation regarding the availability of co-location opportunities for every facility on the list, and evidence of negotiation for collocation on existing facilities where such opportunities exist including but not limited to, statements of applicant's agents regarding written and verbal communications with owners and operators of existing facilities regarding such opportunities and statements of owners and operators of existing facilities regarding the availability or lack of such opportunities.
- i. If the proposed facility is part of a system requiring multiple facilities, provide a map showing the location of all proposed towers, a detailed site plan showing the multiple facilities, and all the materials and information listed in subparagraphs 10 - 14 of this Subsection of the Drawn-to-Scale Depictions, Site Plans for each, Visual Impact Analysis, Fire Safety Plan, etc. for each facility.
- j. Drawn-to-Scale Depiction of Proposed Facility(ies) and Equipment. If the proposed facility is a small wireless facility, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.
- k. Site Plan: The applicant shall submit a site plan that shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new Facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the

site plan. The site plan shall be drawn to a scale of not more than one hundred feet to the inch. The site plan shall include a boundary survey for the project performed by a land surveyor licensed by the State of California.

- I. Fire Safety: The applicant shall submit a Fire Safety Plan that includes a general description of the personal wireless services facility for purposes of ensuring the Fire Department is fully informed and prepared in case of a fire. The Fire Safety Plan shall include:
 - (1) Location of all Fire Safety Plan documents.
 - (2) Location of the facility's alarm panel.
 - (3) List of emergency contacts.
 - (4) Specific responsibilities assigned to designated personnel.
 - (5) Location of signal-processing equipment.
 - (6) Location and listing of types of power equipment, including rectifiers, inverters, distribution cabinets, bus bars, cables, and communications raceways.
 - (7) Listing and location of batteries, including description of quantities and types of batteries, specifying whether batteries are lithium-ion, nickel cadmium, sodium-nickel, valve-regulated lead acid, and/or vented, and description of any associated exhaust ventilation system(s).
 - (8) Description of actions to detect and prevent thermal runaway events.
 - (9) Description of whether the facility will be located in a lightning-prone area. If the facility is to be located in a lightning-prone area, description of how the facility shall comply with NFPA 780 Standard for the Installation of Lightning Protection Systems;
 - (10) Description of location and types of fuses used to ensure that if the wireless transmission facility experiences overcurrent resulting from current exceeding the rating of equipment or the ampacity of a conductor, the facility shall turn off temporarily.
 - (11) Depowering procedures including identification of locations of electrical depowering devices, which include:
 - (a) Coded floor prints located in the Fire Safety Plan document;
 - (b) Facility signage to direct fire personnel to depowering locations;
 - (c) The method of turning off power to the following:
 - i. Alternating current power board. This is the primary source of electric power for a telecommunications facility and is supplied by the local power company.

ii. Standby power generator. This unit, usually a turbine or diesel generator, provides standby ac power that is transferred manually or automatically whenever a loss of ac power is experienced.

iii. Direct current primary disconnect fuse or circuit breaker bay. This unit distributes dc power to the secondary fuse or circuit breaker panels throughout the central office. The secondary fuse or circuit breaker panels feed all the operating voltages to the central office branch circuits.

iv. Uninterruptible power supply (UPS)

v. HVAC systems serving the facility

vi. Alternative energy devices, such as wind turbines, fuel cells, photovoltaic systems, or other devices providing power to the facility.

(12) Detailed electrical designs, signed and stamped by a licensed electrical engineer, demonstrating compliance with the Building, Electric and Fire Code.

- m. Soil Erosion and Sedimentation Control: A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the latest revised edition of the Environmental Quality Handbook published by the U.S. Soil Conservation Service.
- n. Engineer's Report: For the construction of all new wireless facilities and to the extent not already mandated above, the applicant shall provide a report prepared and certified by a professional engineer registered in California certifying the integrity and safety of all proposed new towers and/or structures and indicating the location, type, and height of the proposed personal wireless services facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, all applicable American National Standards Institute (ANSI) technical and structural codes. To the extent that an application proposes the co-location of new equipment onto an existing tower or personal wireless services facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify above.
- o. Visual Impact Analysis. The applicant shall provide a completed visual impact analysis that shall include the following:
 - i. Small Wireless Facilities: The applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to

sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the small wireless facility and their location.

- ii. Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility: For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

- 1) A “Zone of Visibility Map” to determine locations from where the new facility will be seen.

- 2) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The photographic images shall show the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening and landscaping. The analysis shall include the results of the drone/balloon test, and other information as necessary to determine visual impact of the facility. The analysis shall include a map depicting where the photos were taken. Where consistent with the natural or built environment, the analysis shall include a native vegetation landscaping plan with a visual simulation of how the chosen plants, at maturity, will screen the site.

- p. For proposed towers and facilities taller than 100 feet, the applicant shall perform a balloon test and shall publish reasonably advanced public notice of the same to enable the Reviewing Authority, property owners, and the community an opportunity to assess the actual adverse aesthetic impact

which the proposed facility is likely to inflict upon the nearby properties and surrounding community. Said date and time will be established by the Planning Director and Code Enforcement Officer in coordination with the applicant, including an alternative date in case of inclement weather. If a balloon is used, the diameter shall be equal to the largest antenna or dish proposed for the CRS tower or the width of the tower, whichever is larger. The applicant will be responsible for publishing a public notice of the balloon test in at least one local newspaper publication and notifying abutters owning property within one thousand (1,000) feet radius, via U.S. Mail at least one week prior to the test.

- q. If the application is for a facility that will not be attached to an existing utility pole and the facility's proposed height will be greater than 30 feet then structural elevations of the facility(ies) shall include any trees and other structures within twenty (20') feet, and their height.
- r. A report by a structural engineer licensed by the State of California, certifying that the proposed tower is designed to withstand without failure the maximum forces expected from wind, earthquakes, and ice, when the tower is fully loaded with antennas, transmitters and other equipment and concealment elements. The report shall describe the tower structure, specifying the number of and type of antennas it is designed to accommodate, providing the basis for the calculations done and documenting the actual calculations performed.
- s. The applicants shall submit their detailed procedures for reviewing and approving co location requests from other carriers.
- t. Alternatives Analysis. Provide an itemized list of alternative sites considered, with a comprehensive explanation of reasons alternative sites are not technologically feasible. Explanation shall include specific comparative analysis of how different sites would impact aesthetic values, and other environmental values.
- u. Notice of Application. The applicant shall provide evidence that a county-approved notice was sent to all landowners and residents within 1,000 radius feet of the proposed facility location within a 10-day period prior to application acceptance.
- v. A Radiofrequency Compliance Report prepared in accord with the latest version of FCC OET Bulletin 65 shall be required for the proposed project as well as any co-located facilities that contribute to the cumulative exposure from the wireless facility; certifying the project will comply with applicable federal RF exposure standards and exposure limits. The RF Compliance Report shall be submitted with the Application to certify that the proposed project will not violate FCC public safety limits for RF exposure (FCC uncontrolled public exposure limits). It shall be prepared by a Professional Engineer registered in the State of California, signed and submitted under the penalty of perjury that the facility will not expose members of the general public to radiation levels that exceed the

permissible limits the FCC has set for uncontrolled public exposure. The County, at its own discretion may hire a licensed engineer to verify findings of the FCC Compliance Report, at applicant's expense. An RFR Data Request Sheet prepared by the Applicant and/or their technical RF consultant in the form attached as Attachment A shall be submitted with the Application that includes the antenna make and model, transmit frequencies and power (in watts effective radio power (ERP)) by sector; total number of channels per sector and ERP per sector; downtilt, if any, and the number of degrees of vertical downtilt per antenna; the direction of transmission (in degrees) for each sector and mounting height above ground for each antenna array. The RF Compliance Report shall provide methodology and calculations of power density in microwatts per centimeter squared ($\mu\text{W}/\text{cm}^2$) in addition to percent of standard, and shall show run-out tables of power density vs. distance to 600' horizontal distance, at ground level (6') and second-story level (16'); and the Facility's distance from nearest habitable structure(s) and applicable calculations of power density (in $\mu\text{W}/\text{cm}^2$).

- w. Estimated Costs of Removal. A written estimate for the cost of the decommissioning and removal of the personal wireless services facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the Facility Maintenance/Decommissioning Plan and Removal Agreement required herein in Subsection G.12.
- x. Property Owner Consent & Liability Acknowledgment. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its Wireless Telecommunications Facility Permit application and acknowledge the potential landowner's responsibility for engineering, legal and other consulting fees incurred by the County.
- y. Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and state law to provide the services and construct the wireless telecommunications facility. Such evidence includes but is not limited to, a copy of any applicable FCC License by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the County and Wireless ID Registration by the CPUC.
- z. The appropriate processing fee and a deposit for a consultant review as set forth in paragraph 30 of this section.
- aa. Any other studies or information as determined to be necessary by the Planning Director in order to consider an application for a wireless telecommunication facility may be required.

- bb. A tolling agreement that agrees to suspend the relevant shot clock applicable to the type of wireless telecommunications facility being proposed until the date of completeness determination at which time the County shall send applicant a notice of complete application.
 - cc. Batched Applications: The applicants may submit up to five individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the Planning Department, in the Planning Department's discretion, shall determine whether the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the Planning Department shall determine whether the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the Planning Department shall determine whether the entire batch is denied.
 - dd. Independent Consultant. The Reviewing Authority is authorized to retain on behalf of the County an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including, but not limited to, the following matters:
 - 1) The accuracy, adequacy, and completeness of submissions;
 - 2) Compliance with applicable radio frequency emission standards;
 - 3) Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
 - 4) Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis; and
 - 5) The validity of conclusions reached or claims made by applicant.
 - ee. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.
2. Each application for Eligible Facilities shall include the items listed in D.1.a.-e., k.-.l, n., u.-v., y. and z. The applicant shall also produce all other information that is necessary for the Planning Director to verify that the proposed facility meets the criteria for an Eligible Facilities Request in 47 C.F.R. §1.6100.
 3. Review and Approval Authority. The County reserves its authority to the fullest extent permitted over decisions regarding the placement, construction, and modification of a wireless telecommunications facility pursuant to 47 U.S.C.A. §

332(c)(7)(A) and Cal. Gov. Code § 65964.1(g).

- a. **Completeness Review.** Upon receipt of wireless telecommunications permit application, the County shall review the application for completeness. If the County determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days of the County's receipt of the application (or, if an eligible facilities request, within 30 days of receipt), then, per Cal. Gov. Code § 65964.1(d), the County shall notify applicant of the incompleteness of an application rules by mailing a Notice of Incomplete Application by first class mail, to the Notice Address which the applicant has provided.
 - i. **Notice of Incomplete Application.** Such Notice shall advise the applicant, with reasonable clarity, of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.
 - ii. **Shot Clock Tolling.** Upon the mailing of such Notice of Incompleteness, the Shot Clock shall be automatically tolled as permitted by § 65964.1(a) to accommodate the County's timely request for information required to complete the application.
 - iii. If and when the applicant tenders an additional submission to the County to remedy the issues identified in the Notice of Incomplete Application, the Shot Clock will resume running or restart, based on the type of application and the FCC's Shot Clock rules in 47 C.F.R. §§1.6003(d) or 1.6100(c)(3)(ii), as applicable.
 - iv. If upon receipt of any additional materials from the applicant, the County determines that the application is still incomplete and/or defective, then the County shall, once again, mail a Notice of Incomplete Application within ten (10) days of the applicant having filed its supplemental or corrected materials to the County and the shot clock shall be tolled, and the same procedure provided for hereinabove shall be repeated.
- b. **Environmental Impact.** For all applications other than Eligible Facilities Requests, the County shall conduct environmental reviews pursuant to CEQA. If, and to the extent that, the County determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of the CEQA, then the County shall be expected to comply with the requirements of CEQA in determining both (a) the extent of adverse impacts upon the environment and (b) what mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or districts.
- c. **Historical Reviews.** For all applications other than Eligible Facilities

Requests, the County shall consider the potential adverse impacts of any proposed personal wireless services facility upon any historic site or structure. If, and to the extent that the County determines that a proposed installation bears the potential for a significant adverse impact upon a historic site or a historic district within the meaning of the NHPA (especially if the historic site at issue is listed upon the national register of historic places), then the reviewing authority shall comply with the requirements of both NHPA and County law in determining both: (a) the extent of adverse impacts upon the historic properties, and (b) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites or structures. Should a respective applicant fail to obtain a Section 106 review under NHPA, and opinion letters from the FCC pertaining to its proposed installation prior to a first public hearing before the reviewing authority for the respective application, then the County shall make direct requests to the FCC for their review of the application. They shall request the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to NHPA. This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the County recognizes each application for a Wireless Telecommunications Facility Permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

- E. Locational Standards for New Communication Facilities. All communication facilities shall be sited so as to minimize the effect on residential and rural parcels and environmental resources. To that end the following measures shall be implemented for all communication facilities, except Eligible Facilities Requests as defined in 47 CFR § 1.6100(b)(3).
1. Communication facilities shall be located to minimize their visibility and the number of distinct facilities present, as follows:
 - a. No new communication facility shall be placed on an exposed ridgeline or to silhouette against the sky.
 - b. No new communication facility shall be installed in a location that is not developed with communication facilities or industrial or commercial uses.
 - c. No new facility(ies) shall be placed in a location readily visible from a public trail, public park or other developed outdoor recreation area.
 - d. No new facility(ies) shall be installed closer than two (2) miles from another readily visible, unconcealed or unscreened facility unless it is a co-located facility, is on a multiple-user site.
 2. Communication facilities shall be set back from property lines as shown in Table

12.03.080.E.2.

- a. The setback shall be measured from that part of the facility(ies) that is closest to the neighboring property (i.e., the setback for a faux tree would be measured from the end of the branch closest to the neighboring property).
- b. If the project parcel is adjacent to a zoning district with a more restrictive setback, the more restrictive setback shall apply to the proposed communication tower.
- c. Communication facilities shall not be located anywhere that results in less than a 500 foot setback from the facility(ies) to a residentially zoned parcel, regardless of the zoning of the project parcel or the contiguous parcels.

Table 12.03.080.E.2.

Zoning District	Setback From Property Line
Residential	500 Feet
Rural	500 Feet
Rural Penn Valley	500 Feet
Rural South County	500 Feet
Commercial	150% of Towers Height
Industrial	Setback Standards of Table 12.02.050.E
Special Purpose	150% of Towers Height

3. Collocation of new antennas on existing facility(ies) is strongly encouraged. Where appropriate to minimize visual impacts, new towers will not be approved where collocation on existing towers is technically feasible, will provide the desired service coverage, and do not result in alterations that create a greater visual impact.
4. The use of support structures that conceal the presence of antennas are strongly encouraged, including man-made trees, light poles, signs, clock towers, bell steeples or other similar structures. If a stealth method is proposed the applicant shall demonstrate the material will not degrade and shed plastic pollution.
5. Restricted Site Locations for Small Wireless Facilities. All of the following locations will be deemed "Restricted Site Locations" that require an exception pursuant to Section K of this Section:
 - a. any location within a residential zone;
 - b. any location within 500 feet from a residential dwelling unit;
 - c. any location within 500 feet from a daycare facility or school;

- d. any location within a Very High Fire Hazard Severity Zone; and
 - e. any location within a public trail, park, or outdoor recreation area.
6. Location Preferences for Small Wireless Facilities. To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that: (1) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible; and (2) if the proposed site or the most- preferred location within 500 feet from the proposed site is within a Restricted Site Location, the applicant qualifies for an exception pursuant to Section K of this Section. The County prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
- a. Colocated on an already existing facility;
 - b. locations within industrial zones, commercial zones, business parks or office professional zones on or along prime arterials;
 - c. locations within industrial zones, commercial zones, business parks or office professional zones on or along major arterials;
 - d. locations within industrial zones, commercial zones, business parks or office professional zones on or along collector roads;
 - e. locations within industrial zones, commercial zones, business parks or office professional zones on or along local streets;
 - f. any location not within 500 feet from any residential zone;
 - g. locations within residential zones on or along prime arterials;
 - h. locations within residential zones on or along major arterials;
 - i. locations within residential zones on or along collector roads;
 - j. locations within residential zones on or along local streets;
 - k. any location within 1000 feet from an existing/ proposed small wireless facility;

In the event that a proposed facility would be within 500 feet from two or more restricted site locations (as defined in Subparagraph 5), and the proposed facility qualifies for an exception pursuant to Section K of this Policy, the technically feasible location furthest from all such restricted site locations will be deemed to be the most preferred alternative. For discretionary permits the County reserves

the right to deny an application based on aesthetic or other locational considerations such as unacceptable impact on the characteristics of the impacted neighborhood or any other “safe harbor” allowed by 47 U.S.C. §§253(b)-(c) and/or 332(c)(7)(B)(i)(II) even if the applicant has proved that there is a significant gap or lack of adequate capacity and the proposed location is the least intrusive alternative.

7. Accessory Equipment. In order of preference from the most preferred to least preferred, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities shall be located underground, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is preferable under the circumstances of the application.
- F. Design Standards. Wireless facilities shall be designed in compliance with all applicable national and California safety standards and to minimize visual, noise, and other impacts on the surrounding community and landscapes in accordance with the design standards in this section.
1. Antennas: Wall-mounted antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, shall be mounted as close to the wall as technically feasible and shall not extend more than four feet from the face of the wall nor consume more than fifty (50 sq. ft.) square feet per building face, excluding mountings. Pole-mounted antennas, and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, shall be mounted as close to the wall as technically feasible. They shall not be illuminated except as required by County, federal, or state authority.
 2. Small Wireless Facilities shall be sited to inflict the minimum adverse impacts upon individual residential or rural properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same. Small wireless facilities attached to pre-existing wooden and non-wooden poles shall conform to the following criteria. Proposed antenna and related equipment shall meet design standards which the County may maintain and update as needed, provided that the County makes its designed standards publicly available for review by any potential applicant seeking approval for the installation of a small wireless facility within the County.
 3. All facilities shall be engineered and certified by a California-licensed structural engineer to withstand local seismic, wind, ice, and loading conditions applicable to the site, and shall comply with wind and seismic load standards in accordance with California Building Codes and ANSI/TIA-222-H or its most current revision, National Electric Safety Code (NESC) standards, National Electrical Code (NEC) standards.

