

## ORDINANCE NO. 1681

**AN ORDINANCE OF THE CITY OF FAIRWAY, KANSAS, AMENDING AND REPEALING THE FOLLOWING SECTIONS 15-582 THROUGH 15-595 OF THE FAIRWAY MUNICIPAL CODE REGULATING WIRELESS FACILITIES IN THE CITY OF FAIRWAY, KANSAS.**

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRWAY, KANSAS:

**SECTION 1.** That existing Section 15-582 through 15-591 of the Code of the City of Fairway is hereby amended to read as follows:

### **Sec. 15-582. - Intent.**

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and modification of communication facilities. The intent of this chapter is to ensure the provision of quality wireless services within the City limits; establish a fair and efficient process for the review and approval of communication facility applications; assure an integrated, comprehensive review of environmental impacts of communications facilities, and promote the public health, safety, security, and the general welfare of the City.

### **Sec. 15-583. - Definitions.**

For purpose of this chapter, and where consistent with the context of a specific section, the defined terms, phrases, words and abbreviations and their derivations shall have the meanings given in this Section.

*Accessory Facility* means an accessory facility, building, structure or equipment serving or being used in conjunction with communications facilities and generally located on the same site as the Communications Facilities, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

*Antenna* means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services; provided that for the purposes of this subdivision, antennae does not include dish receiving antennas and radio transmitting and receiving antennas as defined in Section 15-624 of this Chapter.

(a) *Distributed Antenna System (DAS)* means a network that distributes radio frequency signals and consisting of:

- (a) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;
- (b) A high capacity signal transport medium that is connected to a central communications hub site; and
- (c) Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

(b) *Small Cell Facility* means a Communications Facility that meets both of the following qualifications:

- (1) Each Antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and
- (2) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(c) *Small Cell Network* means a collection of interrelated Small Cell Facilities designed to deliver Wireless Service.

*Applicant* means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for Wireless Services and that submits an application pursuant to this Chapter.

*Application* means all necessary and appropriate documentation that an Applicant submits in order to receive approval for a communications facility.

*Approval Authority* means the Director for all applications pursuant to Section 15-585 A., and means the Governing Body for all Applications pursuant to Section 15-585 B.

*Base Station* means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other accessory facilities at a specific site that enables FCC-licensed or authorized wireless service to mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a tower or equipment associated with a tower; and it does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in this paragraph or that was not previously approved under the applicable zoning or siting process. (*A non-tower support structure – for example, a building, church steeple, water tower, sign, street light, utility pole or other non-tower structure that can be used as a support structure for Antennas or the functional equivalent of such.*)

*Collocation* means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for wireless service.

*Communications Facility* means a structure, facility, or location designed, or intended to be used as, or used to support antennas or other transmission equipment used in wireless services. This includes without limit, towers of all types, and base stations, including but not limited to buildings, church steeples, water towers, signs, or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related accessory facilities associated with the site. It is a structure and facility intended for transmitting and/or receiving, wireless services, specialized mobile radio (SMR), personal communications services

(PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.

*Director* means Director of Public Works or his/her designee.

*Eligible Facilities Request* means any request for modification of an existing tower or base station that does not substantially change (*see definition*) the physical dimensions of such tower or base station, involving:

- (a) Collocation of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment.

*Eligible Support Structure* means any tower or base station (*see definition*), provided that it is existing at the time the relevant application is filed.

*Existing* A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Modification or Modify* means the addition, removal or change of any of the physical and noticeably visible components or aspects of a communications facility such as antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include replacement of such components in kind. A collocation which changes the physical configuration of the existing facility or structure shall be considered a modification. The Director shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a communications facility.

*Replacement* means replacement of an existing communications facility that exists on a previously approved site, utility easement, or an approved special use permit area, with a new facility of comparable proportions and of comparable height or such other height that would not constitute a substantial change to an existing structure to support communications facilities or accommodate collocation. A replacement includes any associated removal of the pre-existing communications facilities. A replacement tower shall be within 15 feet, as measured horizontally along the ground, of an existing tower, and the existing tower shall be removed within 30 days from the installation of the replacement tower. The Director may approve a separation greater than 15 feet.

