

(Published 1/14/10)

ORDINANCE NO. 0-1-10

AN ORDINANCE relating to Special Use Permits for Wireless Communication Facilities; amending Chapter 27 of the 2008 Code of Ordinances and Resolutions of the Unified Government of Wyandotte County/Kansas City, Kansas amending section 27-593(a)(30) and by repealing said original section 27-593(a)(30).

BE IT ORDAINED BY THE COMMISSION FOR THE UNIFIED GOVERNMENT
OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:

Section 1. That Section **27-593(a)(30)** of the 2008 Code of Ordinances and Resolutions of the Unified Government of Wyandotte County/Kansas City, Kansas, be and the same is hereby amended to read as follows:

Section 27-593 Allowable Special Uses.

- (a) The following uses may be permitted under special use permit in any zoning district except as specifically limited herein:

~~(30) Telecommunication antennas and towers which shall meet the following minimum criteria:~~

- ~~a. All towers more than 100 feet tall shall be designed to accommodate at least three communication carriers.~~
- ~~b. All towers shall be a distance from any off-site main residential structure at least equal to twice the height of the tower.~~
- ~~c. Landscaping of tower site as set out under section 27-699(a)(5).~~
- ~~d. No tower shall be located within a distance of one third of the height of the tower from any land without the landowner's written consent.~~
- ~~e. No tower shall be located within a distance equal to the height of the tower from any off-site main residential structure.~~
- ~~f. Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of a receipt of notice from the governing authority notifying the owner of such abandonment. The landowner shall be responsible for the removal in the event the lessee fails to remove it upon abandonment. If such antenna or tower is not removed within said 90 days, the governing authority may remove such antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.~~
- ~~g. Every telecommunications tower shall be subject to administrative review after three years regardless of the approved term of the special use permit or the date such tower was installed in an M-2 or M-3 industrial zone. Reviews will subsequently be required every three years thereafter. At the time of this review the applicant shall demonstrate to the satisfaction of the unified government that:~~
 - ~~1. The general appearance of the facility has been adequately maintained. This shall include landscaping, fencing, surfacing, tower appearance, etc.~~
 - ~~2. The structural integrity of the tower is uncompromised. A report from a licensed professional engineer shall be submitted by the applicant assuring this.~~

- ~~3. A good faith effort has been made to cooperate with other providers to establish collocation at the tower site. Good faith effort shall include, but is not limited to, timely response to collocation inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing collocation.~~
 - ~~4. The unified government may request that the applicant hire a qualified third party to prepare a report providing measurements of radio frequency radiation emissions and certifying compliance with all applicable regulations.~~
- ~~Failure to adequately demonstrate compliance on any one of these items shall result in the initiation of an enforcement action in municipal court or at district court of the county.~~
- h. ~~In areas except subsections (a)(30)d — (a)(30)h of this section may be modified as set out in section 27-578. In evaluating such proposed sites, commercial district are generally preferred over those in residential districts as are sites in less restrictive residential or commercial districts generally preferred over those in more restrictive districts, as provided in section 27-210(f).~~

(30) Wireless Communication Facilities

(a) Findings. The Telecommunications Act of 1996 grants authority to local jurisdictions over decisions regarding the placement, construction, and modification of Wireless Communication Facilities. The Unified Government has diverse and unique landscape features, natural resources, and residential, commercial and historic neighborhoods that must be protected with quality land use development regulations, including regulations governing the location and design of Wireless Communication Facilities.

(b) Purpose. The purpose of these regulations is to ensure that Wireless Communication Facilities are appropriately designed and sited to ensure compatibility with current and future land uses, while ensuring that Wireless Service Providers are able to provide customers with adequate wireless service. Compatibility touches upon several key factors, including:

1. Aesthetics, including scale (both in terms of mass and height) in association with on-site and off-site land uses.
2. Preservation of open space.
3. Use of existing structures to blend Wireless Communication Facilities into existing structures.
4. Safety.
5. Compliance with existing development guidelines.
6. Siting of Wireless Communication Facilities to ensure minimal disruption to future development patterns, both on-site and off-site.