4. Communication facilities shall be designed to minimize potential adverse impacts may or is likely to inflict upon nearby properties. No tower shall exceed 150 feet in a residential district as defined in Nevada County Code Section 12.02.020. Communications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers is necessary. No exterior lighting shall spill from the site in an unnecessary manner.
5. The height of an existing communication tower shall not be increased by an amount that would result in a violation of height restrictions for different zoning districts outlined in Zoning Ordinance Section 12.02.
6. The applicant shall employ screening and concealment design techniques in the design and placement of wireless facility(ies) and accessory equipment in order to ensure that the facility(ies) is as visually inconspicuous as possible, to prevent the facility(ies) from dominating the surrounding area and to hide the facility from predominant views from surrounding properties and viewsheds, all in a manner that achieves compatibility with the community and background landscapes and structures. Facilities and accessory equipment shall be finished in non-glare colors and non-reflective surfaces and colors that minimize their visibility to the greatest extent possible.
7. The visible exterior surface of communication support facilities, i.e. vaults, equipment rooms and equipment enclosures, shall be designed to be visually compatible with structures typically found in the vicinity of the project site.
8. Fencing and screening of communication facilities.
 - a. Base stations shall be screened from adjacent public rights of way, public trails, public recreation areas, places of public gathering and adjacent properties by landscaping with native species or other means, in alignment with Section 12.04.111 of the Nevada County Code.
 - b. All areas disturbed during project construction shall be replanted with vegetation compatible with vegetation in the surrounding area unless the County Fire Marshal requires fuel modification. Native trees are the preferred vegetation.
 - c. Existing trees and other screening vegetation in the vicinity of the facility and along the access or utility easements, shall be preserved to the maximum extent possible and protected from damage during construction.
 - d. No razor wire or barbed wire shall be permitted on any chain link fencing.
9. Lighting for communication facilities shall be limited as follows:
 - a. All approved lighting shall be shielded or directed on site to minimize off-site light spill except for lighting required by the Federal Aviation Administration.

- b. In residential zones, lighting shall be limited to Security lighting that is manually operated or motion-detector controlled.
10. Signage shall be limited to required address and facility identification signs, emergency and safety hazard signage.
11. All collocated and multiple-user facilities shall be designed to promote facility and site sharing where feasible, including parking areas, access roads, utilities and equipment.
12. Facilities designed as an integral part of the structure are strongly encouraged within all commercial and industrial districts.

G. Permit Requirements.

1. Owners of all approved facilities shall be required to agree to allow future co-location by other carriers, and to provide an efficient process for handling co-location requests.
2. Post-Installation Certification. Within 60 calendar days after the permittee commences full, unattended operations of the wireless facility approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to Director that the wireless facility has been installed and constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data, and site photographs.
3. Insurance required. The Permittee and each owner or operator of an antenna on the personal wireless services facility, shall obtain, and at all times relevant to this permit maintain, insurance policies, issued by an insured authorized to do business in the State of California and reasonably acceptable to the County, at least as broad as follows:
4. Commercial General Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, commercial General Liability ("CGL") insurance on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; (iv) bodily injury or damage

from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit.

5. Environmental Pollution Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the personal wireless services facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.
6. Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the County indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
7. Endorsements. The relevant policy(ies) shall name the County, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) days' prior notice to the County of the cancellation or material modification of any applicable insurance policy.
8. Verification of Coverage. Permittee shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the County before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. Permittee shall furnish updated certificates and endorsements to the County annually. The County reserves the right to require updated certificates and endorsements or complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.
9. Permittee Has Full Liability: The permittee shall assume full liability for damage or injury caused to any property or person by the personal wireless services facility.
10. Permittee shall provide an executed agreement, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the County, its officers, employees, agents, attorneys, and volunteers, from (i) any claim, action or proceeding brought against the County or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the County or (ii) a successful legal action brought against the County for loss of

property value or other harm caused by the placement or operation of a small cell installation. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the County and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the County for all of the County's costs, fees and damages which the County incurs in enforcing the indemnification provisions of this Section.

11. ADA Accommodations. The County seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent they are entitled to same under the Act.
12. Prior to the issuance of any entitlement permit, the applicant shall provide a Facility Maintenance/Removal Agreement and Decommissioning Plan to the Planning Director, binding the developer and successors in interest, to an agreement to:
 - a. Maintain the communication facility as approved; and
 - b. Notify the County of intent to vacate the site, agreeing that the applicant will remove all communication facilities within twelve (12) months unless the site is occupied by a successor; or
 - c. Provide a cash bond equal in cost to removing the tower and associated facilities.
13. Decommissioning Plan: The Facility Maintenance/Removal Agreement shall include a Decommissioning Plan with the following information:
 - a. A plan for disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations detailing the types and quantities of waste materials and methods of disposal;
 - b. A description of how and on what schedule stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. Permittee should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover;
 - c. An estimate of costs for the decommissioning of the personal wireless services facility with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate;
 - d. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum

requirements meet the standards of this Ordinance. Such plan must be filed in the County Office prior to the first operation of the personal wireless services facility;

- e. An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during the implementation of the decommissioning plan.
14. **Abandoned Facilities:** The wireless facility authorized under this use permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the County shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the County in connection with such removal and/ or restoration activities.
 15. **Landscaping:** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the County. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
 16. A permanent, weatherproof, facility identification sign, no more than twelve (12") inches by twenty-four (24") inches in size, identifying the facility operator and a twenty-four (24) hour phone number, shall be placed on the fence, the equipment building or tower base. If larger signage is required by the FCC, the applicant shall provide proof of the requirement, and signage shall not exceed the required size.
 17. **Permittee's Contact Information.** Prior to the final inspection and at all times relevant to this permit, Permittee shall keep on file with the County basic contact and site information. This information shall include, but not is limited to, the following:
 - a. The name, physical address, notice address (if different), direct telephone number and email address for the permittee and, if different from the permittee, the site operator, equipment, owner, the site manager and agent for service of process;
 - b. The regulatory authorizations held by the permittee and, to the extent applicable, site operator, equipment owner and site manager as may be

necessary for the facility's continued operation;

- c. The facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and
 - d. A toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours- per-day, seven days- per-week. Within 10 business days after a written request by the County, the permittee shall furnish the City with an updated form that includes all the most current information described in this condition.
18. Within 15 days after any project approval, the permittee shall sign and file with the Planning Department a Defense and Indemnity Agreement, to defend, indemnify, hold harmless, the County and the BOS, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the County's approval of this use permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this use permit or the small wireless facility or other infrastructure deployment. In the event the County becomes aware of any claims, the County will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the County shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the County's defense, and the property owner and/ or permittee (as applicable) shall promptly reimburse the County for any costs and expenses directly and necessarily incurred by the County in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the County to approve this use permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this use permit.

19. Permit Revocation: Any permit granted under this Section may be revoked in accordance with the provisions and procedures in Section 12.05.110. The Director, Zoning Administrator, Building Code Officer, or other County official may initiate revocation proceedings when there is information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Section, the body that originally approved the permit must issue a written notice to the permittee that specifies (i) the facility(ies); ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the County may pursue, the County may initiate revocation proceedings for failure to correct such violation(s). The body that originally approved the permit may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision to revoke or not revoke a permit shall be final and not subject to any further appeals. Written notice of intention to revoke the permit shall be mailed to the applicant not less than ten (10) days before the public hearing.
20. Truthful and Accurate Statements: The permittee acknowledges that the County's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee' s behalf. In any matter before the County in connection with the use permit or the wireless facility approved under the use permit, neither the permittee nor any person authorized to act on permittee' s behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

H. Safety Standards:

1. All wireless facilities shall be designed by qualified, licensed persons to meet minimum standards for public safety, and shall comply with all applicable legal requirements, including the County Building, Electric and Fire Codes throughout the permit period. All wireless facilities should be proactively monitored and maintained to ensure compliance with the safety design.
2. Fire Safety Hazard Protocols: If the Fire Chief (or his or her designee) or Nevada County Consolidated Fire finds good cause to believe that the facility(ies) (including, without limitation, its accessory equipment, antenna and/ or base station) presents a fire risk, electrical hazard or other immediate threat to public health and safety in violation of any applicable law, such officials may order the facility to be shut down and powered off until such time as the fire risk or electrical hazard has been mitigated. Any mitigations required shall be at permittee's sole cost and expense.

Other Safety Hazard Protocols: If there is good cause to believe that the facility(ies) presents a danger of ice fall, debris fall or shows signs of imminent

structural such as misaligned base plates, degraded flanges, defective sections, joints, and guy wires, County officials may order the facility(ies) shut down and powered off until such time as the hazard has been mitigated. Any mitigations required shall be at permittee's expense.

3. All wireless facilities shall comply with safety standards, including, but not limited to, both of the following: (1) Article 2 (commencing with Cal. Gov't Code § 4216) of Chapter 3.1. of Division 5 of Title 1 and (2) the CPUC's General Order No. 128, Rules for Construction of Underground Electric Supply and Communication Systems, or successor rules adopted by the CPUC.
- I. Operational Requirements: It is of critical importance to the health, safety and welfare of the County, its residents, and the general public that communications facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR § 1.1310(e)(1) et seq.
1. Prohibition on Illegally Excessive RF Radiation: No communication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no communication facility or combination of facilities shall produce at any time RF emissions that exceed the limits for Maximum Permissible Exposure for human exposure pursuant to 47 CFR §1.1310(e)(1), Table 1 or any more restrictive standard subsequently adopted or promulgated by the County, the state of California, or the federal government.
 2. Radio Frequency (RF) Emissions Monitoring Requirements:
 - a. Post-installation certification. Within 45 days of commencing operation of a communications facility, the permittee shall provide the director a post-installation certification prepared in accordance with the telecommunication facility standards confirming that the telecommunications facility is compliant with FCC regulations concerning radio frequency emissions.
 - b. Post-modification certification. Within 45 days of modifying a permitted communications facility, the permittee shall perform subsequent radio frequency reporting and testing confirming that the telecommunications facility is compliant with FCC regulations concerning radio frequency emissions.
 - c. Annual certification. No more than 12 months following the issuance of the initial Wireless Permit, and no more than 12 months after each annual certification, the permittee shall perform subsequent radiofrequency reporting and testing confirmation that the telecommunications facility is compliant with FCC regulations concerning radiofrequency emissions. Failure to supply the required reports or to remain in continued compliance with Maximum Permissible Exposure limits for human exposure pursuant to 47 CFR §1.1310(e)(1), Table 1 shall be grounds for revocation of the permit or other entitlement.

- d. Random testing. At the permittee's expense, the County may retain an engineer or other qualified electromagnetic radiation specialist to conduct random unannounced RF radiation testing of any facility to ensure the facility's compliance with the limits in 47 C.F.R. §1.1310(e)(1) Table 1.
 - e. Upon the request of a resident who believes a communications facility or facilities is operating in excess of FCC exposure limits or other good cause, the County may hire an independent consultant to test the facility for excess RF emissions levels. Such testing shall be conducted at permittee's expense. Noncompliance with FCC exposure guidelines shall be grounds for revocation of the permit or other entitlement.
3. Maintenance: All telecommunications facilities including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or concealment elements, and the facility site shall be maintained so as to minimize visual, noise, and other impacts on the surrounding community and be maintained in good condition, including ensuring the facilities are reasonably free of:
- a. Dirt or grease;
 - b. Chipped, faded, peeling, or cracked paint;
 - c. Rust and corrosion;
 - d. Cracks, dents, or discoloration;
 - e. Missing, discolored, or damaged synthetic foliage or other concealment elements;
 - f. Graffiti, bills, stickers, or advertisements;
 - g. Litter or debris including but not limited to synthetic foliage that has fallen off a monopine; permittee is responsible for prompt cleanup of debris or synthetic foliage at its expense.
 - h. Broken or misshapen structural parts; and
 - i. Damage from any cause.
4. Repairs. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:
- a. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 - b. After the permittee, owner, operator, or any designated maintenance agent receives notification from a resident or the Zoning Administrator.

5. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 6. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.
- J. Public Notice: When a Public Hearing is required by Title 12 Chapter 5 of the Nevada County Code for a project regulated by this Section, public notice shall be given consistent with Cal. Gov't Code §§ 65090–65096 and shall be given to owners within one thousand (1,000') feet radius of the real property that is the subject of the hearing pursuant to Cal. Gov't Code § 65091(a)(3). This notice shall also be given to the owners of at least ten (10) parcels, in addition to the parcel which is the subject of the hearing.
1. Such public notice shall be published in *The Union*, or another newspaper of general circulation within the County at least 10 days prior to the hearing.
 2. Such public notice shall be posted at least 10 days prior to the hearing in at least three public places in the County.
 3. The notice shall include:
 - a. The date, time and place of the public hearing;
 - b. Identity of the hearing body or officer;
 - c. A general explanation of the permit being applied for;
 - d. A general description or diagram of the location of the real property, if any, that is the subject of the hearing.
- K. Exceptions.
1. The County may grant an exception to the provisions in this Section but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the Reviewing Authority shall consider the findings in Subsection K.2. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
 2. Findings for an Exception. The Reviewing Authority may grant an exception to any provision or requirement in this Section only if the Reviewing Authority finds that:
 - a. a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - b. a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.

3. Exception Requests. An applicant may request an exception only at the time the applicant submits an application. The Reviewing Authority may consider additional information provided by the applicant after submittal to supplement the initial exception request. Any request for an exception after the initial submittal shall be deemed to be a new application.
4. Burden of Proof. The applicant shall have the burden to prove to the Reviewing Authority that an exception should be granted pursuant to Subsection K.2. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
5. Scope of Exception. If the Reviewing Authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this Policy to least extent necessary for compliance with federal or state law.

Restricted access: Yes   No  
from base of tower: _____ feet

Distance to fencing

V. Notes:

SUMMARY REPORT

Telecom Ordinance Technical Review Meeting

Prepared for: Nevada County Board of Supervisors and Planning Department

Meeting Date: March 31, 2026

Meeting Participants: Scott McCollough, CHD Telecom Attorney with Vanessa Shinmoto (via Teams); Johanna Finney, Reinette Senum, and Derek Ramirez (Nevada County for Safe Tech); Brian Foss, David Nicholas and Trevor Koski (Nevada County Planning Department and Counsel)

PURPOSE OF THIS REPORT

This report summarizes the technical and legal guidance provided by telecommunications attorney Scott McCollough during a working session with county planning staff and community advocates. The meeting was convened to review the draft wireless telecommunications ordinance prior to its presentation to the Board of Supervisors. Key topics included the legal framework governing local ordinance authority, the treatment of small cell facilities, setback provisions, radio frequency (RF) compliance and testing requirements, and procedural considerations for the Board hearing.

This summary is organized by topic for ease of reference. It is intended to inform Board deliberation and assist staff in refining ordinance language where gaps or vulnerabilities were identified.

I. Legal Framework: Federal Preemption and the Ordinance Structure

A. The Effective Prohibition Standard

Attorney McCollough opened by clarifying the foundational legal construct of the draft ordinance. Under federal telecommunications law, local jurisdictions are prohibited from effectively prohibiting the provision of personal wireless services or telecommunications. The draft ordinance acknowledges this constraint and is structured to operate within it.

The federal and state rules differ depending on the regulatory classification of the underlying service. *Ohio Telecom Ass'n v. FCC (In re MCP No. 185)*, 124 F.4th 993 (6th Cir. 2025) ruled that fixed and mobile internet is information service, not personal wireless service or telecommunications service.

The County's broadband plan is for fixed wireless service used to provide Internet access. That is an information service under federal law.

The ordinance is and should be mostly about personal wireless service (PWS), e.g., mobile voice. That is telecommunications service.

Good ordinances recognize and implement the different rules.

The Nevada County for Safe Tech ordinance template addresses personal wireless service for the most part, but also recognizes that the federal “eligible facilities request” rules also extend to fixed wireless and deals with that in that context. The County ordinance covers both PWS and fixed wireless, but does not recognize and implement the different rules for each.

B. Subsection K: The Variance and Waiver Mechanism

A central element of the ordinance's legal architecture is Subsection K (located on page 37–38 of the Nevada County for Safe Tech ordinance template). This provision functions as a variance mechanism — a well-established land use planning tool — allowing carriers to seek relief from specific requirements, such as setbacks, if those requirements would constitute an effective prohibition in a particular case.

McCollough explained that this approach is legally sound and has been successfully used to defend ordinances in federal court. When a carrier challenges an ordinance under 47 U.S.C. § 253 (a facial challenge), jurisdictions have successfully argued that because a waiver process exists, the carrier had an avenue for relief that it failed to pursue. The ordinance is not invalid simply because a specific requirement may be burdensome in a given case; the carrier must demonstrate effective prohibition and seek the exception.

| *Staff confirmed that Subsection K appears on page 37 of the NCST version of the red-lined draft.*

C. The Ninth Circuit's Significant Gap / Least Intrusive Alternative Test

McCollough noted that the Ninth Circuit recognizes a two-part test for evaluating wireless facility applications: (1) whether a significant gap in service exists, and (2) whether the proposed facility represents the least intrusive means of addressing that gap. This test has evolved from a standard used to overturn denials into a threshold for approval — meaning it is now also a tool the county can use to evaluate whether a proposed facility is genuinely necessary and appropriately sited.

Mr. Koski inquired about a “Savings Clause” and if this has been litigated before in regards to ordinances. McCollough emphasized that the ordinance's interpretive language — stating that nothing in the ordinance shall be read to violate federal law — is not a “savings clause” in the traditional legal sense. It functions instead as an interpretive aid: when a provision is ambiguous, it should be read in a manner consistent with federal law rather than in conflict with it.

II. Small Cell Facilities: A Critical Gap in the Current Draft

A. The Problem with the Current Approach

McCollough identified the wholesale exclusion of small cell facilities from discretionary review as the most significant vulnerability in the current draft. Under the draft, small cells are treated as a ministerial matter — subject to building permits and encroachment permits, but not discretionary approval. McCollough argued **this approach unnecessarily surrenders authority that the county expressly retains under both federal and state law.**

Both the FCC's own rules and the governing federal statutes permit local jurisdictions to require discretionary permits for new small wireless facilities. The county is not required to exempt small

cells from this process. McCollough stated plainly: "There is simply no basis to the argument that requiring a CUP for a new small cell violates any federal law or even any state law."