*Site* means, for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

*Stealth or "Stealth Technology"* means using the least visually and physically intrusive facility by minimizing 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 a communications facility. Specifically, this means ensuring that all antenna arrays, cables, and other accessory facilities used for providing the wireless service are not obtrusive or noticeably

visible from adjacent properties or adjacent right-of-ways. Any accessory facilities mounted onto a tower or structure shall not project greater than one (1) foot, as measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a complementary color as the tower or structure. Cables shall not be allowed to travel along the exterior of a tower or structure. Understanding that new technologies are anticipated to change the components of communications facilities, the Director may determine if a communications facility or component of a communications facility is designed to be stealth.

*Substantial Change* means a modification that substantially changes the physical dimensions of an eligible support structure (Tower or Base Station) by any of the following criteria:

(a) Height

(1) For Towers not in the public rights-of-way, an increase in the height of the Tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater.

(2) For other eligible support structures (*e.g., Towers in the public rights-of-way or base stations*), an increase in the height of the structure by more than 10% or more than 10 feet, whichever is greater.

Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (*such as on buildings' rooftops*); in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. (Middle Class Tax Relief and Job Creation Act 2012 [Pub. L. 112-96 March 27, 2017])

(b) Width/Girth

(1) For towers not in the public rights-of-way, adding an appurtenance to the body of the tower that protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.

(2) For other eligible support structures (*e.g., Towers in the public rights-of-way or base stations*), adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

(c) New equipment cabinets

(1) For any eligible support structure (*see definition*), the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets.

(2) For towers in the public rights-of-way and base stations, the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

(d) Any excavation or deployment outside the current site.

(e) Defeating the stealth technology or concealment elements of the eligible support structure.

(f) Not complying with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections (a) through (d) above.

*Transmission Equipment* means equipment that facilitates transmission for any FCC-licensed or authorized Wireless Service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Tower* means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their accessory facilities, including structures that are constructed for wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated Site.

(a) *Monopole* means a tower consisting of a single pole, constructed without guy wires and ground anchors.

(b) *Lattice Tower* means a guyed or self-supporting three or four sided, open, steel frame structure used to support antennas and transmission equipment.

*Wireless Services* means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through communications facilities or any fixed or mobile wireless services provided using communications facilities.

#### **Sec. 15-584. – Overall Policy.**

In order to ensure that the placement, construction, and modification of communications facilities protect the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (*subject to applicable state and federal law*):

- (a) Optimize the number of Communications Facilities in the City.
- (b) Encourage opportunities for user Collocation on Existing Communications Facilities, buildings and other structures and maximize Replacement strategies.
- (c) Comply fully with established planning guidelines regarding land use and performance standards.
- (d) Emphasize the use of Stealth Technology to integrate the appearance of Communications Facilities with many architectural and nature themes throughout the City and to use Existing Communications Facilities instead of building new Communications Facilities.
- (e) Protect the public interests, where practical and applicable.
- (f) Protect the public health, safety and welfare.

#### **Sec. 15-585. - Application Approval Authority**

(a) Administrative Approval - The Director may approve Applications for Communications Facilities for the following:

- (1) The modification of an existing tower or base station that does not incur a substantial change (*see definition*) to the tower or base station or that otherwise qualifies as an eligible facilities request (*see definition*). (*See C1 for timeframe.*)
- (2) New small cell/DAS facilities on an existing tower, utility pole or street light in the public right-of-way. This provision is also applicable when the existing tower, utility pole or street light is replaced by a tower, utility pole or street light that is not a substantial Change (*see definition*) from the original. (*See C1 for timeframe.*)

