

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-026-0

AS AMENDED

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A SPECIAL USE PERMIT REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-35 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 50-35. Enumerated.

The following are the special uses for which the city council may issue a special permit, as provided in Section 50-32:

(a) Airport, landing field or landing strip for all forms of aircraft, auto race track and drag strip;

(b) Amusement park, but not within 300 feet of any R district;

(c) Beauty salon in an R district, subject to the following restrictions and conditions:

(1) Such use shall be incidental and subordinate to the principal residential use conducted within a dwelling and not in an accessory building;

(2) At least 120 square feet but not more than 1/4 of the floor area of one story of the building shall be devoted solely to such use and to no other use;

(3) Only one person shall work in the beauty salon and such person shall reside on the premises;

(4) There shall be no separate entrance to the beauty salon from the front of the building, and the applicant shall provide evidence of inspection and compliance with all applicable fire and building codes;

(5) No signs or displays advertising the salon shall be permitted on the premises;

(6) At least two off street parking spaces shall be available on the premises for use by patrons of the salon, such parking space requirement to be in addition to the parking space requirements otherwise applicable to the premises;

(7) Applicant shall, prior to issuance of a special use permit pursuant to this Section, provide proof that applicant has all required licenses for operation of a beauty salon;

(8) Notice and publication as required by Section 50-32.2 of this Code shall, in the case of permits under this paragraph, include mailed notice to all property owners and occupants of property within 200 feet of the building;

(9) No permit shall be granted pursuant to this paragraph if a beauty salon already exists within 1,000 feet of the premises;

(d) The city council recognizes that bed and breakfasts are an asset to the community and help the preservation of historic homes and neighborhoods and help the economy of the region as small businesses. Bed and breakfast inns and country inns; in districts where they are permitted as special uses and only as provided herein;

(1) This special use permit shall be granted only to those properties, which meet or exceed the criteria outlined herein. A bed and breakfast inn must be a residential building that has no greater impact on the uses of the public areas or infrastructure or natural resources of the neighborhood than, or be apparent to an observer to be other than, the existing property used as a fully occupied private home with house guests. The principal building

must appear outwardly to be a single family dwelling, giving no appearance of a business use other than allowed signs.

No permit shall be considered or issued for a bed and breakfast facility located closer than 450 feet to an existing bed and breakfast facility. This limitation may be waived by the city council for properties which are locally designated heritage preservation landmarks;

(2) An application for this special use permit shall include the following:

(A) A site plan as defined in Section 50-1.60;

(B) A landscape plan as defined in Section 50-1.40;

(C) A set of detailed floor plans indicating the traditional uses of all rooms and the intended uses in the bed and breakfast operation;

(D) Sign drawings showing location, dimensions and detail;

(E) For a waiver of the 450 foot separation, a copy of the resolution designating the properties as a heritage preservation landmark;

(3) Bed and breakfast inns and country inns may be granted special use permits subject to the following standards and conditions:

(A) The property must be comprised of a minimum of 0.6 acre;

(B) The main residential building must contain a minimum of 1,500 square feet of area on the first floor;

(C) For an inn, the proprietor shall be the owner and occupant of the property;

(D) Off street parking for the uses of the property shall be provided on site as required in Section 50-26. Scattered off site parking shall not be allowed;

(E) All parking areas shall be hard-surfaced and visually screened by vegetation and/or fencing (consistent with the architecture of the structure) as required by the city in order to maintain the apparent single family use of the property;

(F) Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In bed and breakfast country inns, allowed under this Section, dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in bed and breakfast inns, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises which involve a total number of participants in excess of the approved dining area seating capacity shall be limited to: six days per year and shall be restricted to the period of October 15 through June 15;

(G) Any construction to restore buildings to historic condition, any construction of new buildings and any exterior alterations to the building must be authorized by the city council through this special use permit process;

(H) There shall be a limitation on the number of guest rooms permitted based on the size of the building, building code or fire code;

(I) Total signage on the property shall not exceed 12 square feet in size. Such signage shall complement the architecture of the structure;

(J) Guests' stays shall be limited to 21 consecutive days;

(K) A bed and breakfast establishment must comply with all building and fire code requirements. Inspections shall be conducted before special use permits or licenses are issued;

(L) The owner/operator shall present inspection reports from the city fire marshal and St. Louis County health department to the city clerk prior to the issuance of any licenses;

(M) Such other conditions deemed necessary by the planning commission and/or city council to ensure the use complies with the purpose of this Subsection;

(e) Cemetery, crematorium or mausoleum;

(f) Child care facility. A state licensed residential facility for care and treatment of children located within 100 feet of an existing state licensed residential program that has an administrative organization and structure approved under state law for providing shelter, food, training, treatment and other aspects of care of not more than six children, and is an extension of an existing facility licensed under state law.