Compatibility in light of the above factors may be more readily achieved by Applicants through (i) long-range planning for the needs of Wireless Service Providers; (ii) technical documentation of the need for certain Wireless Communication Facilities; (iii) Collocation on existing structures and integration of those facilities with existing architectural features; (iv) use of design techniques that minimize the visual appearance of Wireless Communication Facilities; (v) use of Stealth Communication Towers where existing structures are not available upon which to place Wireless Communication Facilities; and (vi) neighborhood participation in the siting and design of Wireless Communication Facilities.

(c) Definitions. The following definitions control this Chapter. Other terms used throughout this Chapter shall have the same meaning as elsewhere defined in the Zoning Ordinance, if defined therein.

Administrative Determination. A final decision by the Director of Planning or his/her designee.

Applicant. The person or entity making application for a Wireless Communication Facility pursuant to this Chapter.

Base Station Equipment. Base transceiver station equipment, whether stand-alone "outdoor equipment", wall-pack equipment, or equipment located within an equipment shelter.

City. The City of Kansas City, Kansas.

Collocation. The act of placing a Wireless Communication Facility on an existing (i) building, (ii) water tank, (iii) billboard, (iv) Communication Tower, or other previously approved structure within the City's boundaries.

Collocation Installation. A Wireless Communication Facility located on an existing (i) building, (ii) water tank, (iii) billboard, (iv) Communication Tower, or other previously approved structure within the City's boundaries.

Communication Tower. An uninhabitable man-made support structure constructed for the primary purpose of placement of antennas for the transmission and distribution of radio frequency signals.

Governing Body. The elected political body of the City.

Guyed Communication Tower. A Communication Tower structurally supported by guy wires.

Lattice Communication Tower. A Communication Tower structurally supported through the cross-bracing of steel members, and sometimes also referred to as a "self-support tower".

Monopole Communication Tower. A concrete spun or prefabricated tubular steel or carbon Communication Tower.

Planning Department. The City's Urban Planning and Land Use Department.

Property Owner. The owner or owners of real property in fee simple.

Stealth Communication Tower. A Monopole Communication Tower designed, in order of preference (i) with antenna mounting hardware and antenna mounts that are concealed within a canister so that the antennas are not visible; (ii) with antennas that are flush mounted to the pole to minimize the horizontal profile of the structure; or (iii) to be integrated into stadium lights at public parks or schools, or as light standards in parking lots.

Tower Owner. An owner of a Communication Tower.

Wireless Communication Facility. An antenna installation, associated coaxial cable and associated Base Station Equipment used by a Wireless Service Provider to provide wireless service to customers. If a Wireless Communication Facility is located on a Communication Tower, the

Communication Tower and Wireless Communication Facility are collectively the Wireless Communication Facility.

Wireless Service Provider. An entity holding a license issued by the Federal Communications Commission to send and receive radio frequency signals in the cellular and PCS band spectrums within the jurisdictional boundaries of the CITY.

Zoning Ordinance. The Zoning Ordinance of the City of Kansas City, Kansas, codified in Chapter 27 of the Code of Ordinances of the City of Kansas City, Kansas.

(d) Burden of proof. As to the contents of the application for any Wireless Communication Facility required hereby, the burden of proof of establishing (i) compliance with this Chapter; and (ii) the need for the Wireless Communication Facility, from a technical perspective, rests squarely on the Applicant for the Wireless Communication Facility to establish compliance by clear and convincing evidence.

(e) Applicability of Chapter - Conflict.

This Chapter applies to the construction and maintenance, repair, upgrade and operation of Wireless Communication Facilities and Communication Towers. Wireless Communication Facilities may be permitted subject to Administrative Determination, permitted by Special Use Permit, or Prohibited based upon the present zoning designation of the property on which an application for a Wireless Communication Facility is made. The differences in designations recognize that, in certain circumstances, Wireless Communication Facilities and Communication Towers may not be compatible with adjacent land uses or the health, safety and welfare of the community as a whole.