- (3) New Antenna (*including Small Cell/DAS Facilities*) on an Existing Tower or Base Station (*such as a building*) that does not incur a Substantial Change (*see definition*) to the Tower/Base Station and that:
    - a. Is permitted by right in the underlying zoning district; and
    - b. Meets applicable performance standards. (*See (c)2 for timeframe.*)
  - (4) New Antenna (*including Small Cell/DAS Facilities*) on an Existing Tower or Base Station (*such as a building*) that incurs a Substantial Change (*see definition*) to the Tower or Base Station and that:
    - a. Is permitted by right in the underlying zoning district; and
    - b. Meets applicable performance standards. (*See (c)2 for timeframe.*)
  - (5) New Tower permitted by right in the underlying zoning district that meets applicable performance standards. (*See (c)3 for timeframe.*)
  - (6) New Tower or utility pole for Small Cell/DAS Facilities in the public right-of-way. (*See (c)3. for timeframe.*)
- (b) Special Use Permit Approval – A Special Use Permit (SUP) reviewed by the Planning Commission and approved by the Governing Body is required for applications for communications facilities for the following:
- (1) A Substantial Change (*see definition*) to an Existing Tower or Base Station that is not permitted by right in the underlying zoning district. (*See C2 for timeframe.*)
  - (2) Any other Application for placement, installation or construction of Transmission Equipment that does not constitute an Eligible Facilities Request (*see definition*). (*See C2 for timeframe.*)
  - (3) New Tower that is not permitted by right in the underlying zoning district. (*See C3 for timeframe.*)
- (c) Application Timeframe
- (1) A final decision shall be issued for applications under subsections (a)(1), (a)(2), and (a)(3) within 60 calendar days.
  - (2) A final decision shall be issued for applications under subsections (a)(4), (b)(1) and (b)(2) within 90 calendar days.
  - (3) A final decision shall be issued for applications under subsections (a)(5), (a)(6) or (b)(3) within 150 calendar days.
  - (4) The timeframes set forth in subsections (c)(1)-(c)(3) begin to run when a completed application is filed following the pre-application conference. The applicable timeframe may be tolled by mutual agreement or in cases where the City determines that the application is incomplete. To toll the timeframe for incompleteness, the City may provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents and information. The timeframe begins running again when the applicant makes a supplemental submission responding to the City's notice. The City then has 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (d) Small Cell and DAS Facilities – Consolidated Application and Exemption
- (1) Consolidated Application – Pursuant to Kansas Statute, an applicant may file one consolidated application for a small cell network up to 25 individual small cell facilities

of a substantially similar design. Notwithstanding, the City may require a separate application for any small cell facilities that are not of a substantially similar design.

- (2) Exemption – No zoning or siting approval is required for the construction, installation or operation of any small cell or DAS facilities located in an interior structure or upon the site of any campus, stadium or athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

## **Sec. 15-586. Application Process and Requirements**

- (a) Pre-Application Conference – A pre-application conference is required before filing an application for the replacement or modification of an existing communications facility or the construction of a new communications facility, unless waived by the Director. The purpose of the pre-application conference is to ensure the applicant understands all requirements, to establish a tentative timeline, and to determine the approval authority for the application. The pre-application conference should address issues that will expedite the review and approval process. Pre-application conferences for small cell/DAS facilities in the public right-of-way will be conducted with the City’s Right-of-Way Coordinator.
- (b) Application Fee – At the time the Application is filed for a communications facility, the applicant will pay a non-refundable application fee as determined in the current version of the Governing Body resolution establishing applicable fees; provided, the application fee shall be subject to any applicable statutory maximum. An application shall not be deemed submitted unless the applicable fee is paid.
- (c) Application Requirements – An application for the replacement or modification of an existing communications facility or the construction of a new communications facility shall include the following information and requirements, unless waived by the Director:
  - (1) As applicable, a site plan or preliminary development plan, and if applicable, any other Special Use Permit submission requirements set forth in Division 4, Article IV of Chapter 15.
  - (2) A descriptive statement of the proposed communications facility. For towers or base stations, the statement shall provide the capacity of the structure, including the number and type of antennas it can accommodate.[1]
  - (3) An affidavit from the applicant stating that it conducted a thorough analysis of available collocation opportunities within the applicable search ring.[2]
  - (4) Elevation drawings of the proposed communications facilities showing all towers, base stations, antennas, transmission equipment, accessory equipment, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. Specific colors and materials shall be noted.
  - (5) Digital photo simulations of the site providing “before and after” views demonstrating the true visual impact of the proposed communications facilities on the surrounding environment. Staff or the approval authority may require photo simulations from any specific vantage point.
  - (6) A report from a licensed professional engineer that describes the communications facility’s structural capacity, including a statement to the effect that the communications facility can safely accommodate all antennas, transmission equipment and/or accessory

equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Director, as applicable, and in compliance with all City codes. In the event an existing communications facility is to be used, the report shall describe the condition of the existing communications facility based on a physical inspection and its ability to accommodate any additional accessory equipment and/or antennas.