Any such facility shall meet all other state licensing requirements for such facilities, be contiguous to or located not more than 100 feet from the existing licensed facility charged with operation of the facility, and must not present any external image other than that of a single family residence;

(g) Circus or carnival grounds, but not within 300 feet of any R district;

(h) Clinic of less than 10,000 square feet in floor area;

(i) Commercial, recreational or amusement development for

temporary or seasonal periods;

(j) Commercial rooming house, but only in those districts where permitted as special use;

(k) Commercial services and recreational uses in the IP industrial park district, as further defined in Section 50-123 of this Chapter;

(l) Day care facility, but only in those districts where permitted as a special use;

(m) Elderly congregate housing facility, but only in those districts where permitted as a special use;

(n) Marina;

(o) Mini storage facilities; subject to compliance with the following criteria:

(1) Located in a S zone;

(2) On a parcel not less than 7-1/2 acres in size with no less than 500 feet of frontage on a publicly maintained right-of-way;

(3) Development shall not increase the peak stormwater runoff from the site from its existing condition based upon a storm of 100 year frequency and 24 hour duration (5.25 inches of rainfall);

(4) Signage shall be limited to one 40 square foot illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;

(5) There shall be maintained a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;

(6) There shall be a minimum structure setback of 100 feet from any property line;

(7) Storage area unit shall not exceed a 12 foot wall height and a floor area of 300 square feet;

(8) Lighting shall be limited so as not to illuminate beyond property lines;

(p) Office building of a civic, religious or charitable organization, conducting activities primarily by mail and not handling merchandise or rendering services on the premises, but only within the R-4 district;

(q) Petroleum soil treatment;

(1) Petroleum soil treatment in the form of land treatment (soil farming) shall be located in S-suburban zones and shall comply with the following criteria:

(A) That the pollution control agency (PCA) shall have reported to the planning department regarding the individual site and the possibility of any problems relative to issuance of PCA authorization for use of the site;

(B) The natural topography, drainage character, vegetation and use of the site shall not be altered beyond site preparation required for any listed permitted land use within the S-suburban zone. Specifically:

1. No vegetation shall be cut or removed from within state required setbacks except as required for installation of temporary roads;

2. Vegetation removal shall be minimal. Vegetation greater than six inches caliper shall not be removed except as determined necessary to accommodate minimal equipment clearances, and there shall be minimal preparation of the soil on the treatment area. Such preparation shall minimize disturbance of the topsoil and does not preclude the return of the site to listed

permitted S-suburban zone land uses;

(C) All treatment areas must be planted to pasture grasses during treatment and replanted to the original vegetation after the treatment process has been completed;

(D) No sites shall be located within wetland, shore land or flood zones as defined by Chapter 51 of the Code;

(E) That the applicant shall maintain the treatment site in strict compliance with all conditions of this permit and associated state or federal permits;

(2) Petroleum soil treatments using biodegradation such as composting or aerobic treatment cells or other technologies as may be developed and approved by the PCA from time to time, shall be only permitted in M-1 and M-2 zones, and shall be subject to the standards (A), (B), (D) and (E) cited above;

(r) Power transmission line, review and approval to be provided for separately in each of two steps:

(1) A general corridor special use permit;

(2) A final design special use permit, under the following conditions and procedures:

(A) Submittal information for general corridor special use permits. In addition to other information required by the special use permit process, the applicant shall provide the following information with applications for general corridors:

1. A statement demonstrating the need for the proposed line;

2. Drawings showing the approximate location of a preferred route (having a width of less than 1,000 feet) and at least one alternative route. Included within each route shall be an intended center line and subject site and adjacent

area information, the form of which shall be determined by the planning commission on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views. Drawings shall also indicate proposed general types, heights and ranges of spacing of supporting structures and related equipment such as pumping stations, although the specific type of line shall not be approved until the final design review;

3. A statement identifying potential locations of conflict such as adjacent scenic and residential areas and describing general proposed methods of dealing with such conflicts;