This Chapter is supplementary to other dimensional and density standards set forth in the Zoning Ordinance. In the event of conflict between this Chapter and any other Chapter of the Zoning Ordinance, the provisions of this Chapter shall control.

(f) Wireless Master Plan required.

At the time of making application for a Wireless Communication Facility, whether administratively or Specially permitted, the Wireless Service Provider which is the underlying user of the Wireless Communication Facility, shall file with the City Planning Department a wireless master plan documenting the current location from which it operates wireless facilities in and within one-half (1/2) miles of the jurisdictional limits of the City . The plan shall include the existing locations of Wireless Communication Facilities currently operated by the user and any location at which the Wireless Service Provider plans to construct new Wireless Communication Facilities in the next three (3) years. For each existing site location shown, the plan shall include the address, the name of the property owner, the height and orientation of the antennas at the site and a depiction of service coverage from the site (e.g., through a propagation map).

For proposed sites, the plan shall document the location(s) at which a Wireless Communication Facility is anticipated to be constructed, the time in which it is anticipated to be constructed, and an explanation of the existing service deficiency.

The submission of a master plan in compliance with this section does not vest a Wireless Service Provider with any right to construct a Wireless Communication Facility in a region designated for future network expansion. If the Wireless Service Provider's network design changes, so as to

render the presently filed master plan outdated or inaccurate, the burden to modify, supplement or amend the master plan is on the Wireless Service Provider.

(g) Statement of cooperation.

To minimize the aesthetic concerns associated with the proliferation of Communication Towers, any Applicant for a new Communication Tower shall sign a statement indicating that it intends to rent space to other Wireless Service Providers and allow Collocation on its existing towers within the City's jurisdictional boundaries on commercially reasonable terms if it is technologically feasible. The provider shall not intentionally create technological issues for other carriers. This policy is designed to encourage the modification and/or reconstruction of existing Communication Towers in lieu of constructing new Communication Towers adjacent or in close proximity to existing Communication Towers.

All Applicants further agree to cooperate with the City to provide the City and any technical consultant the City may retain with sufficient data to analyze an application filed pursuant to the provisions of this Article.

(h) Designation of uses as Administrative Determination, Specially Permitted, and Prohibited:

Wireless Communication Facilities are authorized subject to the following:

	<u>AG Zone</u>	<u>Residential Zones</u>	<u>Commercial Zones</u>	<u>Industrial Zones</u>
<u>Guyed Tower</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Prohibited</u>
<u>Self Support Tower</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Prohibited</u>
<u>Monopole Tower Under 199 feet</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Prohibited</u>	<u>Specially Permitted*</u>
<u>Stealth Tower Between 80 and 199 Feet</u>	<u>Specially Permitted*</u>	<u>Prohibited</u>	<u>Specially Permitted*</u>	<u>Administrative Determination*</u>
<u>Stealth Tower Under 80 Feet</u>	<u>Specially Permitted</u>	<u>Specially Permitted</u>	<u>Administrative Determination*</u>	<u>Administrative Determination*</u>
<u>Collocation Installation</u>	<u>Administrative Determination**</u>	<u>Administrative Determination**</u>	<u>Administrative Determination**</u>	<u>Administrative Determination**</u>

*Subject to separation, setback and application submission requirements specified in this Chapter.

**Subject to application submission requirements specified in this Chapter, and provided that Collocation in single family, two-family residential and agricultural zones is limited to non-residential structures. Provided further that no Collocation Installation may be placed on any residential structure shorter than thirty (30) feet in height, and any Collocation on a structure shorter than sixty (60) feet in height shall be integrated into the structure on which the Wireless Communication Facility is placed.

The Administrative Determination, decision rests solely in the discretion of the Director of Planning, who may consider the future land use designation of the property or the area surrounding the property, based upon the City's Comprehensive Plan or any applicable area plan.

neighborhood conditions, the existing or potential for the proliferation of Wireless Communication Facilities in the surrounding area, or any other matter that, in the Director of Planning's discretion, warrants additional consideration or relates to the application. The applicant may appeal the administrative decision by filing for a special use permit within one month of the Administrative determination.