- (7) A landscape plan that demonstrates the effective screening of the proposed communications facility and any accessory facilities as required by the Section 15-588 H. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority.
- (8) If lighting is required by the FCC or the FAA, the applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way. All lighting will meet any requirement of Section 15-588 I.
- (9) If an emergency power system will be utilized, the applicant will provide: sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g., testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.
- (10) A statement that the proposed communications facility and any accessory facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.
- (11) An engineer's certification that the proposed communications facility and the cumulative effect of all Communications Facilities on the Site comply with all FCC standards, including but not limited to, certifying that all facilities meet all provisions and regulations for radio frequency (RF) emissions or exposure, and that anticipated levels of electromagnetic radiation to be generated by all facilities on the Site, including the effective radiated power (ERP) of the transmission equipment, shall be within the guidelines established by the FCC.
- (12) When applicable, a signed copy of the lease between the applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner's approval for the proposed communications facility. The lease or other documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the communications facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.
- (13) Applicants for communications facilities in the right-of-way shall provide notice by certified mail to the owners of record of all property within 200 feet of the proposed location. The notice shall provide the following:
  - a. City-issued case number (*if available*);
  - b. Description of the proposed facility;
  - c. Location of the proposed facility;
  - d. Plan sheet showing the proposed location and the facility improvements; and
  - e. Applicant's contact information and a statement that the owner shall have 20 days from the date of the notice to provide the City with any input regarding the application. Each communications facility location shall be provided with its own notice; notices



for multiple locations, even if under the same City case number, may not be provided in a single letter. No application will be approved until the applicant submits an affidavit affirming that the required notice was sent. For applications requiring a Special Use Permit, the notice requirements outlined in Section 4, Article IV of Chapter 15 shall apply.

- (14) Any other information to satisfy the performance standards in Section 15-588 or that, as determined by the Director, will assist the review and approval process for communications facilities.

(d) Independent Third Party Review

- (1) The applicant may be required to provide an independent review of the application as determined by the Director.
- (2) The Director will select and approve a list of acceptable consultants to be used for the third party independent review.
- (3) The scope of the third party review will be determined by the Director and may vary with the scope and complexity of the application; the scope will be determined following the pre-application conference. The independent third party review will generally be focused on the technical review of wireless services and verification of the information submitted by the applicant such as Federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and data used in developing these technical requirements are valid and representative of the proposed communications facility.

[1] Pursuant to Kansas Statute, the City may not require specific information about: the Applicant's business decision regarding its designed service, customer service demand or quality of service for a particular area or Site; the specific need for the Communications Facility; or any proprietary, confidential or other business information to justify the need for the Site, including propagation maps and telecommunications traffic studies.

[2] Pursuant to Kansas Statute, the City may not evaluate the Application based on availability of other potential locations for siting, including options to Collocate.

**Sec. 15-587. - Location of Communications Facilities**

When possible, the City encourages - but does not require - new communications facilities to be located on existing communications facilities or on existing structures (*for example, commercial buildings, water towers, utility poles and street lights*) whereby the new communications facilities can be architecturally integrated or otherwise camouflaged in a stealth manner to minimize the intrusion upon the public and adjacent properties. If and when a new tower or new base station is installed for communications facilities, said new tower or new base station should be located and designed in a manner to minimize the intrusion upon the public and adjacent properties, and when possible, to be architecturally integrated or camouflaged in a stealth manner with surrounding structures. For any new tower or new base station the City's preference of location is as follows:

- (a) In Neighborhood Business, Office and Planned Business/Mixed Use Districts as permitted by right.

- (b) In Neighborhood. Business, Office and Planned Business/Mixed Use, public property or semi-public property (*such as churches and schools*), as permitted by special use permit pursuant to Division 4, Article IV of Chapter 15.
- (c) In Planned Residential District and Planned Business/Mixed Use District as permitted by special use permit pursuant to Division 4, Article IV of Chapter 15.
- (d) In a single-family residential district, as permitted by special use permit pursuant to Division 4, Article IV of Chapter 15.

## **Sec. 15-588. Performance Standards for Communications Facilities**

### **(a) Height**

- (1) Towers - The maximum height which may be approved for a tower is 150 feet, which includes any transmission equipment on top of the tower. A lightning rod, 10 feet in height or less, shall not be included within the height limitations.
- (2) Towers in Right-of-Way – The maximum height which may be approved for a tower and related transmission equipment in the public right-of-way is: 50 feet along a main thoroughfare; and 20 feet along all other streets.
- (3) Base Stations – base stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

### **(b) Design and Color**

#### **(1) Tower**

- a. Design - Towers shall be a Monopole or of some other Stealth or Stealth Technology design unless required by the Approval Authority to be architecturally compatible to the surrounding development. Guy and Lattice Towers are not allowed. Furthermore, Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.
- b. Color and Finish - Towers shall have a galvanized finish unless an alternative Stealth or camouflaged finish is approved by the Approval Authority.