Furthermore, he stated to Planning and Counsel:

As a policy matter, I have a hard time understanding why you would want the County to give up something that you expressly retain under the federal statute and the FCC rules. And that is particularly so with small cells, and even more so, small cells in right-of-way, because that's where we're seeing them the most. I see far more small cell and right-of-way applications than I do for anything else, all over the country. And they're showing up in residential areas right up in front of people's homes. The way that you have written this ordinance by requiring nearly none of the substantive construction and appearance requirements, and then only an encroachment permit and a building permit, means that many people are not even going to find out that there's one planned before they see the truck show up. And I know, in a lot of jurisdictions, there's a ton of people getting really upset when that happens. We are hopeful that you will at least be receptive to including the discretionary aspect of small cells, especially those in right-of-way. Now let me emphasize: I'm not talking about eligible facilities requests. I'm talking about new small cells. That's what's really impacting people right now. More than anything else.

It will allow you to plan, which is what you're all about. It will allow you to consider the land use aspects. And I'm using that term very broadly, because a lot of times in many jurisdictions, stuff in right-of-way isn't considered land use. But here we're talking about the appropriateness of a use, whether it be right-of-way or not, for a facility that really does impact those nearby. What can you expect? And what should the industry expect? I think the industry should expect, and everybody else should expect, that you would use the authority that Congress gave you. The FCC retained that authority when it comes to small cells, whether in right-of-way or not, and you have given that away here, when I think your constituents are asking you to exercise the authority that you're allowed by state and federal law.

B. Why This Matters Practically

Small cell deployment is accelerating nationally. Carriers including Verizon and AT&T are building out offload networks to address capacity concerns, and rural and semi-rural counties are no longer insulated from this buildout. McCollough noted that he reviews more small cell right-of-way applications than any other type of facility nationwide.

Without discretionary review, residents will receive no notice before a small cell is installed in front of their home. Equipment buildout on utility poles — including ground-level cabinets, cables, and generators — can be substantial. ADA conflicts, aesthetic impacts, and property value concerns have generated significant public opposition in other jurisdictions when this process has been bypassed.

Carriers have asserted that small cells must be spaced every 500 to 750 feet, but McCollough indicated that this claim has been factually challenged and is not legally binding. The county is not required to accept carrier representations about necessary density at face value.

C. The Conditional Use Permit (CUP) Recommendation

The primary recommendation from legal counsel was that the county require a Conditional Use Permit (CUP) for all new small cell facilities, including those proposed in the public right-of-way. A CUP process would accomplish the following:

- Provide public notice and the opportunity for community input before installation.
- Allow the county to assess land use compatibility, aesthetics, siting appropriateness, and RF compliance on the front end.
- Enable design review, which is currently absent from the small cell pathway.
- Create a documented record for any subsequent legal challenge.

McCollough distinguished clearly between new small cells — which are fully subject to discretionary permitting — and eligible facilities requests (equipment swaps on existing structures), which are governed by different federal standards and carry more constraints on local authority.

Mr. Koski asked if there is a CUP process with small cells, has Mr. McCollough ever seen any legal precedence where the telecom is fighting back on these types of ordinances, saying there's prohibition because they can't put as many as they want?

Mr. McCollough answered: “There is simply no basis to the argument that requiring a CUP for a new small cell violates any federal law or even any state law. Both federal and state law, for the most part, allow you to require a discretionary permit for this. Now, the situation is a lot different when you get into the eligible facilities route, where there is an existing facility where they are swapping out antennas or equipment. But that's a different thing. When we're talking about new small cells, brand new small cells, that is under federal and state law clearly discretionary.”

D. Shot Clock Considerations

Mr. Koski raised a concern that adding a CUP process would create shot clock pressure. McCollough addressed this directly: the shot clock is actually an argument for a more complete and rigorous application process, not a simpler one. The shot clock tolls while incomplete applications are in the carrier's court. Jurisdictions get into trouble when they accept incomplete applications and then discover missing information after the clock has resumed running.

McCollough noted that the FCC has ruled the shot clock period encompasses the entire permitting process — including building permits — not just the land use phase. Section D1A of the Nevada County for Safe Tech ordinance template addresses application completeness requirements, which staff should review and strengthen in light of this guidance.

III. Siting Hierarchy and Co-Location Incentives

McCollough endorsed the inclusion of a tiered siting hierarchy for small cell facilities as sound land use planning practice. Such a hierarchy — which the draft ordinance references — signals to the industry where facilities are preferred and where they are not, without mandating an absolute prohibition on any specific location.

Key points regarding the siting hierarchy:

- The preference language ("preferred" rather than "mandatory") is legally appropriate and does not create a prohibition.

- The hierarchy gives the county a framework for assessing applications at both the ordinance level and the permit review stage.
- Co-location on existing structures should be strongly encouraged through the hierarchy, and the county may consider offering procedural incentives (e.g., reduced requirements) for carriers that choose to co-locate rather than propose new facilities.
- Industrial areas should be expressed as the preferred location for macro facilities; residential areas should be at the bottom of the hierarchy.

McCollough noted that in at least one other jurisdiction, he drafted a provision effectively treating co-located facilities as eligible facilities, incentivizing carriers to avoid new infrastructure in sensitive locations.

IV. Radio Frequency Compliance: Applications, Testing, and Enforcement

A. Legal Authority for RF Requirements

McCollough clarified the scope of the county's authority under 47 U.S.C. § 332(c)(7)(B)(iv), the provision prohibiting regulation on the basis of environmental effects. This prohibition applies only when a facility complies with FCC emissions guidelines. The county retains the authority to regulate based on RF emissions when a facility does not comply with FCC rules. This authority is built into the statute itself and is not contingent on any local ordinance provision.

B. Application Requirements: Predictive Modeling and RF Compliance Reports

McCollough recommended that the application process require carriers to submit predictive RF exposure modeling as part of their application package. This modeling should be presented in sufficient detail that an independent technical consultant — whether retained by the county or by a community intervenor — can assess its accuracy. Staff should not rely solely on the carrier's own certification.

McCollough cautioned that predictive modeling has known limitations. Environmental conditions — including terrain, structures, and the interaction of multiple antenna frequencies — can cause actual exposure levels at specific locations to significantly exceed modeled predictions, even when the modeling was conducted in accordance with FCC standards. For this reason, independent verification capability is essential.

Mr. Nicholas confirmed that the draft ordinance uses the term "exposure" rather than the narrower term "emissions," which McCollough affirmed as the correct and more protective standard.

Distinction: "Emissions" refers to what is transmitted from the antenna; "exposure" refers to what is received at a given location. The latter is the appropriate standard for protecting public health.

C. Post-Installation Testing

Mr. Foss noted that the revised draft ordinance adds an RF testing requirement within 60 days of installation — a provision not present in the previous version. McCollough endorsed this approach and recommended the county also consider:

- Requiring periodic ongoing compliance certifications from carriers.

- Retaining the county's right to require independent testing when credible health concerns are raised — with costs borne by the carrier.
- Conditioning permits on RF compliance, so that a demonstrated violation provides grounds for permit revocation.

McCollough acknowledged that the FCC is currently proposing to limit the enforcement role of local jurisdictions in RF exposure matters. All local jurisdictions are currently opposing this rule change. He recommended the county ensure its ordinance conditions are documented and tied to the permit itself, preserving maximum enforcement leverage.

D. Good-Cause Testing: A Community Protection Mechanism

A significant portion of the discussion concerned the practical question of what happens when a resident experiences health symptoms following the activation of a nearby tower. At present, the county has no formal mechanism to compel testing in response to such complaints. The draft ordinance, once adopted and strengthened, could address this directly.

McCollough recommended the ordinance include a provision for good-cause testing triggered by a reasonable threshold showing — not merely a complaint, but credible evidence suggesting a likely problem. Key elements of such a provision:

- Testing should be independent of the carrier; the carrier's own predictive model is not a substitute for independent measurement.
- Testing costs should be borne by the carrier once the good-cause threshold is met.
- Testing equipment must be calibrated for the full spectrum of frequencies in use, including 5G frequencies, which cannot be captured by standard consumer meters.

McCollough also noted that the county's health department may already have authority to investigate if residents report health incidents — an avenue worth exploring outside of, and in parallel with, the ordinance process.

A specific case was raised: a resident on McCourtney Road began experiencing headaches and insomnia from the moment a nearby tower was activated in December. The tower was installed under a prior order and is not yet subject to the new ordinance's testing requirements. Under the proposed good-cause framework, such a situation would provide the basis for requiring independent testing at carrier expense.

V. Setbacks: Distance as a Public Health Measure

The meeting included a discussion of setback requirements, which Mr. Nicholas indicated have been modeled using the county's GIS system. Mr. Ramirez raised the concern that the current setback map excludes certain parcels that — even with a 500-foot setback — would have sufficient area to accommodate a wireless facility. This suggested that the modeling may be measuring from property lines rather than from existing residential structures.

McCollough and community representatives noted that from a public health standpoint, the most meaningful measurement is from the antenna to the nearest occupied residence, not to a property line. Property lines vary in their proximity to homes and may not reflect actual exposure distances. At minimum, the ordinance should clearly define what setbacks are measuring and why.

McCollough confirmed that while some jurisdictions have attempted to measure setbacks to existing structures rather than property lines, the more defensible and logistically practical standard remains the property line — particularly because a structure may be built closer to the property line after a tower is installed, and because measuring to the property line is verifiable at the time of application. However, he affirmed the principle that distance is the primary protective factor for neighboring residents and that the county should push setbacks as far as defensible under the effective prohibition framework, using Subsection K as the safety valve for cases where a carrier can demonstrate genuine hardship.

VI. RF Exposure Above Ground Level: Positive Access Control

Mr. Nicholas raised a specific concern about scenarios in which arborists or other workers are exposed to RF levels that exceed FCC public exposure limits at height — for example, when working in a tree adjacent to a tower's antenna array.

McCollough clarified that FCC exposure rules are not limited to ground level. Any location where exposure levels exceed the limits — at any height — requires the carrier to implement positive access control: the affirmative exclusion of the general population from that zone. Signage alone is insufficient. The carrier is legally required to erect a physical barrier where such conditions exist.

McCollough cited an Oceanside case in which a 70-foot tower's antenna orientation caused exposures exceeding FCC limits on an adjoining parcel where a two-story school for children with special needs was planned. This underscores that the concern is not hypothetical.

Recommended ordinance language: require carriers, as a condition of the permit, to submit a contingency plan for any scenario in which humans may need to access areas within proximity of elevated RF exposure — including occupational access during maintenance and arborist work in adjacent trees. This plan should be reviewed as part of the application.

VII. Procedural Considerations for the Board Hearing

Mr. Foss confirmed that the ordinance being presented to the Board of Supervisors on the 14th is the version approved by the Planning Commission with a recommendation of approval. The following procedural points were clarified:

- The Board may direct staff to make modifications, including a continuance to allow time for language revisions. Whether a continuance is required depends on the substantiveness of the changes and may require consultation with county counsel.
- Minor tweaks may be possible without returning to the Planning Commission; significant structural changes — such as the addition of a CUP requirement for small cells — may require the ordinance to go back to the Planning Commission under California statutory procedure.

- The approach at the Planning Commission level was to pass the current draft as a near-term protective measure while more comprehensive revisions are developed. The Board may choose to adopt the same approach or may direct a more complete revision before adoption.
-

VIII. Action Items and Follow-Up Commitments

The following items were identified during the meeting as requiring follow-up:

1. McCollough's office will prepare and transmit supplemental language on: decommissioning requirements, full liability indemnification provisions, and property owner consent provisions. These are intended to protect the county and property owners and are consistent with the legal framework.
 2. McCollough will research and provide a model ordinance or precedent for good-cause RF testing protocols, including the threshold standard and process for triggering independent carrier-funded testing.
 3. Staff should review the small cell application completeness checklist in Section D1A of the NCST template along with McCollough's guidance that all land use and building permit information should be collected at the front end to avoid shot clock vulnerability.
 4. Staff should assess whether the GIS-based setback modeling can be adjusted to reflect distance to existing residential structures rather than — or in addition to — property lines, and whether the current map's exclusions accurately reflect developable area under the proposed setback distances.
 5. County counsel and planning staff should confer on the legal threshold for changes that would require the ordinance to return to the Planning Commission before Board adoption.
-

This report was prepared from the audio transcript of the March 31, 2026 technical review meeting. Speaker attributions and legal summaries are based on recorded statements and have been paraphrased for readability. This document does not constitute legal advice. County counsel should be consulted regarding implementation of any recommended language changes.

SUMMARY OF RECOMMENDATIONS

Telecom Ordinance Technical Review Meeting

Nevada County · March 31, 2026 · For: Board of Supervisors and Planning Department

Topic	Current status	Recommended change
Small cell facilities		
Discretionary review for small cells	Gap Exempt from discretionary approval; building permit only.	Require a Conditional Use Permit (CUP) for all new small cell facilities, including those in the public right-of-way. County expressly retains this authority under both federal and state law.
Design review for small cells	Gap No design review required.	Include design review as part of the CUP process. Equipment buildout on utility poles is substantial — ADA conflicts, aesthetics, and community impact must be assessed on the front end.
Public notice before installation	Gap No notice required under current ministerial pathway.	CUP process would require public notice and a hearing. Without it, residents learn of installations only when the truck arrives.
Tiered siting hierarchy	Partial Referenced in draft; not fully operationalized.	Formalize an 11-tier siting preference hierarchy signaling where facilities are preferred (industrial, co-located) and disfavored (residential, right-of-way). Use "preferred" language — not mandatory — to avoid effective prohibition claims.
Co-location incentives	Gap No incentive structure exists.	Consider waiving certain requirements for carriers that co-locate on existing structures, treating them similarly to eligible facilities. Industry resists co-

Topic	Current status	Recommended change
		location; the county should actively incentivize it.
RF compliance & testing		
RF compliance report at application	<p>Partial</p> <p>Required, but independently verifiable detail is unclear.</p>	Require predictive exposure modeling in sufficient detail for independent technical review. An independent consultant — retained by the county or a community intervenor — must be able to assess the modeling's accuracy.
Post-installation RF testing	<p>Added / Pending</p> <p>New draft adds testing within 60 days of installation.</p>	Retain and strengthen. Also require periodic ongoing compliance certifications. Note: the existing tower on McCourtney Road was activated in December and is not yet subject to the new testing requirements under the prior order.
Exposure vs. emissions language	<p>Present</p> <p>Draft correctly uses "exposure" rather than "emissions."</p>	Retain as-is. Exposure measured at a given location is the correct and more protective standard. Emissions alone do not capture hotspots caused by terrain, antenna orientation, or multi-frequency interaction.
Good-cause independent testing	<p>Gap</p> <p>No mechanism for complaint-triggered testing.</p>	Add a provision allowing the county to require independent RF testing — paid for by the carrier — when a reasonable threshold showing of harm is met. Testing must use equipment calibrated for 5G/6G

Topic	Current status	Recommended change
<p>Permit condition: RF compliance</p>	<p>Partial</p> <p>Not explicitly tied to the permit.</p>	<p>frequencies. Carrier self-reporting is not a substitute.</p> <p>Make RF compliance an explicit permit condition so that a demonstrated violation provides grounds for permit revocation. Without this, enforcement options are limited to referral to the FCC.</p>
<p>Setbacks & siting</p>		
<p>Setback measurement standard</p>	<p>Partial</p> <p>GIS modeled from property lines.</p>	<p>Assess whether setbacks can be measured to existing occupied structures rather than property lines. Current GIS model appears to exclude viable parcels. Distance from antenna to an occupied home is the more meaningful health-protective standard.</p>
<p>Setback flexibility via Subsection K</p>	<p>Gap</p> <p>Does not exist in current draft</p>	<p>Include Subsection K (p. 37-38 of NCST template) provides a waiver pathway. Retain and clearly communicate. Carriers may seek relief from setback requirements only by demonstrating effective prohibition through the waiver process. This does not invalidate the setback rules — it is the county's legal safety valve.</p>

Topic	Current status	Recommended change
Above-ground RF exposure		
Positive access control requirements	<p>Gap</p> <p>Not addressed in current draft.</p>	<p>FCC rules require carriers to affirmatively exclude the general population from any area — at any height — where exposure limits are exceeded. Signage is not sufficient; physical barriers are required. Arborist and maintenance worker scenarios must be addressed explicitly.</p>
Contingency access plan	<p>Gap</p> <p>Not required at application.</p>	<p>Require carriers to submit, as a permit condition, a contingency plan for any scenario where humans must access areas near elevated RF exposure — including arborists, maintenance workers, or adjacent occupants at height.</p>
Legal structure & procedure		
Small cell exclusion from current draft	<p>Gap</p> <p>Wholesale exclusion creates internal inconsistency.</p>	<p>Adding a CUP requirement for small cells may require the ordinance to return to the Planning Commission under California statute if the change is deemed substantial. County counsel must advise on the applicable threshold.</p>
Shot clock vulnerability	<p>Partial</p> <p>Application completeness checklist may be insufficient.</p>	<p>Require all land use and building permit information at the front end (see Section D1A of NCST template) The shot clock covers the entire permitting process including building permits. Sequential processing — land use first, then building — creates shot clock risk.</p>

Topic	Current status	Recommended change
Pending follow-up items		
Decommissioning language	Added / Pending To be transmitted by NCST	Nevada County for Safe Tech will draft supplemental language covering decommissioning requirements, full liability indemnification, and property owner consent provisions. These protect the county and affected property owners and fall within the letter of the law.
Good-cause testing model ordinance	Added / Pending McCullough to research and provide.	McCullough will locate a precedent ordinance establishing the standard and threshold for carrier-funded independent RF testing triggered by credible resident complaints.

Status key: **Gap** Not present in draft **Partial** Present but needs strengthening
Present Retain as-is **Added / Pending** New addition or awaiting follow-up

TOWN OF ATHENS

WIRELESS TELECOMMUNICATIONS FACILITY ORDINANCE

SECTION 1. TITLE

This Ordinance shall be known and may be cited as the “Wireless Telecommunications Facility Ordinance”, and will be referred to herein as the “Ordinance.”