(i) Who may Apply for Communication Tower.

No application for a Communication Tower will be accepted by the Planning Department unless accompanied by an Affidavit by a Wireless Service Provider that it is constructing and will own and operate the tower, or, if it will not own and/or operate the tower, that it will Collocate on the Communication Tower within six (6) months of issuance of a certificate of occupancy for the tower. Failure to comply with this statement will render the Communication Tower subject to the provisions for Removal set out in Section 14 below. The purpose of this provision is to discourage the construction of speculative Communication Towers within the City's jurisdictional boundaries and to make clear that, if approved, these towers are constructed "at risk" and in the absence of use of the tower by a Wireless Service Provider, the City retains the right to require its removal.

(j) Development Standards Applicable to Construction of All Wireless Communication Facilities

1. The following standards shall apply to all Wireless Communication Facilities:

(a) No commercial advertising shall be allowed on a Wireless Communication Facility, unless that Wireless Communication Facility is actually located on an existing, approved sign. Wireless Communication Facilities may have safety or warning signs in appropriate places;

(b) No signals, lights or illumination shall be permitted on a Wireless Communication Facility, unless required by the Federal Aviation Administration. Should lighting be required by State or Federal law, the lighting shall be placed on the Communication Tower and designed in a way as to minimize, to the fullest extent possible, glare onto adjacent residential properties;

(c) Light fixtures may be attached if required by the FAA, as described in (vi) below or if part of a Stealth Communication Tower design of or incorporated into and used for the illumination of athletic fields, Parking Lots, Streets or other similar areas. Lighting of the accessory buildings for basic security purposes is permissible but may not result in glare on adjacent properties;

(d) The height of a Communication Tower or Wireless Communication Facility shall conform to the height limitations of an applicable overlay district, if an overlay is used;

(e) All Wireless Communication Facilities shall be sited to have the least intrusive visual effect, as is practical, on the environment and adjacent properties.

(f) For existing Communication Towers, lighting and painting requirements shall be in accordance with FAA guidelines. For new Communication Towers, if an option exists to light a tower in lieu of painting the tower, Applicant must agree to light the tower.

(k) Application submission requirements for Wireless Communication Facilities.

Prior to submission of an application for a Communication Tower or a Wireless Communication Facility, the Applicant shall arrange a pre-application conference with the Director of Planning. The Director of Planning will advise the Applicant of the process that will be employed by his or her designee and discuss alternative designs, if appropriate.

The materials listed below must be submitted by the Applicant to the Planning Department before the application shall be deemed complete and before an Administrative Determination is made or the submittal is forwarded to the Planning Commission for consideration. On receipt of an application, within one (1) week thereof, the Director of Planning or his/her designee will notify the Applicant if the application is complete. A finding that an application is complete has no bearing on the appropriateness of the use applied for and does not mitigate the Director of Planning's authority to (i) continue the matter for further investigation for review of the application materials provided; (ii) request additional technical information relating to compliance with the standards adopted herein.

At the time of application for a Wireless Communication Facility or a Communication Tower, the applicant shall submit:

(1) written authorization from the Owner of the property on which the Wireless Communication Facility will be located.

(2) a final development plan in accordance with Section 27-277(g) of the Zoning Ordinance, showing existing and proposed structures, the location of the proposed Wireless Communication Facility and/or other uses, access road(s) location, access road surface material, parking area, screening walls and materials, location and content of warning signs, exterior lighting specifications, a landscaping plan, land elevation contours, existing land uses and zoning designations surrounding the site. If any Accessory Structure is proposed, details of the Structure, including elevations and proposed use of the Structure, shall be included.

(3) a Title Report and vesting deed, or certification of current ownership from the County Register of Deeds, documenting ownership of the Property.

The following additional information is required for Communication Towers and Collocation Installations except for collocations on existing telecommunication tower facilities, as applicable:

(a) Application Submission Requirements for Communication Towers (regardless of whether subject to approval by Administrative Determination or Special Use Permit).