4. A statement addressing each applicable standard of Section 50-35(r)(4) below in regard to the preferred route and alternative routes;

(3) Submittal information for final design special use permits. In addition to information otherwise required by the special use permit process, the applicant shall provide the following for final design special use permits:

(A) Plans and profiles, the form of which shall be determined by the planning commission, showing the exact location of the center line and the exact location and design of supporting structures and related equipment as proposed by the applicant. Alternative potential designs of supporting structures shall also be presented;

(B) A landscaping plan and subject site and adjacent area information on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views in a form which shall be

determined by the city planning commission;

(C) A statement addressing each applicable standard of Section 50-35(r)(4) below;

(4) Standards for approval. No special use permit shall be granted unless the following standards and conditions are met in addition to normal requirements of the special use permit process:

(A) For general corridor special use permits:

1. The public need for the route and facility as specifically proposed shall be demonstrated;

2. Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

3. The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;

(B) For final design special use permits:

1. Where it is determined that a proposal would unduly harm adjacent property or property values, it shall be determined that no other feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;

2. All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with

regard to height, scale, material, color and design;

3. Lines shall meet or exceed the National Electric Safety Code;

4. Electro-magnetic noise and interference with radio and television reception, as well as audible hum outside the line right-of-way, shall be minimized;

5. The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

(C) For both general corridor and final design special use permits. The following standards shall apply in addition to those required above under general corridor and final design special use permits:

1. When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion which would create sedimentation and pollution problems; areas of unstable soils which would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;

2. Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;

(5) Alteration of final design special use permit. Once the final design special use permit is issued, the applicant may change the height and location of structures for engineering purposes provided no structure height is increased or decreased by more than 20 percent of its approved height or moved more than 25 feet from its approved location. Should it be necessary to alter the height or location more than the amounts set forth herein, applicant must obtain the approval of the city planning commission after the commission has conducted its normal public hearing and notice procedures. The decision of the planning commission on any alterations shall be final unless appealed to the city council within ten days;

(s) Privately operated community building or recreation field;

(t) Any public or government owned or leased building not permitted in a particular district; provided that such permit shall run for a full period of the lease and that both lease and permit shall run for not less than ten years from date of permit;

(u) Radio or television broadcasting tower or station;

(v) Residential care facility, only in those districts where permitted as a special use;

(w) Residential rooming house, only in those districts where permitted as a special use;

(x) Riding stable;

(y) Solid waste disposal facility;

(1) Special use permits for solid waste disposal facilities and yard waste compost facilities shall be granted only under certain circumstances and under certain conditions;

(2) An application for this special use permit shall include the following:

(A) A complete legal description of the property and the specific site within the property description;

(B) A site plan as defined in Section 50-1.64;

(C) A landscape plan as defined in Section 50-1.65.7;

(D) A detailed plan schedule for excavation, grading, dumping, filling, covering, landscaping and closure of the facility;

(E) Engineering certification, signed by the project engineer, which must certify (with any exceptions listed) that the design for construction is in accordance with standards as set out in these regulations and state statutes and rules relating to the specific type of requested facility;

(F) Signage plans showing location, dimensions and detail;

(G) Drainage plan that provides for diversion of surface water around and away from the disposal area and does not increase the rate of runoff, from the predevelopment condition, from the site onto adjoining properties;

(H) Ground water monitoring plan as and if required by state statutes or rules;

(I) A detailed dust control plan for the facility and for roadways in and leading to and from the facility;

(3) Standards and conditions. Solid waste disposal facilities and yard waste composting facilities may be granted special use permits in S, M-1 and M-2 zones subject to the following:

(A) Setbacks, in M-2 zones, all aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. In S and M-1 zones the setback shall be 300 feet from all properties zoned other than M-2. Such setbacks shall be bermed and/or landscaped so as to be visually screened from adjacent properties and roadways. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;

(B) Licensing for all solid waste disposal operations and facilities as well as yard waste composting facilities shall comply with all state and Western Lake Superior Sanitary District requirements in accordance with Minnesota Statutes and agency rules;

(C) Solid waste disposal facilities for industrial waste shall only be allowed in M-2 zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;

(D) Solid waste disposal facilities for construction debris shall only be allowed in M-2 zones;

(E) Facilities for composting of yard waste shall not accept materials other than yard waste;

(F) No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are

defined in Chapter 51 of this Code;

(G) All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;

(H) There shall be no burning of materials;