SECTION 2. PURPOSE

The purpose of this ordinance is to provide a process and a set of standards for the regulation of wireless telecommunications facilities in order to:

- (A) Establish standards for proper location, placement, design, structural integrity, and compatibility of wireless telecommunications facilities, to ensure their compatibility with surrounding aesthetics and development;
- (B) Implement municipal regulations related to the provision of wireless telecommunications services, and the siting of their facilities;
- (C) Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- (D) Permit and manage access to the public rights-of-way of the Town;
- (E) Ensure that all telecommunications carriers providing facilities or services within the Town comply with the Ordinances of the Town;
- (F) Encourage the colocation of wireless telecommunications facilities, thus helping to minimize adverse impacts on the community;
- (G) Recognize that technology and laws regarding these facilities has changed, so the Town’s regulations need to change accordingly;
- (H) Promote the health, safety, and general welfare of the people of Athens;
- (I) Minimize negative impacts of facilities on surrounding land uses;
- (J) Conserve and enhance the unique natural beauty, irreplaceable natural resources, historical, natural, and man-made character and appearance of Wesserunett Valley and the Town of Athens;
- (K) Protect residents, buildings, fields, farmland, woodlands, and infrastructure from dangers resulting from fire and electrical malfunctions;
- (L) Protect the scenic and visual character of the Town along with its landscapes and views which are responsible for the Town of Athens’ economic vitality and future potential. Protecting these assets will require that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics of the Town of Athens; and
- (M) Provide standards for the safe provision, monitoring, and removal of cell towers and other personal wireless service facilities consistent with applicable federal, state and local laws, ordinances, and regulations.

This Ordinance is not intended to, nor shall it be interpreted or applied to:

- (A) Prohibit or effectively prohibit any personal wireless service provider’s ability to provide authorized service;

- (B) Prohibit or effectively prohibit any entity's ability to provide reasonable and necessary interstate or intrastate telecommunications service;
- (C) Unreasonably discriminate among providers of functionally equivalent services;
- (D) Deny any request for authorization to place, construct or modify wireless telecommunications service facilities solely on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply in every instance and regard with all FCC's regulations concerning such emissions;
- (E) Deny any Eligible Facilities Requests that the Town may not deny under federal or state law.

Consistent with the balancing of interests which the United States Congress intended to embed with the federal Telecommunications Act of 1996 (hereinafter "the TCA"), codified in various sections of 47 U.S.C. Chapter 5 ("Communications Act"), this Ordinance is intended to serve as a Smart Planning Provision, designed to achieve the four (4) simultaneous objectives of:

- (A) Enabling personal wireless service providers to provide adequate personal wireless services throughout the Town so that Town residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services;
- (B) Minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage;
- (C) Preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the Town's communities, residential areas, and individual homes; and
- (D) Complying with all legal requirements the Communications Act imposes upon the Town, when the Town receives, processes and determines applications seeking approvals for the placement, construction and modifications of cell towers and/or other personal wireless service facilities.

The Town seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and sites, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The Town also seeks to ensure that, in applying this section, the Select Board is vested with sufficient authority to require applicants to provide adequate, accurate, and truthful probative evidence, to enable the Board to render factual determinations consistent with both the provisions set forth herein below and the requirements of the Communications Act when rendering decisions upon such applications.

To achieve the objectives stated herein, the Town seeks to employ the "General Authority" preserved to it under 47 U.S.C. §332(c)(7)(A) to the greatest extent which the United States Congress intended to preserve those powers to the Town, while simultaneously complying with each of the substantive and procedural requirements set forth within 47 U.S.C. §332(c)(7)(B) and 47 U.S.C. §1455(a).

SECTION 3. AUTHORITY

This Ordinance is adopted pursuant to and consistent with Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A MRSA Section 3001.

SECTION 4. APPLICABILITY

This local land use ordinance applies to all construction, modification, and expansion of wireless telecommunications facilities, except as provided in Section 4.1.

4.1. Exemptions - The following are exempt from the provisions of this ordinance: _

- (A) Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials;
- (B) Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the FCC;
- (C) A ground or building mounted citizens band radio antenna, including any mast, if the height (post and antenna) does not exceed forty-five feet;
- (D) Non-transmitting antennas designed to receive over-the-air broadcast signals;
- (E) Mobile and portable devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar personal-use devices; and
- (F) Antennas subject to the preemptive provisions of 47 C.F.R. Part 1, Subpart S.

SECTION 5. DEFINITIONS

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE

An adjunct facility or structure associated with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or electrical transmission equipment storage sheds or cabinets. Other than utility poles used as support structures, the accessory facility or structure is not itself or part of a personal wireless service facility but can be part of the permitting review for personal wireless service facilities.

ACCESSORY EQUIPMENT

Equipment other than antennas used as part of a personal wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. §1.6100(b)(8), as may be amended or superseded. Accessory equipment is an element of a personal wireless service facility.

ACHP

The Federal Advisory Council on Historic Preservation.

ADEQUATE COVERAGE

As determined by the Select Board, adequate coverage means that a specific wireless carrier’s personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier’s personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the Town, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier’s gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap,

whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using or can use its services are not the most preferred frequency of the wireless carrier.

ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or mobile or portable device authorized under 47 C.F.R. Part 15.

ANTENNA EQUIPMENT

Equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

ANTENNA FACILITY

An antenna and associated antenna equipment.

APPLICANT

Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a Wireless Telecommunications Facility Permit, site plan approval, building permit, pole permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.

APPLICATION

Refers to all necessary and required documentation and evidence that an applicant must submit to receive a Wireless Telecommunications Facility Permit, building permit, or other municipal approval for personal wireless service facilities from the Town.

BALLOON TEST

The raising of a balloon (or placement of a "crank up" tower, crane or temporary structure) equal to the height of a proposed personal wireless services facility tower for a period of 4 hours on a pre-determined date and time prior to approval of a Wireless Telecommunications Facility Permit application.

BATCHED APPLICATION

More than one application for a Wireless Telecommunications Facility Permit submitted at the same time.

BOARD

The Select Board of the Town of Athens, also known as the Board of Selectmen.

CELL TOWER

A free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services,

including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

C.F.R.

The Code of Federal Regulations

COLOCATION and/or COLOCATE

To install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

COMPLETE APPLICATION, COMPLETED APPLICATION

An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this and the Code Enforcement Officer or the Town's expert or consultant or the Board determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Code Enforcement Officer, Select Board or the Town's expert or consultant or the Board.

COMPLEX

The entire site or facility, including all structures and equipment, located at the site.

DBM (dBm)

DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.

DEPLOYMENT

The placement, construction, or substantial modification of a personal wireless service facility.

DISTRIBUTED ANTENNA SYSTEM, DAS

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

EFFECTIVE PROHIBITION

A finding by the Select Board that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Board deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined in this Ordinance, but suffers from a significant gap or capacity deficiency in its personal wireless services within the Town and that a proposed installation by that applicant would be the least intrusive means of remedying that gap or deficiency, such that a denial of the application to install such facility would effectively prohibit the identified carrier from providing personal wireless services within the Town. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon a preponderance of the evidence in the record.

ELEVENTH HOUR SUBMISSIONS

An applicant's submission of new and/or additional materials in support of an application within 48 hours of the expiration of an applicable shot clock, or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Select Board to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

ELIGIBLE FACILITIES REQUEST

A request for modification of an existing wireless tower or base station that involves that does not substantially change the physical dimensions of such tower or base station:

- (A) Collocation of new transmission equipment;
- (B) Removal of transmission equipment; or
- (C) Replacement of transmission equipment.

ENURE

To operate or take effect. To serve to the use, benefit, or advantage of a person or party.

EXCESSIVE RF RADIATION or EXCESSIVE RADIATION

RF radiation emissions at levels that lead to human exposures exceeding the general population or occupational human exposure limits set forth within 47 C.F.R. §1.1310(e)(1), Table 1 Sections (i) and (ii).

FAA

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

FACILITY OR PERSONAL WIRELESS SERVICE FACILITY (PWSF)

An antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services. It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment as accessory equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services but does not include accessory facilities or structures. A generator, battery or other main or backup source of electrical energy used to supply power to Facility is not itself or part of a Facility or Personal Wireless Service Facility since it is not an antenna, structure or accessory equipment as defined herein or under FCC rules except to the extent it is a utility pole used as a support structure for antennas. Utility or back up electrical power sources are accessory facilities or structures.

FCC

The Federal Communications Commission.

GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 C.F.R. §1.1310(e)(1), Table 1 Section (ii).

HEIGHT

When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

HISTORIC STRUCTURE

Any structure that is either listed on the National Register of Historic Places, or is eligible for inclusion in the National Register of Historic Places under 36 C.F.R. §63.1.

IN-KIND REPLACEMENT

The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

MACROCELL

A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 300 feet in height.

MAINTENANCE or ROUTINE MAINTENANCE

Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

MHPC

The Maine State Historic Preservation Commission

NECESSARY or NECESSITY or NEED

What is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards. Any situation involving a workable choice between or among alternatives or options is not a need or a necessity.

NEPA

The National Environmental Policy Act, 42 U.S.C. §4321 et seq, the Council for Environmental Quality’s rules at 40 C.F.R. Chapter V, Subchapter A and the FCC’s implementing rules at 47 C.F.R. Part 1, Subpart I.

NHPA

The National Historic Preservation Act, 54 U.S.C. §300101 et seq, and 36 C.F.R. Part 800 et seq.

NODE, DAS NODE

A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, or (if so enabled) small cells which operate independently.

NON-STEALTH AESTHETIC REQUIREMENTS

A design or treatment other than stealth technology that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. Non-stealth aesthetic requirements can take the form of location restriction, concealment techniques like walls or facades, or trees.

NOTICE ADDRESS

An address, which is required to be provided by an applicant at the time it submits an application for a Wireless Telecommunications Facility Permit, at which the Town, Select Board and/or Code Enforcement Officer can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Ordinance, as well as any notice requirements of any other local, state and/ or federal law.

NOTICE OF INCOMPLETENESS, NOTICE OF INCOMPLETE APPLICATION

A written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a personal wireless services facility, wherein the sender advises the applicant that its application is incomplete, the wrong type of application, or is otherwise defective, and setting forth the reason or reasons why the application is incomplete and/or defective.

NOTICE OF EFFECTIVE PROHIBITION CONDITIONS

A written notice which is required to be provided to the Town at the time of the filing of any application for a Wireless Telecommunications Facility Permit, by all applicants seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the Town, would constitute an “effective prohibition” within the meaning of the Communications Act, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II).

OCCUPATIONAL/CONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 C.F.R. §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 C.F.R. §1.1310(e)(2).

ORDINANCE

This Wireless Telecommunications Facility Ordinance.

PERMIT

Wireless Telecommunications Facility permit issued by the Town of Athens.

PERMITTEE

The person(s) or entity(ies) to which a Wireless Telecommunications Facility Permit is issued.

PERSONAL WIRELESS SERVICE/PERSONAL WIRELESS SERVICES

Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

PROBATIVE EVIDENCE

Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Select Board, as the finder-of-fact in determining whether to grant or deny applications for Wireless Telecommunications Facility Permits under this provision of the Town Code.

RELATED THIRD PARTIES

Any entity contracting with applicant for the design, construction, maintenance, use or operation of the proposed small cell installation, including such entity's officers, contractors, subcontractors, and agents or any subsidiaries, affiliates, successors in interest or legal assigns.

REPAIRS

The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

RESIDENTIAL DWELLING

Any dwelling unit that includes toilet or outhouse facilities, and facilities for food preparation and sleeping.

RESIDENTIAL PROPERTY

Any property that contains a residential dwelling.

RF

Radiofrequency.

RF RADIATION

Radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves of energy, and which can include both Non-Ionizing radiation and Ionizing radiation.

SECTION 106 REVIEW

A review under Section 106 of the National Historic Preservation Act.

SETBACK

For purposes of Wireless Telecommunications Facility regulation, setbacks serve multiple purposes. First, they represent one valid tool toward maintaining aesthetics and minimizing adverse effects. Second, they protect public safety by way of minimizing fire risk and ensuring sufficient opportunities for egress during emergencies.

For purposes of this Ordinance, setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or

structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a Wireless Telecommunications Facility Permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord. Setbacks from residential dwellings and school buildings shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the closest edge or corner of the residential dwelling or school building and the closest permitted structure of the wireless service facility.

SHOT CLOCK

The applicable period which is presumed under FCC rules to be a reasonable period for the Town to make a final decision on an application seeking Wireless Telecommunications Facility Permit approval for the installation or substantial or minor modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii).

SPECTRUM ACT

Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI (Spectrum Act of 2012), §6409(a), 126 Stat. 156 (Feb. 22, 2012), codified as 47 U.S.C. §1455(a).

PREPONDERANCE OF THE EVIDENCE

An assignment of the burden of proof. Means proving that the proposition is more likely true than not true. Expressed slightly differently, proving something by a preponderance of the evidence means proving it by the greater weight and persuasiveness of the evidence.

SCHOOL

A public school, private school, or public preschool program as defined in 20-A M.R.S. §1, or any other educational facility that serves children from prekindergarten to grade 12.

SITE DEVELOPER or SITE DEVELOPERS

Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.

SMALL CELL

A fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles, support structures or is strand-mounted. Small cells are located at substantially lower elevations than macrocell facilities.

SMALL WIRELESS FACILITY (SWF)

A personal wireless service facility and type of small cell that meets each of the following conditions:

(A) The facilities—

- (i) Are mounted on structures 50 feet or less in height including their antennas as defined below;

- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; and
- (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(B) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna above, is no more than three cubic feet in volume;

(C) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(D) The facilities do not require antenna structure registration under 47 C.F.R. Part 17;

(E) The facilities are not located on Tribal lands, as defined under 36 C.F.R. 800.16(x); and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. §1.1307(b).

A small wireless facility as defined in 30-A M.R.S. §4362(1)(A) proposed to be located in the public right-of-way is a permitted use but is otherwise subject to the provisions of this Ordinance.

STATE

The State of Maine.

STEALTH or STEALTH TECHNOLOGY

Stealth technology is used to make a personal wireless facility look like something other than a wireless tower or base station.

STRAND MOUNTED ANTENNA or STRAND MOUNTED SMALL CELLS

Small wireless antenna(s) and equipment attached directly to the wire, that is, the metal strand, hanging between two utility poles. These are similar in size to cable operator's equipment that is placed on their aerial fiber. Strand Mounted antennae are small cells but do not qualify as a Small Wireless Facility because it is not mounted on a Structure as defined below.

STRUCTURE

A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

TCA

The Telecommunications Act of 1996, codified in various parts of 47 U.S.C. Chapter 5.

THERMAL RUNAWAY

Self-heating of an electrochemical system in an uncontrollable fashion.

TOLLING or TOLLED

The pausing of the running of the time period permitted under the applicable shot clock for the respective Type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application

will end the tolling, thus causing the shot clock period to either *resume* running or restart and begin running *anew*.

TOWER, TELECOMMUNICATIONS TOWER

Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.

TOWN

The Town of Athens, Maine.

TOWN ORDINANCES

The Ordinances of the Town of Athens, Maine.

UNDERTAKING

As defined in NHPA, 54 U.S.C. §300320(3); see also 36 C.F.R. §800.16(y) (defining undertaking). Any application for a Wireless Telecommunications Facility Permit seeking Board approval for the installation of a personal wireless services facility licensed under the authority of the FCC is an undertaking within the meaning of NEPA, in accord with 42 C.F.R. §137.289 and 36 C.F.R. §800.16.

WIRELESS CARRIERS or CARRIER

Companies that provide Personal Wireless Services to end-use consumers.

WIRELESS TELECOMMUNICATIONS FACILITY or WIRELESS FACILITY

Any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services. See also 30-A M.R.S. §4362(1)(B).

WIRELESS TELECOMMUNICATIONS FACILITY PERMIT

The official document or permit granted by the Select Board pursuant to which an applicant is allowed to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services in compliance with this Ordinance.

SECTION 6. REVIEW AND APPROVAL AUTHORITY

No personal wireless services facility shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this section.

Prior to the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF the Town shall require a Wireless Telecommunications Facility Permit pursuant to the provisions of this section, which shall be applied for in accordance with the procedures set forth within this Ordinance, unless otherwise provided herein below.

An applicant seeking to place PWSF facilities in Town-owned right-of-way it must have already entered into a Right-of-Way Use Agreement with the Town or otherwise already possess the right to use the right-of-way for this purpose.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/ or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a Wireless Telecommunications Facility Permit.

Each application for a Wireless Telecommunications Facility Permit under this chapter and each individual PWSF for which an application for a Wireless Telecommunications Facility Permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. Each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a Distributed Antenna System or other interlinked system.

SECTION 7. APPLICATION TYPES

7.1 Application Types - There shall be four (4) specific types of applications for Wireless Telecommunications Facility Permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. It shall be the obligation of any applicant to explicitly and correctly identify which type of application being filed. The four types of applications for Wireless Telecommunications Facility Permits are detailed as follows:

(A) Type I Applications - Colocations of Small Wireless Facilities and Eligible Facilities Requests

Type I applications shall be limited to applications wherein an applicant seeks to collocate a new small wireless facility, as defined in this chapter, by installing new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.

Type I applications for collocation of a small wireless facility shall require an applicant to obtain a Wireless Telecommunications Facility Permit from the Select Board.

Applications that meet the definition of an Eligible Facilities Request shall also be treated as a Type I application. Consistent with 47 C.F.R. §1.6100(c), if the application does meet the requirements for that category under FCC rules, the Town Board shall approve the application, subject to the Town Board's retained right to ensure compliance with generally-applicable safety code requirements.

(B) Type II Applications - Colocations which do not meet the definition of a Small Wireless Facility;

Type II applications shall be limited to applications wherein an applicant is seeking to collocate new personal wireless service equipment by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex, which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure.

Type II applications for collocation of a wireless facility shall require an applicant to obtain a Wireless Telecommunications Facility Permit from the Select Board.

(A) Type I Applications - Colocations of Small Wireless Facilities;

Unless extended by agreement, tolled, or subject to reasonable delays, the Select Board shall issue a written decision upon a Type I application within sixty (60) days after the date that the Town receives a Type I application.

Upon receipt of a Type I application to collocate a SWF, the Select Board shall review the application for completeness. If the Select Board determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days after the date of the Town's receipt of the application, the Select Board, or his/her or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Upon receipt of a Type I application claiming to be an Eligible Facilities Request, the Select Board shall review the application for completeness. If the Select Board determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days after the date of the Town's receipt of the application, the Select Board, or his/her or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Select Board shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Select Board shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Select Board to remedy the issues identified in the Notice of Incomplete Application, which they had mailed to the applicant.