(1) Technical documentation of need for Communication Tower.

No new Communication Tower shall be permitted unless the applicant demonstrates, based on substantial evidence and to the reasonable satisfaction of the City, that no existing Communication Tower or other Collocation structure can accommodate the Wireless Service Provider's proposed Wireless Communication Facility. The Applicant for a Communication Tower must present the following:

- (a) A Collocation study documenting the efforts of the Wireless Service Provider to locate on existing structures within the area of deficient service;
- (b) Propagation studies documenting deficiencies in wireless service by the Wireless Service Provider;
- (c) Drive Test data, if requested by the Director of Planning or the Planning Commission or Board of Commissioners, to support the data depicted in the computer-generated propagation study models;
- (d) Dropped call data from adjacent Wireless Communication Facilities, separated according to site and by sector, to document the Wireless Service Provider's deficiency in coverage and to document that a new Communication Tower in the *precise region* in which it will be located will alleviate the coverage deficiency if requested by the Director of Planning, or the Planning Commission or Board of Commissioners;
- (f) Documentation showing how a greater number of shorter towers or Collocation on existing structures would not sufficiently satisfy the deficiency in service coverage;
- (g) For any Special Use Permit for a Monopole Tower, documentation explaining why a Stealth Communication Tower cannot accommodate the Wireless Service Provider's coverage needs, even if the use of a Stealth Communication Tower results in the need for additional or shorter towers;
- (h) If asserted as a reason for applying for a new Communication Tower, documentation that existing Communications Towers or structures do not have sufficient structural capacity to support the Wireless Service Provider's Wireless Communication Facility, and that existing or approved Communication Towers cannot be reinforced or modified; and
- (i) Other limiting factors the Applicant can demonstrate, not including the provisions of this Chapter, that render existing Communication Towers or structures unsuitable for the Wireless Service Provider's needs.

(2) **Security Deposit.** In addition to the Special Use Permit and/or Administrative Determination filing fee applicable to all requests for Wireless Communication Facilities except collocation facilities, an Applicant for a Communication Tower may be required to deposit a fee of Four Thousand Dollars (\$4,000.00) with the Planning Department to cover the cost of an independent study of the level of service in the area in question, and shall sign a form (i) authorizing the City to use those funds to hire consulting engineers to review the application and to advise the City on the extent to which the Applicant has, or has not, met the burden of proof documenting the need for the tower as required by this Chapter. Upon the conclusion of this technical review process, funds remaining unexpended, if any, shall be refunded to the Applicant, and the Applicant shall be provided with an accounting for the funds expended. Any unused portion of the deposit will be returned to the Applicant within thirty (30) days of disposition of the Application.

(3) **Additional Criteria for Review**

In addition to the standards and conditions listed in Sections 1 and 2 above, the City shall consider the following factors in determining whether or not to issue a Special Use Permit or an Administrative Determination allowing the Communication Tower:

- (a) the height of the proposed Communication Tower;
- (b) proximity of the Communication Tower to residential structures and to residential district boundaries and property master planned for residential use;
- (c) technical or engineering requirements limiting placement of the Wireless Communication Facility at other, more appropriate areas, to provide the required coverage;
- (d) nature of uses on adjacent and nearby properties;
- (e) surrounding topography, tree coverage and foliage (natural clutter);
- (f) design of the Communication Tower, based upon consideration of the preferences set out in the definition of Stealth Communication Tower, to mitigate the visual obtrusiveness of the Communication Tower.