- (2) Base Stations – Base Stations shall comply with any applicable color and design requirement for its particular type of structure as set forth in the applicable zoning district, and shall blend with the surrounding buildings and/or natural environment.

#### **(3) Antennas**

- a. Design on Towers – Antenna bridges and platforms on towers are not allowed. Antennas on towers may be:
  - (i) Internal,
  - (ii) A panel of slim-line design mounted parallel with the Tower,
  - (iii) A design deemed by the Approval Authority to be less obtrusive or more stealth than the above-described designs; or
  - (iv) An omni-directional antenna placed at the top of the tower when it gives the appearance of being a similarly sized or smaller extension of the tower. (*The latter will be included in the tower height calculation.*)
- b. Design on Base Stations – Antennas and visible accessory facilities on a base station or other building/structure shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with said building/structure and to camouflage their appearance in a Stealth manner. These facilities on rooftops may

require screening that is architecturally compatible with the building. As applicable, the following additional requirements apply:

- (i) Antennas may be installed on any existing building or structure (*such as a water Tower but excluding single-family residences and accessory uses*) three (3) stories in height or greater but no less than 35 feet provided that the additional Antennas shall add no more than 20 feet to the height of said existing structure.
  - (ii) Antennas which are architecturally compatible to the building architecture may locate on non-residential buildings less than three (3) stories or 35 feet in height, subject to final development plan approval pursuant to Division 5 of Article IV of Chapter 15.
  - (iii) Attached Antennas on a roof shall be located as close to the center of the roof as possible; and Antennas mounted on a building or structure wall shall be as flush to the wall as technically possible, and shall not project above the top of the wall.
  - (iv) Accessory Facilities for Antennas may be permitted on the roof so long as it is screened from view when deemed necessary by the Planning Commission or Governing Body. (*For ground mounted accessory facilities see Sub-Section G. of Section 15-588.*)
- c. Color and Finish - Antennas and visible accessory facilities shall be colored and finished in a manner consistent with the tower/base station and any surrounding elements so as to camouflage their appearance in a stealth manner. These facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the tower/base station so as to make these facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

(c) Setbacks

- (1) Communications Facilities in Neighborhood Business, Office and Planned Business/Mixed Use zoning districts shall meet the setback requirements for other types of commercial structures of a similar size that are allowed by right in the zoning district in which the facilities are located. In the event the communications facilities will exceed the height allowed for other types of commercial structures in the district in which the facilities are located, the communications facilities shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.
- (2) Communications Facilities in single family residential zoning districts shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare. Setbacks for towers located on residentially zoned property that is shown on the Comprehensive Plan for a use other than very-low density or low density residential shall be determined at the time of the application.
- (3) In addition to the above setback requirements set forth in subsections (c)(1) and (c)(2), towers shall have a minimum setback of 200 feet from any surrounding property which is

shown as very-low or low-density residential on the Comprehensive Plan, unless such tower: (1) does not exceed the height requirement for other types of commercial structures in the district in which the Tower is located; (2) is a utility pole or street light or a monopole similar in size thereof; or (3) is designed as an architecturally compatible element in terms of material, design and height to the Existing or proposed use of the Site.

- (4) Small Cell/DAS Facilities on utility poles or street lights shall not be subject to the setback requirements in subsections (c)(1) – (c)(3) above.
- (d) Accessory Facilities - Accessory Facilities shall include only structures and facilities necessary for transmission functions for wireless services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory facilities shall be constructed of building materials consistent with the primary use of the site and shall be subject to the applicable approval process. Where there is no primary use other than the communications facility, the accessory facility and the building materials for the accessory facility shall be subject to the review and approval of the Approval Authority.
- (e) Equipment Storage - Mobile or immobile equipment not used in direct support of a Communications Facility shall not be stored or parked on the Site of the Communications Facility unless repairs to the Communications Facility are being made or pursuant to emergency approval as set forth in Section 15-590.
- (f) Parking Areas and Drives - All parking areas and drives associated with the Communications Facility shall comply with Sub-Division II, Division 3 of Article 4 of Chapter 15, except that the Approval Authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.
- (g) Screening - Accessory Facilities located at the base of a Tower or Base Station shall be screened from view with a solid screen wall a minimum of six (6) feet in height. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures, and shall be subject to the review and approval of the Approval Authority. The landowner or provider shall be responsible for maintenance of the screening. The Approval Authority shall have the ability to waive or reasonably modify this requirement where the design of the Accessory Facility is architecturally compatible to the primary use of the Site or where the Accessory Facility will have no visible impact on the public right-of-way and any other nearby property.
- (h) Landscaping - A landscape plan shall be required in accordance with Section 15-525 of Chapter 15. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority. A continuous landscaped area shall be provided around the perimeter of the accessory building or screening wall; and utility boxes will comply with any applicable utility box screening requirement. All plant materials are subject to Section 15-526 of Chapter 15 and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The owner or provider shall be responsible for maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the Approval Authority.
- (i) Lighting – Communications Facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the Approval Authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding

views. Security lighting around the base of a Tower may be provided if the lighting is shielded so that: no light is directed towards adjacent properties or rights-of-ways; the lighting avoids illuminating the Tower; and the lighting meets any other applicable City requirements.

- (j) Utilities - All utilities at a Communications Facility Site shall be installed underground and in compliance with applicable codes.
- (k) Security - All Communications Facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.
- (l) Signage – Signage at the Site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the Approval Authority.
- (m) Building Codes and Inspection
  - (1) Construction and Maintenance Standards – To insure structural integrity, communications facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for Communications Facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (*all as amended from time to time*). If upon inspection the City concludes that a Communications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have 30 days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.
  - (2) Inspection - At least every 24 months, the Communications Facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of Communications Facilities. At a minimum, this inspection shall be conducted in accordance with the inspection check list provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (*as amended from time to time*). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.
- (n) Operational Standards
  - (1) Communications Facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the communications facilities shall be brought into compliance with the revised standards and regulations within six (6) months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring communications facilities into compliance with any revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.
  - (2) It is the responsibility of the Wireless Service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

- (o) Removal of Abandoned Communications Facilities - Any Communications Facility that is not operated for a continuous period of 12 months shall be considered abandoned and a nuisance, and the owner of the facility or the landowner shall remove the facility within 90 days of a receipt of notice from the City. If such facility is not removed within said 90 days, the City may remove the facility at the facility owner or landowner'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.
- (p) Unsafe Communications Facilities – Any communications facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense.

#### **Sec. 15-589. - Application Denial**

- (a) The City may deny an application for any of the following reasons:
  - (1) Failure to submit any or all required Application documents and information.
  - (2) Conflict with safety and safety-related codes and requirements.
  - (3) Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.
  - (4) The use or construction of a Communications Facility which is contrary to an already stated purpose of a specific zoning or land use designation.
  - (5) The placement and location of the Communications Facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the Wireless Service provider.
  - (6) Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).
  - (7) Conflict with planned future public improvements.
  - (8) Conflict with or violation of any provision contained within this Chapter or any other applicable City code or with any applicable federal or state law.
- (b) In the event of a denial, the Approval Authority or the City shall notify the Applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. Such notice shall be made within the applicable timeframe set forth in Section [15-585](#).
- (c) Any denial shall not discriminate against the Applicant with respect to the placement of Communications Facilities of other investor-owned utilities, Wireless Service providers, wireless infrastructure providers or wireless carriers.

#### **Sec. 15-590. - Emergencies and Disasters**

In the event of a declared emergency or disaster, the City Manager or the Director may authorize any temporary towers, base stations, transmission equipment or accessory equipment necessary to temporarily restore wireless services.

**Sec. 15-591. - Performance Standards for Communications Facilities**

The provisions of this Chapter shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating communications facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Chapter, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 2.** That existing Sections 15-582 through 15-595 of the Fairway Municipal Code of the City of Fairway is hereby repealed.

**SECTION 3.** That if any portion or section of this Article is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this Article, which shall remain in full force and effect.

**SECTION 4.** That this Ordinance shall become effective upon adoption and publication of its summary in the official City newspaper.

**PASSED** by the City Council this 10th day of December, 2018. **APPROVED** by the Mayor.

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Melanie Hepperly, Mayor

ATTEST:

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Kim H. Young, City Clerk

APPROVED AS TO FORM:

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Stephen P. Chinn, City Attorney