The receipt by the Select Board of any responsive materials from the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Select Board determines that the application is still incomplete and/or defective, then the Select Board shall, once again, mail a Notice of Incompleteness within ten (10) days after the date when applicant has submitted its supplemental or corrected materials to the Town. The shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

For applications to collocate a SWF that have been tolled, once the applicant has provided all necessary information and the Town Board is satisfied that the applicant has correctly characterized the request the shot clock shall resume.

For Eligible Facility Requests that have been tolled, once the applicant has provided all necessary information and the Town Board is satisfied that the applicant has correctly characterized the request the shot clock shall restart and begin anew, e.g., reset to day 0.

(B) Type II Applications - Colocations on existing Towers, Structures or other Facilities which do not meet the definition of a Small Wireless Facility;

Unless extended by agreement, tolled, or subject to reasonable delays, the Select Board shall issue a written decision upon a Type II application within ninety (90) days after the date that the Town receives a Type II application.

Upon receipt of a Type II application, the Select Board shall review the application for completeness. If the Select Board determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days after the date of the Town's receipt of the application, the Select Board, or his/her or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Select Board shall advise the applicant, with reasonable clarity of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Select Board shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Select Board to remedy the issues the Select Board identified in the Notice of Incomplete Application, which they had mailed to the applicant.

The receipt by the Select Board of any responsive materials from the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Select Board determines that the application is still incomplete and/or defective, then the Select Board shall, once again, mail a Notice of Incompleteness within ten (10) days after the date the applicant has submitted its supplemental or corrected materials to the Town. The shot clock shall once again be tolled, and the same procedure provided hereinabove shall be repeated.

For Type II applications that have been tolled, once the applicant has provided all necessary information and the Town Board is satisfied that the applicant has correctly characterized the request the shot clock shall be resumed.

(C) Type III Applications - New Small Wireless Facilities; and

Unless extended by agreement, tolled, or subject to reasonable delays, the Select Board shall issue a written decision upon a Type III application within ninety (90) days after the date that the Town receives a Type III application.

Upon receipt of a Type III application, the Select Board shall review the application for completeness. If the Select Board determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days after the date of the Town's receipt of the application, the Select Board, or his/her or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address which the applicant has provided.

Within such Notice of Incompleteness, the Select Board shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Select Board shall toll the 90-day shot clock. If and when the applicant tenders an additional submission to the Select Board to remedy

the issues the Select Board identified in the Notice of Incomplete Application, which he/she or they had mailed to the applicant the shot clock shall be reset to day 0 unless, upon receipt of any additional materials from the applicant, the Select Board determines that the application is still incomplete and/or defective, the Select Board mails a Notice of Incompleteness within ten (10) days after the date that the applicant has submitted its supplemental or corrected materials to the Town, at which point the shot clock *shall be tolled*, and the same procedure provided for hereinabove shall be repeated.

For Type III applications that have been tolled, once the applicant has provided all necessary information and the Town Board is satisfied that the applicant has correctly characterized the request the shot clock shall restart and begin anew, e.g., reset to day 0

(D) Type IV Applications - New Towers and All Other Wireless Facilities.

Unless extended by agreement, tolled, or subject to reasonable delays, the Select Board shall issue a written decision upon a Type IV application within one hundred fifty (150) days after the date that the Town receives a Type IV application.

Upon receipt of a Type IV application, the Select Board shall review the application for completeness. If the Select Board determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days after the date of the Town's receipt of the application, the Select Board, or his/her or their designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Select Board shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Select Board shall toll the 150-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Select Board to remedy the issues the Board identified in the Notice of Incomplete Application, which he/she or they had mailed to the applicant.

The receipt by the Select Board of any responsive materials from the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Select Board determines that the application is still incomplete and/or defective, then the Select Board shall, once again, mail a Notice of Incompleteness within ten (10) days of the date that the applicant has submitted its supplemental or corrected materials to the town and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

For Type IV applications that have been tolled, once the applicant has provided all necessary information and the Town Board is satisfied that the applicant has correctly characterized the request the shot clock shall resume.

8.3 Shot Clock Extensions & Reasonable Delay Periods

(A) Shot Clock Extension by Mutual Agreement; and

The Select Board, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Board shall include the Board's authority to request, at any time, and for any period of time the Select

Board may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Board, the applicant, or any relevant third party, to complete any type of Undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Board, to the extent that any such Undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or municipal laws or regulations, and/or the requirements of any provision of Town Ordinances, including but not limited to this Ordinance.

In response to any request by the Board, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Select Board shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Board within the hearing process.

(B) Reasonable Delay Extensions of Shot Clock Periods.

The Town recognizes that there may be situations wherein, due to circumstances beyond the control of the Town and/or the Select Board, the review and issuance of a final decision upon a Wireless Telecommunications Facility Permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section 8.2.

If, despite the exercise of due diligence by the Town and the Select Board, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Board shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is, because of the specific facts, reasonable under the circumstances.

SECTION 9. APPLICATION REQUIREMENTS

9.1 Initial Application

Applications for a Wireless Telecommunications Facility permit shall be made to the Select Board, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

If the Select Board determines that the application is defective or incomplete, they shall promptly mail a Notice of Incompleteness to the applicant, in accord with Section 8 to toll the applicable shot clock, to ensure that the Town and the Select Board are afforded sufficient time to review and determine each respective application.

9.2 Batched Applications

Applicants may submit up to five individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the Select Board, in the Select Board's discretion, shall determine whether the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the Select Board shall determine whether the entire batch shall be deemed withdrawn. If any

application in a batch fails to meet the required findings for approval, the Select Board shall determine whether the entire batch shall be denied.

9.3 Application Materials

Except as provided in Section 9.5, each application shall include the following materials, the absence of any one of which listed hereinbelow, shall render the respective application incomplete:

(A) Listing of all applicants, co-applicants, site developer(s), and wireless carrier(s), and related third parties on whose behalf the application is being submitted;

(B) Proof of Authorization for Site Occupancy;

Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, the applicant shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to Colocate new equipment into an existing personal wireless services facility, it shall provide a copy of its written colocation agreement with the owner of such pre-existing personal wireless services facility, from which it may redact any financial terms.

(C) Drawn-To-Scale Depictions;

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Ordinance, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility. If the applicant claims the proposal involves an Eligible Facilities Request it shall provide sufficient documentation for the Town to determine that the modification of an existing tower or base station does not substantially change the physical dimensions of such tower or base station.

(D) Site Plan;

The applicant shall submit a site plan that shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new Facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan. The site plan shall be drawn to a scale of not more than one hundred feet to the inch.

The site plan shall include a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

(E) Fire Safety;

The applicant shall submit a fire safety plan that includes a general description of the personal wireless services facility for purposes of ensuring the Fire Department is fully informed and prepared in case of a fire. The Fire Safety Plan shall specify how the equipment operation will be in compliance with NFPA 76 standards for safeguarding telecommunications facilities and equipment from fire damage, NFPA 2001: Clean Agent standards for fire suppression systems in telecommunications facilities, NFPA 72: Fire Alarm and Signaling Code standards for fire alarm system installation, testing, and maintenance. The fire safety plan must include, but is not limited to, the following:

- (i) Location of all Fire Safety Plan documents;
- (ii) Location of the facility's alarm panel;
- (iii) List of emergency contacts;
- (iv) Specific responsibilities assigned to designated personnel;
- (v) Location of signal-processing equipment;
- (vi) Location and listing of types of power equipment, including rectifiers, inverters, distribution cabinets, bus bars, cables, and communications raceways;
- (vii) Listing and location of batteries, including description of quantities and types of batteries, specifying whether batteries are lithium-ion, nickel cadmium, sodium-nickel, valve-regulated lead acid, and/or vented, and description of any associated exhaust ventilation system(s);
- (viii) Description of actions to detect and prevent thermal runaway events;
- (ix) Description of whether the facility will be located in a lightning-prone area. If the facility is to be located in a lightning-prone area, description of how the facility shall comply with NFPA 780 Standard for the Installation of Lightning Protection Systems;
- (x) Description of location and types of fuses used to ensure that if the wireless transmission facility experiences overcurrent resulting from current exceeding the rating of equipment or the ampacity of a conductor, the facility shall turn off temporarily;
- (xi) Depowering procedures including identification of locations of electrical depowering devices or service disconnecting means, which include:
 - (1) Coded floor prints located in the Fire Safety Plan document;
 - (2) Facility signage to direct fire personnel to depowering locations; and
 - (3) The method of turning off power to the following:
 - (a) Alternating current power board. This is the primary source of electric power for a telecommunications facility and is supplied by the local power company;
 - (b) Standby power generator. This unit, usually a turbine or diesel generator, provides standby alternating current power that is transferred manually or automatically whenever a loss of utility-fed power is experienced;

(c) Direct current primary disconnect fuse or circuit breaker bay. This unit distributes direct current power to the secondary fuse or circuit breaker panels throughout the central office. The secondary fuse or circuit breaker panels feed all the operating voltages to the central office branch circuits;

(d) Uninterruptible power supply (UPS);

(e) HVAC systems serving the facility;

(f) Alternative energy devices, such as wind turbines, fuel cells, photovoltaic systems, or other devices providing power to the facility;

(xii) Location of Knox box;

(xiii) Description of plan for regular testing and maintenance of fire suppression and detection systems to ensure they remain operational during an emergency;

(xiv) Description of actions and procedures to prevent overheating of breakers;

(xv) Description of overcurrent protection equipment;

(xvi) Description of methods used to ensure impedance matching and to prevent of mismatches between sources, conductors, and loads.

(F) Soil Erosion and Sedimentation Control;

A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the latest revised edition of the Environmental Quality Handbook published by the U.S. Soil Conservation Service. The plan shall include proof that the construction, operation, and maintenance of the personal wireless services facility will be in compliance with the Town of Athens Shoreland Zoning Ordinance.

(G) Engineer's Report;

For the construction of all new wireless facilities, the applicant shall provide a report prepared and certified by professional civil, electrical, structural engineer (as appropriate) registered in Maine certifying the integrity and safety of all proposed new towers, equipment and/or structures and compliance with all applicable standards and codes. The report or the design plans shall indicate the location, type, and height of the proposed personal wireless services facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, all applicable American National Standards Institute (ANSI) and American Society of Civil Engineers (ASCE) standard, and all building, electrical, fire and other safety codes.

To the extent that an application proposes to collocate or add new equipment onto an existing tower or personal wireless services facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

The engineer's report and/or designs shall provide enough detail to independently verify compliance with all applicable standards and code. At minimum, the materials shall include:

- (i) A short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
- (ii) A one-line diagram of the electrical system;
- (iii) Voltage Drop & Load Flow Study;
- (iv) Load Calculation;
- (v) Panel Directories;
- (vi) A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
- (vii) A plot plan showing the location of the service disconnecting means;
- (viii) An elevation drawing of the equipment and the service disconnecting means; and
- (ix) Demonstration that the wireless facility structure is designed to meet applicable structural standards for antenna support structures and antennas, including but not limited to TIA 222-1-2023, or its replacements.

(H) Visual Impact Analysis;

The applicant shall provide a completed visual impact analysis, which, at a minimum, shall include the following:

(i) Small Wireless Facilities;

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The applicant shall also provide the information required by Section 10.1.D, viewshed observation points.

(ii) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility for applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

(1) A “Zone of Visibility Map” to determine locations from where the new facility will be seen;

(2) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic

impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/ or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory facilities or structures, including overhead utility lines from abutting properties and streets; and

(I) Location Preferences and Alternative Site Analysis;

The application shall address the applicant’s effort to meet the Town’s location preferences described in Section 10.1 and fully justify any proposed placement of any facility that is not in the most preferred location and/or any higher preferred location than the specific location that is proposed.

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a Wireless Telecommunications Facility Permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (i) An inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed facility;
- (ii) A map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory facilities or structures on the site of the inventoried location;
- (iii) An outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility;

- (iv) A demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case; and
- (v) A demonstration the carrier is not able to solve any claimed service needs through upgrade of existing facilities to improve coverage or capacity, including but not limited to cell splitting and/or cell sectoring. The application shall explain why no alternative is available or feasible.

(J) FCC Compliance;

The requirements are as follows:

- (i) The information required by Section 14 of this Ordinance;
- (ii) The information required by Section 15 of this Ordinance; and
- (iii) RF exposure compliance report.

An FCC compliance report, prepared by a licensed engineer registered in Maine and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed personal wireless services facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

The Town of Athens, at its own discretion, may hire a licensed engineer to cross check the FCC Compliance Report, with the cost borne by the applicant.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility then the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the Occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the *General Population Exposure Limits* or the *Occupational Exposure Limits*. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

The applicant shall make the underlying data available in a format that will allow for independent replication of results.

(K) Estimate for Cost of Removal of Facility;

A written estimate for the cost of the decommissioning and removal of the personal wireless services facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein.

(L) Property Owner Consent & Liability Acknowledgment;

A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its Wireless Telecommunications Facility Permit application and acknowledge the landowner's responsibility for engineering, legal and other consulting fees incurred by the Town if not paid by the applicant.

(M) FCC License;

A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the Town. If the applicant will be using unlicensed or licensed by rule spectrum (example: CBRS GAA) the applicant shall include documentation demonstrating federal authority to provide personal wireless services using that spectrum.

(N) Viewpoint and Viewshed Analyses

In addition to any zone of visibility analysis for impact on nearby sites, each application of any type shall address the visual impacts of the proposed facility on the protected scenic views and viewshed observation points listed in Sections 10.1.C and .D regardless of their distance from the proposed location.

- (i) Viewshed analysis. A Viewshed analysis identifies locations that are visible from one or more observation points. The analysis should be performed using a Geographic Information System program such as ArcGIS Pro, GRASS GIS (r.los, r.viewshed), QGIS (viewshed plugin), LuciadLightspeed, LuciadMobile, SAGA GIS (Visibility), TNT Mips, ArcMap, Maptitude, or ERDAS IMAGINE, configured as appropriate for tower siting and using proper variables or offset variables. The analysis should employ both line of sight and full viewshed tools. The output should identify what locations the facility can be seen from and whether any views will be blocked or obstructed as a result of the facility. The analysis should in particular determine whether there will be blockage or obstruction of any of the protected view areas listed in Section 10.1.C from any point.
- (ii) Visibility analysis. A visibility analysis assesses what areas are visible from a specific point. Visibility analyses also involves use of a GIS to determine whether a proposed facility will act as a visibility barrier to views from the selected point. Many of the programs used for viewshed analysis have an available visibility analysis plugin. The application must include a visibility analysis for the points within the protected viewshed areas listed in Section 10.1.D.

(O) Effective Prohibition Claims;

Applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the Communications Act, prohibits the local government from denying their respective applications even if state law does not otherwise permit a variance. The Town recognizes that Congress has restricted the Town's state-law authority to some extent and has imposed additional obligations through the TCA, codified at 47 U.S.C. §332(c)(7)(B). At the same time, federal courts and the FCC have recognized that there is a balance to be struck between the Town's traditional state law land use authority and carriers' needs to deploy personal wireless service facilities. Regulations focused on legitimate local objectives, such as ordinances requiring installations to conform to the character of the neighborhood, are not categorically precluded by the effective prohibition restriction. The Town will strive to affect a harmonious role regarding placement, construction and modification of personal wireless service, so that carriers can place needed personal wireless service facilities on suitable sites after taking appropriate measures to mitigate adverse effects.

Wireless carriers often assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps. The Town is aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states. At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy. As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff's 66-page report is available in the Athens Town Office.

Some applicants claim that the wireless carrier has adequate coverage but their facilities are experiencing a capacity deficiency that prevents the carrier from providing reliable or adequate voice and/or data service throughout the coverage area. The applicants then assert that denial of the application would constitute an effective prohibition.

The Town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Select Board to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Ordinance and the statutory requirements of the Communications Act.

Consistent with same, if, at the time of filing an application under this Ordinance, an applicant intends to assert before the Select Board or the Town that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the Town, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Select Board would constitute an "effective prohibition" under 47 U.S.C. §332, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled: **"Notice of Effective Prohibition Conditions."**

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Select Board to reasonably determine:

- (i) whether and to what extent the conditions alleged by the respective applicant exist;

(ii) whether and to what extent there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the Town, or a capacity deficiency that leads to unacceptable service quality;

(iii) the geographic locations of any such gaps or capacity deficiencies; and

(iv) the geographic boundaries of such gaps or capacity deficiencies, to enable the Select Board to determine whether granting the respective application would be consistent with the requirements of this Ordinance and the legislative intent behind same, and whether federal law would require the Select Board to grant the respective application, even if it would otherwise violate the Town's Ordinances, including, but not limited to, this Ordinance.

(P) The additional materials which the applicant shall then be required to provide shall include the following:

(1) Drive Test Data and Maps;

If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the Town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The drive test shall follow the test methodology as that employed by the FCC. *See Mobility Fund Phase II Coverage Maps Investigation Staff Report*, GN Docket No. 19-367, Doc-361165A1, ¶¶55-56, 2019 FCC LEXIS 3977, *60-*65 (Dec. 5, 2019).

The applicant shall provide the Town and the Select Board with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test;
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded;
- (iii) each signal strength recorded, measured in DBM, for each frequency; and

Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

(iv.) The applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three

(3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

(2) Denial of Service and/or Dropped Call Records;

If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency that prevents the carrier from providing adequate coverage of its personal wireless services within the Town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier’s customers were unable to initiate, maintain and conclude the use of the carrier’s personal wireless services without actual loss of service, or interruption of service. The carrier shall also indicate the current physical resource block utilization rate by channel, frequency band and air interface generation (e.g., LTE, 5G), on average, at peak times and at the time of any specifically claimed past blocking events. The underlying information and method of calculating the claimed capacity shortfall must be made available on request, in a format that will allow for independent replication of results.

(3) Evaluation of alternatives.

Applicant shall demonstrate that it made a full effort to evaluate all potential alternatives, including but not limited to (i) alternate sites, and (ii) upgrade of existing facilities to improve coverage or capacity, including but not limited to cell splitting and/or cell sectoring. The application shall explain why no alternative is available or feasible.

(Q) A specific statement of all relief requested, including each permit by type that is being sought.

9.4 Eligible Facilities Requests Application Materials

For applications claimed to be Eligible Facilities Requests, the application can be limited to:

- (A) Adequate documentation for the Town to determine whether the request meets the requirements prescribed by 47 C.F.R. §1.6100 for Eligible Facilities Requests; and
- (B) Proof that the facility, as modified, will comply with all prescribed generally-applicable health and safety codes. See Sections 10.3(B), (C) and 10.4(I), (J), (K).