(4) Setbacks and Design Standards

The following standards shall apply to Communication Towers:

- (a) No Communication Tower may exceed 199 feet in Height.
- (b) The Communication Tower shall be set back from the property line in all directions a distance equal to at least the height of the Communication Tower, if the site is in the AG zone. The Communication Tower shall be set back from the property line in all directions a distance that is equal to at least one-half its height, if the site is zoned for commercial or industrial purposes. These setbacks may be waived upon receipt of a notarized letter from the fee owner(s) of the parcel from which the waiver is sought acknowledging consent to the waiver and the precise distance of the waiver required from this Section.
- (c) Communication Towers other than Stealth Communication Towers shall be set back from residential structures by a distance of 300 feet.
- (d) Communication Towers other than Stealth Communication Towers shall be set back from all property zoned for residential use or planned for residential use, according to an adopted future land use plan or map, by a distance of 300 feet.
- (e) Distance to other Communication Towers. Communication Towers shall not be located closer than one-half (1/2) mile from another Communication Tower, unless an Applicant proposes a Stealth Communication Tower less than eighty feet in height. In certain circumstances where existing towers are at capacity, the Planning Commission may recommend a variance to this requirement to the Board of Commissioners.
- (f) Communication Towers shall be designed and built to allow expansion at a later date to accommodate Collocation by at least one (1) additional Wireless

Service Provider for each additional twenty (20) feet of height in excess of sixty (60) feet; provided, however, that no Communication Tower is required to accommodate more than three (3) Wireless Service Providers.

(g) With the exception of necessary electric and telephone service and connection lines approved by the City, no part of any Wireless Communication Facility, nor any lines, cable, equipment, wires or braces in connection with the facility, shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line.

(h) Coaxial cable and conduit from Base Station Equipment to the Wireless Service Provider's antennas shall be routed through entry and exit ports and shall be concealed from view (by traversing the distance between the Base Station Equipment to the antennas through the internal portion of the tower) to the greatest extent possible.

(i) Screening.

(a) Wireless Communication Facility compounds shall be screened with minimum ten foot (10') walls, from grade. These walls must be composed of either (a) solid masonry or (b) wooden fencing set on steel rails with a maximum 1/4" gap between wood slats and masonry columns with a minimum width of two feet (2') and a maximum separation of sixteen feet (16') per column. The Director of Planning or his/her designee must approve all designs or variations to this standard.

(b) Landscaping. The Applicant must submit a landscaping plan in accordance with Zoning Ordinance Section 27-1349. Further, an Applicant must provide the Planning Department with a watering plan/schedule for the first twelve (12) months subsequent to the issuance of a certificate of occupancy for the Wireless Communication Facility to ensure the landscaping will survive. The Director of Planning or his/her designee must approve all designs or variations to this standard.

(c) All compound entry gates must be constructed of wooden slats set on steel rails.

(j) All compound facilities enclosing Wireless Communication Facilities must be kept free of invasive weed and noxious plant species.

(k) Driveways. All driveways to compound facilities enclosing Wireless Communication Facilities must be improved with a minimum three (3) inch thick asphaltic or cement surface.

(l) Compound size. No Special Use Permit or Administrative Determination will be issued unless the Applicant demonstrates that adequate Base Station Equipment space is available for the number of Collocators the Communication Tower is intended to accommodate.

(m) Power and telephone line burial. Overhead power and telephone lines are prohibited. All power and telephone lines must be buried to a depth of thirty-six inches (36") below grade, from the source of the utility to the Base Station Equipment or other equipment requiring power associated with the Communication Tower or Wireless Communication Facility.

(n) Every Communication Tower shall be protected from trespass by unauthorized persons and shall contain an anti-climbing device to discourage climbing the Communication Tower.

(o) Communication Towers and Wireless Communication Facilities shall be constructed using best available engineering practices to ensure life and property safety.

(p) Mobile or immobile equipment not used in direct support of a Wireless Communication Facility shall not be stored or parked on or adjacent the compound, unless repairs to the Wireless Communication Facility are currently and actively being made.

(q) Lighting of building entries that are part of Wireless Communication Facilities for security is permissible, provided the lights are downward facing 180 degree fixtures with no greater than one foot candle power and are otherwise compliant with Zoning Ordinance Section 27-1349(b)(9).

(r) All accessory buildings or structures accessory to Communication Towers shall meet all Building design standards as listed in Chapter 8, and require a Building Permit issued by the Codes Enforcement Officer.

(s) All visible buildings, structures and equipment accessory to a Communication Tower shall be designed to blend in with the surrounding environment through the use of color, camouflage and architecture.