9.5 Colocation and Supplementation Requests – Structures that Already Host Personal Wireless Facilities

Where an applicant proposes to collocate equipment on an existing structure that already hosts personal wireless service facilities, the application need not contain certain material that would otherwise be required. The application content requirements are the same for both Type I and Type II collocation requests, except that in order to benefit from the shorter shot clock associated with Type I collocation requests the applicant must also provide sufficient information to demonstrate the

facilities meet the criteria in 47 C.F.R. §1.6002(l). An applicant that already has equipment on an existing support structure and proposes to place additional equipment to upgrade or supplement facilities on the same support structure to expand capacity, capability or coverage can also choose to limit the application materials as allowed by this section even if the request does not meet the criteria for an Eligible Facilities Request.

The application may omit:

- (A) The boundary survey required by Section 9.3.D;
- (B) Any of the information called for by Section 9.3.E that has already been provided for the existing structure and will not change as a result of the contemplated colocation or supplementation;
- (C) Section 9.3.F;
- (D) Section 9.3.I;
- (E) Section 9.3.J(i) and (ii);
- (F) The information required by Section 9.3.K can be limited to the cost of decommissioning and removal of only the facilities proposed to be colocated, added, upgraded or supplemented.
- (G) The applicant may also seek relief from submitting any other application content requirement other than that required by Section 9.3.N (as limited). The request must state why the information is not necessary. One valid reason is that the information has already been provided as part of a prior permit application and there will be no change to that information as a result of the contemplated colocation or supplementation. If this option is taken the applicant shall include a sworn affidavit by a representative with authority to bind the applicant to the commitment that there will be no change. The Town will consider the request and state whether it is granted or denied within the period for providing Notice of Incompleteness for that application type.

9.6 Replacement Tower at an Existing Tower Site

Where an applicant proposes to replace a tower on a site that currently hosts a permitted tower, the applicant may seek relief from submitting certain application materials.

The applicant may request that other permitting requirements be waived by the Select Board. One valid reason for requesting a waiver is that the information has already been provided as part of a prior permit application and there will be no change to that information as a result of the contemplated changes to the site. If this option is taken, the applicant shall include a sworn affidavit by a representative with authority to bind the applicant to the commitment that there will be no change. The Town will consider the request and state whether it is granted or denied within the period for providing Notice of Incompleteness for that application type.

If a waiver is approved by the Select Board, the application to replace a tower at a pre-existing permitted site may omit one or more of the following:

- (A) Section 9.3.H, Visual Impact Analysis;
- (B) Section 9.3.I, Location Preferences and Alternative Site Analysis;
- (C) Section 9.3.N, Viewpoint and Viewshed Analyses

If a waiver is approved by the Select Board, the application to replace a tower at a pre-existing permitted site may be exempted from meeting Setback Requirements as specified in Section 11.

SECTION 10. LOCATION PREFERENCES AND DESIGN STANDARDS

10.1 Location Preferences

(A) Preference order:

- (i) The first and most preferred location for personal wireless service facilities is colocation at an existing site or upgrade/supplementation of a carrier's existing facilities at an existing site to expand capacity, capability or coverage, unless the new facilities would unreasonably interfere with existing scenic or aesthetic uses or obstruct protected viewsheds;
- (ii) The second order preference is a location where the personal wireless service facilities will not be visible to the surrounding and nearby properties because of distance;
- (iii) The third order preference is employment of effective concealment measures at the desired location; and
- (iv) The fourth order preference is use of stealth technology.

(B) Presumptively inappropriate locations. The Town of Athens declares that, unless the applicant can demonstrate that denial would constitute an effective prohibition and the balance of interests lies in favor of the carrier, personal wireless facilities cannot be located in a predominantly residential area and must meet all setback requirements in relation to residential dwellings or structures, school buildings, schools or town-owned playgrounds, school or town-owned recreational fields, or school or town-owned recreational facilities.

(C) The Town of Athens designates the following scenic views as existing scenic and aesthetic uses that should be protected:

- (i) Athens Village, including the historic Union Meeting House and Somerset Academy (listed on Historic Register);
- (ii) Historic Chapman Ridge Farmland;
- (iii) Barker Pond;
- (iv) Mt Rest Cemetery;
- (v) Porcupine Hill;
- (vi) Parkman Hill;
- (vii) Robbins Hill;
- (viii) Kennebec and Wesserunsett Valleys; and
- (ix) Western Mountains (Appalachian range, including Saddleback Mountain, Sugarloaf Mountain and the Bigelow Mountain Range);

(D) The Town of Athens designates the following viewshed observation points that should be protected:

- (i) 75-98 Barker Hill Rd.;
- (ii) 22-64 South Main St Rd;
- (iii) 101- 123 Stickney Hill Rd.;
- (iv) 180-183 Fox Hill Rd.;
- (v) 30-33 Back Road (Mt Rest Cemetery);
- (vi) 179-293 Dore Hill Rd.;
- (vii) 23-80 Peaks Hill Rd.;
- (viii) 257-293 Chapman Ridge Rd.;
- (ix) 2013-2056 East Ridge Rd.;
- (x) 213, 326-429 Brighton Rd.;
- (xi) 32 - 63 Lords Hill Circle; and
- (xii) Bunker Hill Rd.

10.2 General Design standards

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility at the desired location.

For any particular location the applicant must demonstrate it has designed the least visually and physically intrusive facility and complex under the facts and circumstances through any available technique, including but not limited to stealth and/or concealment.

10.3 Small Wireless Facility Design Standards

Small Wireless Facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and non-wooden poles shall conform to the following criteria.

Proposed antenna and related equipment shall meet:

- (A) Design standards which the Town may maintain and update as needed, provided that the Town makes its designed standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the Town;
- (B) All Building and Construction Codes adopted by the state of Maine as part of the Maine Uniform Building and Energy Code (“MUBEC”); and

Below is a partial list of potentially applicable codes and standards:

- (i) 2015 International Building Code;
- (ii) 2015 International Existing Building Code;
- (iii) 2015 International Energy Conservation Code;

- (iv) ANSI/ASHRAE Standard 90.1-2007;
- (v) 2020 National Electric Code – NFPA 70;
- (vi) 2015 International Mechanical Code;
- (vii) 2018 Fire Prevention Code – NFPA 1;
- (viii) NFPA 37;
- (ix) NFPA 110 and/or 111
- (x) NEC Arts. 445, 701 and/or 702, as applicable.

(C) Demonstration that the wireless facility structure is designed to meet applicable structural standards for antenna support structures and antennas, including but not limited to TIA 222-1-2023, or its replacements.

Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

10.4 PWSF Design Standards

The design of a proposed new telecommunications tower or personal wireless service facility which does not meet the definition of a Small Wireless Facility shall comply with the following:

- (A) The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties;
- (B) Existing on-site vegetation shall be preserved to the maximum extent possible, subject to actions necessary to reduce fire risks. No cutting of trees shall take place on a site connected with an application made under this Ordinance prior to the approval of the Permit use. Any tree cutting after approval of the Wireless Telecommunications Facility Permit must be in accordance with the approved site plan;
- (C) Native deciduous or other fire-resistant tree plantings may be required to screen portions of the telecommunications tower and accessory facilities or structures from nearby residential property as well as from public sites known to include important views or vistas. Trees used for screening purposes should be set back at least 20 feet from the supporting structure;
- (D) The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement;
- (E) Telecommunications towers shall not be lighted except where FAA/ FCC required lighting of the telecommunications towers is necessary. No exterior lighting shall spill from the site in an unnecessary manner;
- (F) Adequate emergency and service access shall be provided and maintained. Parking shall be provided to assure adequate emergency and service access. The Select Board shall determine

the number of required spaces, but in no case shall the number of parking spaces be less than two spaces;

(G) Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential;

(H) Fencing. The telecommunications tower and any accessory buildings or structures shall be adequately enclosed by a fence, the design of which shall be approved by the Select Board. The Select Board may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility;

(I) All Building and Construction Codes adopted by the state of Maine as part of the Maine Uniform Building and Energy Code (“MUBEC”);

A partial list of potentially applicable codes and standards are:

- (i) 2015 International Building Code
- (ii) 2015 International Existing Building Code
- (iii) 2015 International Energy Conservation Code
- (iv) ANSI/ASHRAE Standard 90.1-2007
- (v) 2020 National Electric Code – NFPA 70
- (vi) 2015 International Mechanical Code
- (vii) 2018 Fire Prevention Code – NFPA 1
- (viii) NFPA 37
- (ix) NFPA 110 and/or 111
- (x) NEC Arts. 445, 701 and/or 702, as applicable

(J) All supporting structures must be designed and constructed to meet applicable structural standards for antenna support structures and antennas, including but not limited to TIA 222-1-2023, or its replacements; and

(K) Strand-mounted antennas shall be placed only on supporting strands that have been tested and certified as capable to hold the additional weight and to resist high winds.

SECTION 11. SETBACK REQUIREMENTS

11.1 Setbacks from other wireless facilities

Each proposed personal wireless services facility shall be set back a minimum of 1,000 feet from an existing/proposed personal wireless services facility. Distances of setbacks shall be verified by the applicant and confirmed by the Code Enforcement Officer.

11.2 Setbacks from residences, schools, playgrounds, and recreational facilities

Each proposed personal wireless service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and shall be set back a minimum of 1,000 feet from any residential dwelling or structure, school building, school or town-owned playground, school or town-owned recreational field, or school or town-owned recreational facility. Adequate

measures shall be taken to contain on-site all icefall or debris from tower failure and preserve the privacy of any nearby residential properties.

11.3 Setbacks from property lines

Each proposed personal wireless service facility and personal wireless service facility structure, compound, and complex shall be set back a minimum of two hundred (250) feet from any property lines and from any public road.

Small wireless facilities proposed to be located on public right-of-way shall be setback at least the greater of 50 feet or one hundred twenty five percent (125%) of the height of the structure from any residential dwelling or structure, school building, school or town-owned playground, school or town-owned recreational field, or school or town-owned recreational facility.

SECTION 12. HEIGHT RESTRICTIONS

12.1 Small Wireless Facility Height

Personal Wireless Service Facilities which meet the definition of a small wireless facility shall not exceed a maximum height of fifty (50) feet.

12.2 PWSF Wireless Facility Height

Personal Wireless Service Facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of three-hundred (300) feet above ground level.

SECTION 13. USE RESTRICTIONS

13.1 Type I Application Use Restrictions

Type I applications for colocation of a small wireless facility shall be a Type I Wireless Telecommunications Facility Permit use, requiring an applicant to obtain a Wireless Telecommunications Facility Permit from the Select Board.

13.2 Type II Application Use Restrictions

Applications for colocations of a wireless personal services facility, which do not meet the definition of a small wireless facility, shall require a Type II Wireless Telecommunications Facility Permit.

13.3 Type III Application Use Restrictions

Applications for installing new Small Wireless Facilities that meet the criteria for Type III applications shall be considered a Type III Wireless Telecommunications Facility Permit use. They shall require a Wireless Telecommunications Facility Permit, unless they do not meet the applicable setback requirements or height limitation.

13.4 Type IV Application Use Restrictions

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility or if the small wireless facility does not meet setback requirements or height limitation shall require a Type IV Wireless Telecommunications Facility Permit.

SECTION 14. ENVIRONMENTAL IMPACTS

All fixed emission sources are subject to the FCC's NEPA rules, even if the facility in issue is not required to be registered in the Antenna Registration System (ASR). Construction constitutes a "major federal action" as defined in 40 C.F.R. §1508.1(w) since it involves federal authorizations to

use electromagnetic spectrum licensed by the FCC. This means that the licensee must evaluate whether a NEPA categorical exclusion applies. If there is no applicable categorical exclusion the licensee must perform an environmental assessment to determine whether there may be a significant environmental impact. Nothing in the FCC rules requires that the materials generated in the evaluation or assessment be made publicly available unless the facility must be registered in the ASR or the environmental assessment concludes there may be a significant environmental impact. Those rules, however, also do not specifically make them confidential or immune from disclosure.

Each application shall include all materials that must be prepared by a licensee to comply with the FCC's NEPA rules, including the original evaluation and any environmental assessment. If these materials have been submitted in a docketed or non-docketed FCC proceeding and are therefore already publicly available in a convenient manner such as through an FCC system such as ECFS or ASR and without registration the applicant may provide a working link to the materials but shall also provide a statement of the status of the proceeding, including any determinations (including but not limited to any Finding of No Significant Impact (FONSI)) made by the FCC or the bureau to which initial processing has been delegated.

These materials must include the basis for any conclusions reached through the evaluation. For example, if the evaluation concludes that a categorical exception applies the materials must contain all the facts bearing on the question, including any facts that might tend to undercut that conclusion and an explanation why the conclusion the categorical exception applies was reached despite those facts. If an environmental assessment was performed and concludes there will not be a significant environmental impact, the applicant must provide the full environmental assessment, including all underlying facts bearing on whether there may be a significant environmental impact, including any facts that might tend to undercut that conclusion and an explanation why the conclusion was reached despite those facts. Any mitigation steps proposed or to which the applicant has committed must also be fully set out.

The FCC has also subsumed Endangered Species Act Section 7 consultation within the NEPA compliance process. 47 C.F.R. §1.1307(a)(3) requires all licensees and tower owners to consider whether a proposed facility may affect sensitive species and their habitats. The U.S. Fish and Wildlife Service (USFWS) provides an online mapping tool to determine which species and habitats are likely present in and around a site and must be considered for effects. If there are listed species or habitat there must be a biological assessment that considers the likelihood of an adverse effect.

The FCC has delegated the informal consultation process to applicants, who are responsible for identifying possible effects on species and habitats and developing the initial evaluation of whether an adverse effects is likely. USFWS can provide suggestions on possible mitigating methods and has the option of indicating whether it would concur in a finding of "May Affect Not Likely to Adversely Affect" (MANLAA).

As with other NEPA related materials, the information generated during the informal ESA Section 7 consultation process is not required to be made publicly available, but no rule prohibits public disclosure or designates any information generated by an applicant as confidential.

Each application shall include all materials that must be prepared by a licensee to comply with the FCC's ESA Section 7 obligations, including the original online inquiry, the USFWS output, any USFWS mitigation recommendations, any formal or informal biological assessment and any USFWS indications whether it would concur in a MANLAA finding. If these materials have been submitted in a docketed or non-docketed FCC proceeding and are therefore already publicly available in a convenient manner such as through an FCC system such as ECFS or ASR and without registration the applicant may provide a working link to the materials but shall also provide a statement of the

status of the proceeding, including any determinations (including but not limited to any MANLAA finding) made by the FCC or the bureau to which initial processing has been delegated.

These materials must include the basis for any conclusions reached through the evaluation. For example, if the evaluation concludes that there will be no effect or no adverse effect the materials must contain all the facts bearing on the question, including any facts that might tend to undercut that conclusion and an explanation why the conclusion was reached despite those facts. If a biological assessment was performed and concludes there will not be an adverse effect, the applicant must provide the full biological assessment, including all underlying facts bearing on whether there may be an adverse affect, including any facts that might tend to undercut that conclusion and an explanation why the conclusion was reached despite those facts. Any mitigation steps proposed or suggested by USFWS or to which the applicant has committed must also be fully set out.

ESA Section 7 does not require consultation regarding species or habitats that are state-listed only. Each applicant is responsible for determining whether a project may impact state-listed species under Maine's Endangered Species Act. Applicants should also determine whether the project may impact a Maine Natural Areas Program Natural Community or a Rare Plant. Each application must include a section demonstrating that the applicant has performed all state-required assessments and evaluations and provide sufficient materials to demonstrate full compliance with the requirements of the environmental laws of Maine, including any and all records relating to and constituting required determinations. If a filing or submission to a state agency such as, for example, the Department of Environmental Protection has been made then the application shall contain a copy of all such filings.

SECTION 15. HISTORIC SITE IMPACTS

Construction and operation of a tower constitutes an "Undertaking." 47 C.F.R. §1.1307(a)(4) requires that prior to initiation of construction of a communications tower facility the entity must determine whether the proposed tower facility would affect properties listed or eligible for listing on the National Register Historic Places. The FCC has entered two National Programmatic Agreements with historic preservation officers relating to Colocation of Wireless Antennas (47 C.F.R. Part 1, Appendix B) and regarding the NHPA Section 106 review process for all other wireless facilities (47 C.F.R. Part 1, Appendix C). The FCC has also established two electronic systems to facilitate communication and collaboration regarding NHPA rights, duties and obligations.

Each application for wireless facilities shall provide sufficient documentation to demonstrate compliance with NHPA requirements. These materials shall include the results of the initial search for nearby historic properties and any notifications submitted to the Maine and/or any local preservation office, whether submitted via the FCC's Tower Construction Notification System (TNCS) and/or E-106 or otherwise. If the project may affect a historic site the application shall also include all communications with the MHPC and/or local preservation office regarding the project.

SECTION 16. FORCE MAJEURE

In the event that the rendering of a final decision upon a Wireless Telecommunications Facility Permit application under this section is delayed due to natural and/or unnatural events and/or forces which are not within the control of the Town or the Select Board, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the presumed reasonable period of time as defined by the applicable shot clock.

SECTION 17. ELEVENTH HOUR SUBMISSIONS

In the event that an applicant tenders eleventh-hour submissions to the Town and/or the Select Board in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Board at such late point in the proceedings, the Select Board shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Select Board shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Board, even if such review or services extend beyond the applicable shot clock period, so long as the Board completes such review and retains and secures such expert services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

SECTION 18. EXCESSIVE EXPOSURES AND RF TESTING

18.1 RF Limits

47 U.S.C. §332(c)(7)(B)(iv) provides that “[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” The plain text says that preemption applies when the “facilities” “comply” with the FCC’s regulations. If the facilities do not comply then a state or local government may regulate on the basis of environmental effects.

Personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC under the Antenna Registration System. Nor does the FCC enforce its RF radiation human exposure limits by: (a) testing the actual radiation emissions of wireless Facilities and actual human exposures at the time of their installation or at any time thereafter, or (b) requiring their owners to test them.

This means that for some wireless facilities constructed and operated within the Town, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to excessive levels of RF Radiation.

The Town deems it to be of critical importance to the health, safety, and welfare of the Town, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits set out in FCC regulations.

In accord with the same, the Town enacts the following RF Radiation testing requirements and provisions set forth herein below.

18.2 No Excessive RF Radiation Exposures Permitted

No personal wireless service facility emissions shall result in human exposures that exceed the FCC’s limits. To this end, no personal wireless services facility shall at any time be permitted to emit excessive RF Radiation, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 C.F.R. §1.1310(e)(1), Table 1 Sections (i) and (ii).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the Town, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any Wireless Telecommunications Facility Permit or other permitting approval granted by the Select Board or any other Board or representative of the Town is subject to modification or revocation by the Select Board following a public hearing.

18.3 Initial Certification of Compliance with Applicable RF Radiation Limits

Within forty-five (45) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the Select Board a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 C.F.R. §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 C.F.R. §1.1310(e)(3).

Predictive reports of the type that are acceptable for initial permitting are not to be used to compliance testing and certification. The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby Facilities, and determine if such emissions and resulting human exposures are exceed the limits described hereinabove at any location within the Town. The engineer shall test for actual compliance by measuring actual emissions and calculating actual exposures under typical operating conditions and under 100% duty cycle levels.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Select Board.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The Town may require, at the applicant's expense, independent verification of the results of the analysis.

18.4 Random RF Radiofrequency Testing

At the operator's expense, the Town may retain an engineer or other qualified electromagnetic radiation specialist to conduct random unannounced RF Radiation testing of emissions and exposures from such Facilities to ensure the facility's compliance with the limits codified within 47 C.F.R. §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 C.F.R. §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation or leading to exposures at levels in excess of the legal limits permitted under 47 C.F.R. §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Select Board at which the owner and/or operator of such facility shall be required

to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the Town to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 C.F.R. §1.1310(e)(1) et seq.

In the event that the Town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Select Board shall have the power to, and shall revoke any Wireless Telecommunications Facility Permit, building permit, and/or any other form of approval(s) which the Select Board, Appeals Board, Code Enforcement Officer, and/or any other representative of the Town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Select Board shall impose a fine of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove, three or more times within any five (5) year period, then in addition to revoking any approvals for the facilities which were violating the limits codified in 47 C.F.R. §1.1310(e)(1) et seq., the Select Board shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the Town for a period of five (5) years.

SECTION 19. COMPLETED APPLICATION REVIEW

Upon acceptance of an application that appears to be complete, the Select Board shall proceed to evaluate the merits of and begin the process of deciding whether to grant the requested relief in whole, in part or with changes and additional conditions beyond the standard conditions stated in Section 31. The Select Board shall also submit the application to the Fire Chief for review of Fire Safety provisions. Following approval by the Fire Chief, the Select Board shall then conduct a public hearing upon each application, and render its determinations in accord with this Ordinance, and shall ultimately determine whether or not to grant each applicant a Wireless Telecommunications Facility Permit.

SECTION 20. FIRE DEPARTMENT REVIEW

After submittal by the applicant of a complete application, the Select Board shall transmit the application packet to the Fire Chief. The Fire Chief shall review the application for compliance with objective health and safety standards related to fire hazards, including but not limited to all applicable provisions in NFPA 76 Standard for the Fire Protection of Telecommunications Facilities. The Fire Chief shall inform the Select Board in writing of the Chief's conclusions and any recommended conditions for public health and safety.

The Fire Chief has the explicit authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Chief in connection with any permit application. The Fire Chief may request independent

consultant review on any matter committed to Fire Department review or approval. Subject to applicable law, in the event that the Fire Chief elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant relating to retaining a consultant as described in this Ordinance shall be applicable to independent consultant review required by the Fire Chief.

If the applicant plans to install systems such as Energy Storage Systems (ESS) that require safety training or fire suppression equipment that the Athens Fire Department does not currently possess, the applicant will be responsible for providing training, equipment, and housing for use and maintenance of required equipment. If the Athens Fire Department has Mutual Aid Agreements with Fire Departments from surrounding towns, and those towns lack training necessary to provide adequate fire protection from the applicant's equipment, the applicant shall provide safety training for those Departments.

SECTION 21. PUBLIC HEARING

21.1 Hearing Required

The Select Board shall conduct a public hearing upon each Wireless Telecommunications Facility Permit application, except the Select Board shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the Town and the Select Board under the requirements of the Communications Act.

21.2 Notice of Public Hearing

The Select Board shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a personal wireless services facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same. Before the date scheduled for the public hearing, the Select Board shall cause to be published a "NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

Each "Notice of Public Hearing for New Wireless Facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a Wireless Telecommunications Facility Permit, and the date, time, and location of the hearing.

Each "Notice of Public Hearing for New Wireless Facility" shall be published both: (a) in one or more newspapers in the manner set forth within, and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words: "NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

For Type I and Type III applications, notices of public hearing shall be mailed to all property owners whose real properties are situated within 1,000 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Select Board shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 1,000 feet from any property line of the property upon which the applicant proposes to install its facility.

For Type II and Type IV applications, the applicant shall mail such notices of public hearing to all property owners whose real properties are situated within 1,500 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility.

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom such notices were mailed by the applicant, the date of the mailing(s), and the content of the notices which were mailed to such recipients.

SECTION 22. FACTUAL DETERMINATIONS TO BE RENDERED BY THE SELECT BOARD

22.1 Evidentiary Standards

In determining Wireless Telecommunications Facility Permit applications for personal wireless service facilities, the Select Board shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Board to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence which the Board may require an applicant to produce, are the following:

- (A) where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Board can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Board is required to determine;
- (B) where an applicant is planning a facility taller than one hundred (100) feet, the Board shall require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Board, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community. Said date and time will be established by the Select Board and Code Enforcement Officer in coordination with the Applicant, including an alternative date in case of inclement weather. If a balloon is used, the diameter shall be equal to the largest antenna or dish proposed for the tower or the width of the tower, whichever is larger. The applicant will be responsible for publishing a public notice of the balloon test in at least one local newspaper publication and notifying abutters owning property within fifteen hundred (1,500) feet, via US Mail at least one (1) week prior to the test;
- (C) where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Board may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Board to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application;
- (D) where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Board may require the applicant to

provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer; and

(E) Upgrade of existing facilities as alternative. The applicant shall evaluate whether upgrading its existing facilities to add equipment, or antennas, use additional frequencies available to the applicant or employ cell splitting or sectoring will address, in whole or in part, any claimed gap in coverage or capacity deficiencies. The application shall have the burden of proving that upgrades will not serve as acceptable solutions, in whole or in part.

22.2 Factual Determinations

The Board shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Board shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Board to determine the accuracy of any factual allegations or conclusions asserted by each respective applicant. Testimony by a subject matter expert will be required where the topic involves matters of special competence.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Board.

To decide applications for a Wireless Telecommunications Facility Permit, the Select Board shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Board shall render local permitting determinations in accordance with (a) hereinbelow.

Then, if, and only if, an applicant asserts claims that: (a) its proposed wireless facility or installation *is necessary to remedy a significant gap or coverage deficiency in personal wireless services for an explicitly identified wireless carrier*, and (b) that its proposed installation *is the least intrusive means of remedying a specifically identified significant gap or gaps or coverage deficiency*, the Board shall *additionally* render Communications Act determinations, in accord with Subsection (B) hereinbelow.

The Board shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations. Factual determinations will be based on a preponderance of the evidence.

Evidence which the Board may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Board may additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the Town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the Town, its residents, and property owners, and not applicants.

If, and to the extent that the Select Board fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Select Board.

(A) Local Permitting Determinations;

The Board shall make the following factual determinations as to whether the application meets the requirements for granting a Wireless Telecommunications Facility Permit under this Ordinance. The applicant bears the burden of proof and persuasion on all elements and issues and must demonstrate by a preponderance of the evidence that:

(i) Compliance with Ordinance;

The proposed installation will meet each of the conditions and standards set forth in this Ordinance.

(ii) Potential Adverse Aesthetic Impacts;

The proposed installation will not inflict a significant adverse aesthetic impact upon properties that are located adjacent or in proximity to the proposed site, or to the Town as a whole.

(iii) Potential Adverse Impacts Upon Real Estate Values;

The proposed installation will not inflict a significant adverse impact upon the property values of properties that are located adjacent or in proximity to the proposed site, or to the Town as a whole.

(iv) Potential Adverse Impact Upon the Character of the Surrounding Community;

The proposed installation and its use will be compatible with the use and/or character of properties located adjacent or in proximity to the proposed site or to the Town as a whole.

(v) Potential Adverse Impacts Upon Historic Properties or Historic Districts;

The proposed installation will be compatible with and/or will not have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(vi) Potential Adverse Impacts Upon Scenic Sites and Views or Other Aesthetic Resources of The Town;

The proposed installation will be compatible with and/or will not have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the Town including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, scenic views, public parks, and/or any other traditionally or historically recognized valuable scenic and/or aesthetic assets of the Town.

(vii) Sufficient Fall Zones;

The proposed installation has a sufficient fall zone and/or safe zone around the personal wireless services facility to afford the general public safety against the potential dangers of structural failure, icfall, debris fall, and fire.

(viii) Mitigation; and

The applicant has mitigated the potential adverse impacts of the proposed personal wireless services facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

(ix) Environmental/Historic.

The applicant has complied with all federal and state requirements regarding evaluations and assessments and has or will obtain all necessary consents/concurrences from each responsible agency, officials or officers regarding environmental impacts, protected species and habitats and historical sites.

If when applying the evidentiary standards set forth in hereinabove, the Select Board determines that the applicant has not carried its burden of proving the proposed personal wireless services facility will meet the standards set forth within this Ordinance, or that the applicant has not carried its burden of proving proposed facility would not inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the Town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Select Board shall deny the respective application for a Wireless Telecommunications Facility Permit unless the Board additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections (b) and (c) immediately hereinbelow, and the applicant's need to deploy the proposed facility in the proposed site outweighs the failure to prove entitlement under the criteria and substantive requirements in this Ordinance.

(B) Communications Act Determinations; and

If an applicant has filed a "Notice of Effective Prohibition Conditions," the Select Board shall make three (3) additional factual determinations, as listed herein below:

(i) Adequate Personal Wireless Services Coverage;

Whether the specific wireless carrier has adequate personal wireless services coverage within the geographic areas for which the applicant claims a significant gap exists in such coverage.

(ii) Significant Gap in Personal Wireless Services of an Identified Carrier; and

Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap or capacity deficiency in its personal wireless services within the Town.

In rendering such determination, the Board shall consider factors including, but not necessarily limited to (a) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (b) whether any such alleged gap is relatively large or small in geographic size, (c) whether the number of the carrier's customers affected by the gap is relatively small or large, (d) whether the location of

the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or (d) overall, whether the gap is relatively insignificant or otherwise relatively *de minimis*.

A significant gap or capacity deficiency cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

(iii) Least Intrusive Means of Remediating Gap(s) in Service.

Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Select Board based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Board shall consider factors including, but not necessarily limited to: (a) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap or capacity deficiency may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for colocation or upgrade, (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation (c) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (d) whether, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or (e) overall whether the applicant has made a full effort to evaluate potential feasible alternatives to remedy the gap or capacity deficiency through alternative, less intrusive substitute installations, such as upgrade of existing facilities.

(C) Finding of Effective Prohibition or Lack of Effective Prohibition.

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Select Board affirmatively determines that the applicant has failed to establish either:

(i) that an identified wireless carrier suffers from a significant gap(s) or capacity deficiency in its personal wireless services within the Town, and/or

(ii) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps, then the Select Board may deny the application pursuant to Subsection (B) above, and such denial shall not constitute an "Effective Prohibition."

SECTION 23. RETENTION OF CONSULTANTS

23.1 Use of Consultants

The Select Board shall be authorized to select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Select Board in connection any permit application. Where deemed reasonably necessary by the Select Board and/or

the Town, the Select Board and/or the Town may retain the services of professional consultants to assist the Select Board in carrying out its duties in deciding Wireless Telecommunications Facility Permit applications for personal wireless service facilities.

The Select Board may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation:

- (A) permit application completeness and/or accuracy, including performing a drive test or other form of reception testing to determine whether the proposed personal wireless services facility is necessary to achieve the applicant's legitimate service objectives and needs;
- (B) pre construction planned compliance with applicable regulations for human exposure to RF emissions;
- (C) post-construction actual compliance with applicable regulations for human exposure to RF emissions;
- (D) whether and to what extent a proposed project will comply with applicable laws;
- (E) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the Town's discretion to review; and
- (F) any other issue identified by the Select Board that requires expert or specialized knowledge, including without limitation any issues related to an exception requested by the applicant pursuant to this Ordinance. Until such time as the Town hires staff possessing specialized expertise described in this paragraph, the Town generally may be required to hire an independent consultant in connection with any application.

The Select Board may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with Town staff and/or the applicant. Subject to applicable law, in the event that the Select Board elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the Town a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Select Board until the Town adopts the initial required deposit by fee schedule. The Select Board may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Select Board shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Select Board or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Select Board shall invoice the applicant for the balance. The Town shall not issue any permit to any applicant with any unpaid deposit requests or invoices.

Where the Select Board uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for Wireless Telecommunications Facility Permit approvals of personal wireless service facilities, the applicant shall be responsible for payment of all the reasonable and

necessary costs incurred by the Town for such services. In no event shall that responsibility be greater than the actual cost to the Town of such engineering, legal, or other consulting services.

23.2 Advance Deposits for Consultant Costs

The Select Board may require advance periodic monetary deposits held by the Town on account of the applicant or landowner to secure the reimbursement of the Town's consultant expenses. The Select Board shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After review and approval of itemized vouchers by the Select Board as to reasonableness and necessity of the consultant charges, the Town may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the Town shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the Town to pay current or anticipated vouchers, the Town shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the Select Board. Consultants shall undertake no review on any matter scheduled before the Select Board until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

23.3 Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The Town may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to assist the Select Board in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the Town or its residents; (b) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (c) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, to enable the Board to best comply with the letter and intent of the provision of the Communications Act which is relevant thereto.

23.4 Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the Select Board shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of a Wireless Telecommunications Facility Permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the Select Board on reasonable advance notice.

23.5 Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land

development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the Town for funds expended to compensate services rendered to the Town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the Town for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the Town to be due. In the event of failure to reimburse the Town for such fees, the following shall apply:

- (A) The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action; and
- (B) Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal and consulting fees expended by the Town shall be remedied by charging such sums against the real property that is the subject of the Wireless Telecommunications Facility Permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected simultaneously and in the same manner as Town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Select Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

SECTION 24. BOND REQUIREMENTS AND REMOVAL OF ABANDONED FACILITIES

24.1 Bond Requirement

An applicant for a Wireless Telecommunications Facility Permit for the installation of a new personal wireless service facility shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/ or complex, as well as any accessory equipment and accessory facilities or structures, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. If the application is for Type I or Type III colocation or to supplement equipment at an existing site, the estimate may be limited to that necessary to decommission and remove only the new equipment.

The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws.

Upon receiving a Wireless Telecommunications Facility Permit approval from the Select Board, and prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the Town a bond for a length of no less than five years in an amount equal to

or exceeding the estimate of the cost of removal of the personal wireless services facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

In establishing or adjusting the bond amount required under this condition, the Select Board shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.

The performance bond shall be 150% of the estimated decommissioning cost with salvage factor figured in. This figure will be recalculated every five years from the date of Board approval. The calculation shall be done by a Maine licensed professional engineer, the cost of which shall be borne by the wireless facility owners or operator.

The bond shall be accompanied a signed letter of consent from the Applicant, owner or operator granting and guaranteeing the Town the authority to access the funds and property and perform decommissioning of the personal wireless services facility in the event the facility is abandoned, discontinued, or if a date for decommissioning is set and the owner or operator fails to meet their obligations to remove the personal wireless services facility and fully execute the decommissioning plan.

The letter of consent shall include a provision granting the Town the ability to access the funds and property and perform the decommissioning if the facility is abandoned or the the owner or operator of the facility or subsequent responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and approved by the Board of Selectmen.

Every 5 years after the date of issuance of the initial Wireless Telecommunications Facility Permit, the Applicant, owner or operator will be responsible for notifying the Board of Selectmen in writing when the performance bond is recalculated and funded. The owner or operator is also responsible for notifying the Town in writing if the performance bond is revoked, and in such cases, shall provide the Town with a replacement performance bond within 30 days which must be approved by the Board of Selectmen, or the owner's or operator's license to operate the personal wireless services facility will be revoked. The facility will be decommissioned at the owner's or operator's expense.

24.2 Decommissioning Plan

The applicant for a Wireless Telecommunications Facility Permit shall provide a decommissioning plan with the following information:

- (A) A plan for disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations detailing the types and quantities of waste materials and methods of disposal;
- (B) A description of how and on what schedule stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. The Applicant should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover;

- (B) An estimate of costs for the decommissioning of the personal wireless services facility with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate;
- (C) An agreement that decommissioning will be paid for by a performance bond;
- (D) A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum requirements meet the standards of this Ordinance. Such plan must be filed in the Athens Town Office prior to the first operation of the personal wireless services facility; and
- (E) An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan.

If the application is for Type I or Type III colocation or to supplement equipment at an existing site, the decommissioning plan may be limited to the actions necessary to decommission and remove only the new equipment.

At any time the Town has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the personal wireless services facility, upon request by the Town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

24.3 Removal of Abandoned Facilities

Any personal wireless service facility that is not operated or used for a continuous period of twelve (12) consecutive months shall be considered abandoned.

The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the personal wireless services facility is in active operation, the owner shall have sixty (90) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with, the facility.

If the facility is not removed within ninety (90) days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and accessory facilities and structures.