(t) No Communication Tower site may be situated in a designated Historic Overlay District unless the City's Historic Preservation Commission approves the location and design.

(b) Application Submission Requirements for Collocation Facilities

(1) Applications for Collocation Facilities, wherever located, shall be submitted as final development plans subject to Administrative Determination by the Director of Planning pursuant to Zoning Ordinance Section 27-277(g).

(2) The following standards apply to any proposal to attach a Wireless Communication Facility to an existing structure:

(a) The structure upon which Collocation is proposed shall be at least thirty feet (30') in height before a Collocation Facility may be erected upon, or attached to, it;

(b) The structure to which the Collocation Facility is proposed to be attached may not be a structure designated by the Historic Preservation Commission as a historic structure or be in a designated Historic Overlay District unless the Historic Preservation Commission approves that Collocation;

(c) The addition of Wireless Communication Facilities to an existing structure shall not cause the height of that structure to increase by more than the greater of (i) ten (10) feet in height, or (ii) (a) twenty percent (20%) of the structure's then-existing height or (b) the maximum height allowed in that Zoning District, whichever is greater but not to exceed 20 feet. Any proposed

increase in height beyond these height restrictions shall require approval through the Special Use Permit process;

(d) Collocation Facilities erected upon, or attached to, existing Structures shall not be subject to standard Setback requirements;

(e) Subject to applicable Codes, Collocation Facilities, including accessory buildings and structures to be located on the same property, shall be located on the roof of the structure when the Collocation structure is a building. If the accessory equipment, buildings and other structures can be safely located on the roof of the structure, the equipment (not including antennas) shall be set back from the edge of the roof at least five (5) feet, and shall be painted to match the building or concealed with a screening wall;

(f) Ground-mounted Base Station Equipment shall be screened with a screening wall and landscaping as specified in Section 11.A.4(i) of this Chapter, unless an existing screening wall has already been constructed (e.g., around an existing Communication Tower);

(3) Expansion of Communication Tower compounds. A Communication Tower compound may be expanded administratively if the Base Station Equipment complies with the requirements set out in Section 11.A.4, and if the Communication Tower would be allowed subject to Administrative Determination pursuant to this Chapter if newly proposed. The compound may additionally be expanded by Administrative Determination if the Communication Tower would not be subject to Administrative Determination under this Chapter, but was a permitted use under the City's previously adopted zoning regulations. The compound may additionally be expanded by Administrative Determination if the expansion is within a previously approved special use permit boundary. All other Communication Tower compound expansions must adhere to the Special Use Permit process.

(4) Modifications to existing Communication Towers and Wireless Communication Facilities. Any Communication Tower or Wireless Communication Facility may be increased in height by not more than twenty (20) percent of its originally approved height through the Administrative Determination process, provided that if the height increase would have rendered the Communication Tower prohibited in the first instance under this Chapter, that increase is not authorized; provided further, if the increase would have rendered an otherwise Administratively Approved site subject to a Special Use Permit under this Chapter, the request shall be subject to the Special Use Permit notice and hearing requirements.

(I) Governing Body Action

(1) A request for the placement, construction or modification to a Wireless Communication Facility or Communication Tower shall be acted upon within a reasonable period of time from the receipt of a complete submittal of an application, site plan and supporting documentation, as required in this Chapter.

(2) Denial of an application to place, construct or modify a Wireless Communication Facility or Communication Tower shall be supported by findings based on substantial evidence and shall be provided in written form to the Applicant.

(m) Maintenance and Certification Standards Applicable to All Communications Facilities

The following maintenance and operating standards shall apply to any Communication Tower or Wireless Communication Facility:

- (1) any Wireless Communication Facility that is not in use for a period of two or more years shall be removed by the Owner at the Owner's expense. Failure to remove the Wireless Communication Facility, pursuant to non-use or for any other reason set out in this Chapter, may result in removal and assessment of cost to the property pursuant to K.S.A. 12-6a17.
- (2) any Owner of a Communication Tower shall submit a letter to the Director of Planning by July 1 of each year listing the current users and types of Collocation Facilities located on the Facility.
- (3) a sign shall be posted on every Wireless Communication Facility, or on the exterior fence around the Wireless Communication Facility, noting the name and telephone number of the Wireless Communication Facility Owner and operator.
- (4) the Owner/operator shall at all times employ at least ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public.
- (5) all Communications Towers and Wireless Communication Facilities Antennas shall conform to the requirements of the Occupational Safety and Health Administration (OSHA).

(n) Bonding Required

(1) Safety

Before a Communication Tower is erected on publicly owned property, the Owner of the Communication Tower must file with the County Clerk a written indemnification of the City and proof of liability insurance sufficient to respond to claims up to \$1,000,000, in the aggregate, that may arise from operation of Wireless Communication Facilities within the City.

(2) Removal

Before a building permit is issued for any Communication Tower, the applicant shall present a removal bond to the Chief Counsel in the amount of \$50,000, which bond shall be available for use by the City for the removal of the Communication Tower should the Communication Tower ever be abandoned. The bond shall contain the following endorsement: "It is hereby understood and agreed that this instrument may not be canceled nor any intention not to renew be exercised until 60 days after receipt by the City, by registered mail, of written notice of such intent."

(o) Inspections.

All Communication Towers, whether existing or new, shall be inspected every five (5) years by a Kansas licensed Professional Engineer at the Tower Owner's expense and an

inspection report shall be filed with the Director of Planning. All Communication Towers and Wireless Communication Facilities may be inspected at any time by the Director of Planning, The Building Official or their designee to determine compliance with original construction standards. Deviation from the original approved construction standards constitutes a violation of this Code and the Zoning Ordinance.

Notice of violations will be sent by registered mail to the Tower Owner, who will have 30 days from the date the notification is issued to make adjustments or repairs. The Tower Owner shall notify the Director of Planning, The Building Official or their designee in writing that the adjustments or repairs have been made, and, as soon as reasonably possible thereafter, another inspection will be made by the Director of Planning, The Building Official or their designee to assess compliance. The Tower Owner shall then be notified of the results of the second inspection. An appeal of the decision of the Codes Enforcement Officer can be made to the Board of Zoning Appeals in accordance with Section 27-53 of the Zoning Ordinance.

(p) Amateur Radio, Receive-Only and Broadcast Antennas

This Chapter shall not govern any communication facility that is:

(i) less than 50 feet in Height;

(ii) located in the Rear Yard of a residentially zoned Parcel;

(iii) Owned and operated by a federally licensed amateur radio operator; provided, however, that communications towers covered under this Paragraph shall not be available for co-location by Wireless Service Providers; or

(iv) used solely to transmit and receive commercial AM, FM or television broadcast signals.

(q) Failure to enforce does not constitute waiver. No failure by the City or any of its departments to enforce any provision of this Section shall constitute a waiver of the provisions thereof. Any failure of a Owner or a Section Provider to comply with the terms of this Section may subject the Owner and/or Provider to revocation of administrative or special permits, and penalties and municipal violations as set out below.

(r) Violations. Failure to comply with this Chapter or any condition specified in an administratively or specially approved permit constitutes a code violation for which penalties and fines may be imposed.


(s) Severability. If any provision of this Chapter shall be found to be invalid, that provision shall be severed from this and the remainder of the Chapter shall remain in full force and effect.

Section 2. That Section 27-593(a)(30) of the 2008 Code of Ordinances and Resolutions of the Unified Government of Wyandotte County/Kansas City, Kansas, is hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval, and publication in the official Unified Government newspaper, The Wyandotte Echo.

PASSED BY THE COMMISSION OF THE UNIFIED GOVERNMENT OF WYANDOTTE
COUNTY/KANSAS CITY, KANSAS,

THIS 7 DAY OF January, 2010.



Joe Reardon, Mayor/CEO

Attest:



Unified Government Clerk

Approved as to form:

Delia York, Deputy Chief Counsel