SECTION 25. INSURANCE

25.1 Insurance required.

The Permittee and each owner or operator of an antenna on the personal wireless services facility, shall obtain, and at all times relevant to this permit maintain, insurance policies, issued by an insured

authorized to do business in the State of Maine and reasonably acceptable to the Select Board, at least as broad as follows:

- (A) Commercial General Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, commercial General Liability (“CGL”) insurance on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; (iv) bodily injury or damage from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit;
- (B) Environmental Pollution Liability Insurance. The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the personal wireless services facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage;
- (C) Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. Permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy;
- (D) Endorsements. The relevant policy(ies) shall name the Town, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) days’ prior notice to the Town of to the cancellation or material modification of any applicable insurance policy;
- (E) Verification of Coverage. Permittee shall furnish the Town with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the Town before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee’s obligation to provide them. Permittee shall furnish updated certificates and endorsements to the Town annually. The Town reserves the right to require updated certificates and endorsements or complete,

certified copies of all required insurance policies, including the endorsements required herein, at any time;

- (F) Permittee Has Full Liability: The permittee shall assume full liability for damage or injury caused to any property or person by the personal wireless services facility; and
- (G) Permittee shall provide an executed agreement, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the Town, its officers, employees, agents, attorneys, and volunteers, from (i) any claim, action or proceeding brought against the Town or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Town or (ii) a successful legal action brought against the Town for loss of property value or other harm caused by the placement or operation of a small cell installation. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the Town and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the Town for all of the Town's costs, fees and damages which the Town incurs in enforcing the indemnification provisions of this Section.

SECTION 26. ADA ACCOMMODATIONS

The Town of Athens seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent that they are entitled to same under the Act.

SECTION 27. SIGNS

27.1 Sign Requirements

Except as provided herein below, no portion of any personal wireless service facility, telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers.

Notwithstanding the forgoing, the owner or operator of any such facility shall post the following signs on their facilities, subject to the requirement that all such signs shall conform to the sign requirements of the Town:

- (A) any signs required under federal law, but which shall be no larger than required by any such federal law or laws;
- (B) A sign of no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone shall be posted adjacent to any entry gate;
- (C) "No trespassing" or other warning signs may be posted on a fence enclosing a wireless facility and/or or wireless compound; and
- (D) For small wireless facilities, when the RF source does not exceed the general population limits, the owner or operator shall post the green "INFORMATION" sign authorized by 47 C.F.R. §1.1307(b)(4)(ii).

SECTION 28. VEGETATION AND EROSION CONTROL

28.1 Clearing of natural vegetation

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of personal wireless services facility. Except for normal thinning, landscaping, cutting or trees necessary to construct and safely maintain the facility, existing vegetation shall be left intact to prevent soil erosion.

Removal of mature trees shall be avoided to the greatest extent possible. General Use herbicides and pesticides shall be prohibited.

28.2 Topsoil

No prime agricultural soil or soil from Farmland of state-wide significance, or significant volume of topsoil shall be removed from the site for installation of the facility. Topsoil shall be considered part of the development and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations. The developer shall take measures to correct and prevent soil erosion in the proposed development.

28.3 Erosion Control

Outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity. Wherever the storm drainage system is not within the right-of-way of a public road, perpetual easements shall be provided to the Town allowing maintenance and improvement of the system.

Erosion and sediment control installation shall be inspected and approved by the Code Enforcement Office before any earth moving and/or construction shall commence. Best Management Practices for Erosion and Sediment Control as established by the Maine DEP shall be implemented by the applicant.

Construction of a personal wireless services facility shall commence no earlier than May 1st and shall cease no later than October 31st of each year. The Code Enforcement Officer shall determine that the area has been stabilized for the winter.

28.4 Small Cell Facilities

Prior to issuance of a Wireless Telecommunications Facility Permit, the applicant shall identify all existing trees to be removed on a parcel for the installation, operations and maintenance of the facility and obtain approval from the Select Board of a tree protection plan prepared by a certified arborist if the small cell installation will be located within the canopy of a street tree, or a tree on private property, or within a 20-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than 20 feet may be required by the permitting authority.

SECTION 29. GENERAL PROVISIONS

29.1 Balancing of Interests

The Town formally recognizes that, as has been interpreted by federal courts within the First Circuit, when it enacted the TCA, Congress chose to preserve local authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in Sprint Spectrum L.P. v. Willoth, 176 F3d 630 (2d Cir. 1999) and its progeny, and the Town has relied upon such federal courts' interpretations of the TCA in enacting this Ordinance.

The Town similarly embraces the federal courts' determinations that the TCA was passed by Congress to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in Omnipoint Communications Inc. v. The City of White Plains, 430 F3d. 529 (2d Cir. 2005). This includes preserving to local governments the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, "once an area is sufficiently serviced by a wireless service provider, the right to deny applications (for new wireless facilities) becomes broader." Crown Castle NG East LLC v. The Town of Hempstead, 2018 U.S. Dist. LEXIS 212002, 2018 WL 6605857 (E.D.N.Y. Dec. 17, 2018).

It is the intent of the Town that this Ordinance be applied in a manner consistent with the balancing of interests reflected within the TCA.

Consistent with same, the Town rejects and shall reject any current and/or future FCC interpretations of any provision of the Communications Act which are inconsistent with, contrary to or not the best reading of, the statutory language and/or binding decisions of the United States Court of Appeals for the First Circuit and United States District Courts within the First Circuit.

This includes a rejection of any FCC interpretations inconsistent with Willoth and any claims that the FCA legally prohibits the Select Board from denying a Wireless Telecommunications Facility Permit application, based solely upon a claim that an applicant desires the installation of its new facility for "densification" of its existing personal wireless services, or to offer a new service, irrespective of whether the carrier already possesses adequate coverage within the Town, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the Town, its property owners, citizens and/or communities.

29.2 Conflict With Other Laws

To the extent that any provision of this Ordinance is found to conflict with any applicable federal or State law, it is the intent of the Town that the remaining portion of this Ordinance which has not been found to conflict with such law be deemed to remain valid and in full force and effect.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

29.3 Transfer of Permit

The permittee shall not transfer the permit to any person prior to the completion of the construction of the personal wireless services facility covered by the permit, unless and until the transferee of the permit has notified the Select Board and the new permittee has received Select Board Approval for an updated Wireless Telecommunications Facility Permit.

29.4 Town's Standing Reserved. The Town's grant or grant by operation of law of a permit pursuant to this Policy does not waive, and shall not be construed to waive, any standing by the Town to challenge any FCC rules that interpret the Telecommunications Act, the Spectrum Act or any permit issued pursuant to this Policy.

SECTION 30. INSPECTION

At least ten days prior to commencing each major phase of construction of required improvements, the applicant for a personal wireless services facility shall notify the Select Board in writing of the time when the applicant proposes to commence construction of such improvements, so that the Municipal Officers can cause inspection to be made by the Code Enforcement Officer to assure that all municipal specifications and requirements shall be met, and to assure the satisfactory completion of improvements and utilities required by the Board.

SECTION 31. CONDITIONS OF APPROVAL

31.1 Standard Conditions

All permits issued under this Ordinance shall be automatically subject to the conditions in this Section.

31.2 Permit Term

The Wireless Telecommunications Facility permit will automatically expire 10 years and one day from its issuance. Any other permits or approvals issued in connection with any colocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. The Select Board may establish a shorter permit term if (i) the Fire Chief concludes that the proposed wireless facility presents a potential fire hazard and (ii) the potential fire hazard cannot be mitigated by changes to the facility or other conditions.

31.3 Permit Renewal

The permittee may apply for permit renewal not more than one year before the permit expires. The permittee must demonstrate that the wireless facility or other infrastructure deployment complies with all the conditions of approval associated with the Wireless Telecommunications Facility Permit and all applicable provisions in this Ordinance and other applicable Town Ordinances that exist at the time the decision to renew or not renew is rendered. The Select Board may modify or amend the conditions on a case by-case basis as may be necessary or appropriate to ensure compliance with this Ordinance or other applicable law. Upon renewal, the Wireless Telecommunications Facility Permit will automatically expire 10 years and one day from its issuance.

31.4 Post-Installation Certification

Within sixty (60) calendar days after the permittee commences full, unattended operations of a wireless telecommunications facility, the permittee shall provide the Select Board with documentation reasonably acceptable to the Select Board that the wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs and may be reviewed for compliance by an independent consultant retained by the Town pursuant to this Ordinance. The Post-Installation Certification shall include, without limitation, the Physical Site Information including listing of ASR Registration Number, Owner of Record, Service Life, Number of Antennas, name of each Wireless Carrier using the facility, list of lengths and sizes of guy wire coil, lengths and sizes of COAX and Fiber Cable, COAX Fiber Boots, COAX Fiber Panels, and COAX Fiber Connectors, base station equipment, jaw jaw turnbuckle, grounding kit(s), Lighting Arrestor, Lights, Wave Bridge, GPS receiver(s) and transmitter(s), and backup power equipment including fuel tank(s).

31.5 Site Maintenance

The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this ROW administrative design review permit. The permittee shall keep the site area free from all litter and debris at all times. All portions of the facility where the RF emission levels are in compliance with FCC “occupational/controlled exposure” levels but exceeded FCC “general population/uncontrolled exposure” levels must be marked with the appropriate signage.

31.6 Adverse Impacts on Other Properties

The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the Town or other state or federal government agency or official with authority to declare an emergency within the Town. The Code Enforcement Officer may issue a stop work order for any activities that violates this condition in whole or in part. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a small wireless facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Select Board or designee, the Select Board or designee shall cause such repair to be completed at permittee’s sole cost and expense.

31.7 Permittee Cooperation

Permittee agrees to promptly cooperate with the Town in assisting the Town to achieve its accommodation obligations under the Americans with Disabilities Act, the Fair Housing Act Amendments of 1988 and other applicable laws.

31.8 Inspections; Emergencies

The permittee expressly acknowledges and agrees that the Town’s officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the Town’s officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the Town’s officers, officials, staff or other designees while any such inspection or emergency access occurs.

31.9 Continued Monitoring

The permittee shall certify in writing continued compliance with the fire safety standards of this Ordinance on or before January 30th of each calendar year. The Fire Chief will continue to monitor the safety of wireless facilities in the Town and publish a yearly review of fire safety considerations regarding potential risks posed by electrical components of new technologies and any fire events or near-miss events related to wireless facilities.

The Fire Chief, in his or her discretion, may issue written fire safety performance directives that shall apply to all existing permits within the scope of such directives and shall be considered as though incorporated into such permits. All permittees shall be required to comply with such directives at the permittee's sole cost and expense.

The Fire Chief shall receive and investigate any credible fire safety complaint made by a resident of the Town regarding a personal wireless services facility in the Town. Cost of such investigation shall be borne by the permittee. Permittees shall also inform the Fire Chief in writing within one business day of any fire or near-ignition event at any personal wireless services facility or replacement of any personal wireless services facility component in connection with any malfunction pertaining to excess heat, sparking or discharged current. The Fire Chief shall further investigate any fire in or around the vicinity of a small wireless facility. If the conclusion of the investigation is that any facility component is at fault, the Fire Chief shall promptly notify the Select Board of his/her findings, and the facility at issue shall be immediately powered down until such time as the permittee provides assurances or undertakes precautions satisfactory to the Fire Chief that such event or similar event will not reoccur. In the event that no such assurance is received, and the Fire Chief has good cause to believe that such failure to comply constitutes a threat to health or safety, the Fire Chief may recommend permit revocation to the Select Board pursuant to the procedures in this Ordinance.

31.10 Encroachments Over Private Property

No wireless facility antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.

31.11 Permittee's Contact Information

Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Select Board basic contact and site information on a form to be supplied by the Town. This information shall include, but is not limited to, the following: (a) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (b) the regulatory authorizations held by the permittee and, to the extent applicable, site operator, equipment owner and site manager as may be necessary for the facility's continued operation; (c) the facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (d) a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week. Within ten (10) business days after a written request by the Town, the permittee shall furnish the Town with an updated form that includes all the most current information described in this condition.

31.12 Indemnification

The permittee, each owner or operator of an antenna on the personal wireless services facility, and, if applicable, the property owner upon which the small wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the Town, Select Board, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims (including claims on the basis of RF emissions), demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the Town's approval of the Wireless Telecommunications Facility Permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that

arise from or in connection with the permittee's or its agents', Select Boards', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with the Wireless Telecommunications Facility Permit. In the event the Town becomes aware of any claims, the Town will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the Town to approve the Wireless Telecommunications Facility Permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the Wireless Telecommunications Facility Permit.

31.13 Truthful and Accurate Statements

The permittee acknowledges that the Town's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the Town in connection with the or the small wireless facility or other infrastructure approved under the Wireless Telecommunications Facility Permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

31.14 ADA Compliance

Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.

31.15 Environmental and Historic Site Compliance

Permittee shall continue to comply with all federal and state environmental and historical requirements. If permittee has not yet obtained all necessary permits, consents and/or concurrences from each responsible agency, officials or officers regarding environmental impacts, protected species and habitats and historical sites this Permit is conditional on ultimate and timely receipt of them. If one or more required permits, consents or concurrences is denied Permittee must provide notice to the Town of such event, and this Permit shall automatically be void and be of no effect unless and until the required permit, consent and/or concurrence is ultimately obtained through final order or agreement.

31.16 Eligible Facilities Requests

All permits for an Eligible Facilities Requests shall be subject to the following conditions and all of the other conditions of approval placed on a Wireless Permit, unless modified by the approving authority:

Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.

The Town's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the Town grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for

the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

The Town's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the Town to challenge Section 6409(a) of the Spectrum Act (47 U.S.C. §1455(a)), any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

31.17 Small Wireless Facilities

In addition to the other conditions of approval placed on a Wireless Permit, all permits for a small wireless facility shall be subject to the following additional condition, unless modified by the Town:

The Town's grant of a permit for a small wireless facility does not waive, and shall not be construed to waive, any standing by the Town to challenge any FCC orders or rules related to small wireless facilities, or any modification to those FCC orders or rules.

SECTION 32. ANNUAL RECERTIFICATION

32.1 Annual Recertification Required

Each Wireless Telecommunications Facility Permittee shall apply for an annual recertification approval from the Town in order to maintain the Wireless Telecommunications Facility Permit. The recertification approval application shall be submitted to the Select Board no more than eleven (11) months following the issuance of the initial Wireless Telecommunications Facility permit, and no more than eleven (11) months following the issuance of the subsequent year's annual recertification approval.

32.2 Affidavit

Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the Town an affidavit which shall list all active wireless telecommunications facilities and installations it owns within the Town by location, certifying that (1) each active wireless installation is covered by liability insurance in the amount required by this Ordinance, naming the Town as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal regulations concerning radio frequency exposure limits.

32.2 Contact and site information

The Permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the Town. The Permittee shall notify the Town of any changes to the information submitted within seven days of any change, including the name or legal status of the owner or operator.

32.3 Notices and Signs

At all times, all required notices and signs shall be posted on the site as required by the FCC and state law, and as approved by the Town. The location and dimensions of a sign bearing the emergency contact name and telephone numbers shall be posted pursuant to the approved plans.

32.4 Insurance

The Permittee shall maintain current at all times insurance policies as required by this Ordinance.

32.5 RF Compliance Report

The applicant, and each intended owner or operator of an antenna to be installed on the site, shall submit an RF Compliance Report and RF Data Request Sheet (Attachment A). The RF Compliance Report shall certify under penalty of perjury that the proposed personal wireless services facility, both individually and cumulatively with all other emitters that contribute more than five percent to the cumulative emissions in the vicinity (if any), are in actual compliance with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer. The RF report must include the actual frequency bands and power levels for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch. The underlying information and method of determining compliance must be included and presented in a format that will allow for independent replication of results.

All RF compliance reports and the selection of circumference of the vicinity subject to testing shall be reviewed and confirmed by a qualified professional retained by the Town.

32.6 Physical Site Information

The application shall include, without limitation, the Physical Site Information including listing of the facility's ASR Registration Number, Owner of Record, Service Life, Number of Antennas, name of each Wireless Carrier using the facility, list of lengths and sizes of guy wire coil, lengths and sizes of COAX and Fiber Cable, COAX Fiber Boots, COAX Fiber Panels, and COAX Fiber Connectors, base station equipment, jaw jaw turnbuckle, grounding kit(s), Lighting Arrestor, Lights, Wave Bridge, GPS receiver(s) and transmitter(s), and backup power equipment including fuel tank(s). The Renewal Certification, and a description of additions of equipment to the facility, and damage to any equipment at the facility, and removal of any equipment from the facility that was listed in the initial Post-Installation Certification.

32.7 Failure to recertify facility

Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for wireless facilities by the applicant will be accepted by the Town until such time as the annual recertification has been submitted and all fees and fines paid.

SECTION 33. ENFORCEMENT

The Town of Athens may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

No changes, erasures, modifications, or revisions shall be made in any plans detailed in the application after final approval of the application has been given by the Board and endorsed in writing on the Plan, unless the revised application is first submitted to the Select Board and the Board approves any modifications. The Board shall make findings that the revised plan meets the standards of this Ordinance.

If the Code Enforcement Officer finds upon inspection of the facility under development that any of the requirements of this Ordinance have not been implemented in accordance with the plans and specifications filed by the applicant, the Code Enforcement Officer shall so report in writing to the

Select Board. The Select Board shall order correction of the violation(s) and may take any other legal action to ensure compliance with this ordinance.

SECTION 34. PENALTIES

34.1 Fines

Any person who owns or controls any personal wireless services facility or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. §4452. Each day such violation continues after notification by the Code Enforcement Officer shall constitute a separate offense.

34.2 Permit Revocation

A Wireless Telecommunications Facility Permit may be revoked in accordance with the provisions and procedures in this Ordinance. The Select Board may initiate revocation proceedings when the Select Board has information that the permittee made material changes to any part of the personal wireless services facility without the Town's prior written authorization or that the personal wireless services facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the personal wireless services facility and any associated conditions with such permit(s).

Before any public hearing to revoke a permit granted under this Policy, the Select Board must issue a written notice to the permittee that specifies (i) the personal wireless services facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the Town may pursue, the Town may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the Select Board after a duly notice public hearing. The Select Board shall provide at least ten (10) days' prior written notice of such public hearing to residents and property owners within fifteen-hundred (1,500) feet from the personal wireless services facility. The Select Board may revoke a permit when it finds that the personal wireless services facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the personal wireless services facility and any associated conditions with such permit(s). Any decision by the Select Board to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five (5) business days after the Select Board adopts a resolution to revoke a permit, the Select Board shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

SECTION 35. SEVERABILITY

If any section, sub-section, sentence, clause, phrase, or other part of this Ordinance is, for any reason, held by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portion(s) of this Ordinance.

SECTION 36. EFFECTIVE DATE

This Ordinance is effective as of March 8, 2025, the date upon which it received approval by the majority of voters at Town Meeting. This Ordinance shall remain in effect until terminated or amended by a majority vote of a Town Meeting.

Attachment A: RF Data Request Sheet