(I) Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in S and M-1 zones shall be constructed with an approved, as part of the special use permit, dust free material;

(J) All vehicles transporting materials to or from the facility shall be covered;

(K) For sites in S and M-1 zones, there shall be no dumping or operations outside of buildings, nor delivery or removal of materials to or from the site occurring between the hours of 10:00 p.m. and 7:00 a.m.;

(L) Except for yard waste composting facilities there shall be no processing (separating or sorting) of materials outside of covered structures;

(M) Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed 55db at any property line which abuts property zoned other than M-2;

(N) In S and M-1 zones there shall be no exterior lighting permitted except to provide security for buildings

and parking areas. Where such lighting is permitted it shall be directed so no light source is visible from any property line;

(O) Compliance funding: in the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

(z) Strobe lights, as defined in Section 10-36 of this Code, may be used on radio and television broadcasting towers exceeding 400 feet in height located in that area of the city commonly known as the tower farm within Section 28, Township 50, Range 14, subject to the following restrictions and conditions:

(1) Strobe lights may be used only when the north sky illumination on a vertical surface at the base of the tower is greater than five footcandles. Red obstruction lights must be used at all other times;

(2) Strobe installations shall be shielded so as not to be visible from ground elevation for a radius of two miles from the antenna base;

(3) Strobe installations will be allowed only on towers which are required by federal aviation administration regulations to be painted orange and white;

(aa) Drive-in theater in the S suburban district;

(bb) Tourist or trailer camp; provided, that such tourist or trailer camp shall comply with the applicable provisions of this

Code and the laws of the state;

(cc) Essential municipal or public utility use, facility or building, other than a business office or production facility; provided that such use, facility or building shall be located in a S district only if its specific function requires that it be so located in order to serve the immediate neighborhood, as opposed to serving a major portion of the community. Provided, that a substation which serves more than the immediate neighborhood may be granted a special use permit in S districts if such substation is located in such a manner that it is visually screened from adjacent properties and is located on a site of at least five acres;

(dd) Veterinarian or animal hospital; provided, that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, which are ordinarily permitted in the house and kept for company or pleasure) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a sound-proof building with adequate ventilation;

(ee) Wind energy conversion systems. Wind energy conservation systems (WECS) shall be permitted, provided; tower height shall not exceed 200 feet; that existing or future uses permitted within adjacent properties are not adversely effected by noise, electronic signal interference or safety conditions; that satisfactory visual screen buffers be provided at the edges of the property to mitigate aesthetic impacts upon the neighborhood if located within "R" districts; and that WECS be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower unless it can be demonstrated that tower failure would not damage adjacent public or private interests;

~~(ff) Personal wireless communications service towers. These towers shall include all towers and poles over 50 feet high used to provide "personal wireless services" as defined in 47 USCS §332(c)(7)(C)(I), including those commonly known as cellular telephone towers or personal communications services (PCS) towers. The following standards shall apply to the considerations of special use permits for these towers: Wireless telecommunications facilities;~~

~~(1) No permit decision shall unreasonably discriminate among providers of functionally equivalent services; Purpose and legislative intent. The Telecommunications Act of 1996 affirmed the city's authority concerning the placement, construction and modification of wireless telecommunications facilities. The city council of the city finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its residents. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this Section 50-35(ff) is to minimize impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city;~~

~~(2) No permit decision shall have the effect of prohibiting personal wireless services in an area; Title. This Section 50-35(ff) shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the city of Duluth;~~

~~(3) No permit decision shall be based on the environmental effects of radio frequency emissions if the proposed tower complies with all applicable federal communications commission regulations; Severability;~~

~~(A) If any word, phrase, sentence, part, section, subsection, or other portion of this Section 50-35(ff) or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect;~~

~~(B) Any special use permit issued under this Section 50-35(ff) shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;~~

~~(4) Any decision to deny a permit for these towers must be made in writing and supported by substantial evidence contained in a written record; Definitions. For purposes of this Section 50-35(ff) and where not inconsistent with the context of a particular subsection, the defined terms, phrases, words,~~

abbreviations, and their derivations shall have the meaning given in this section;

(A) "Accessory facility or structure" means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets;

(B) "Applicant" means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities;

(C) "Application" means all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities;

(D) "Antenna" means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals;

(E) "Co-location" means the use of an existing tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed;

(F) "Commercial impracticability" or "commercially impracticable" means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and

that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable";

(G) "Completed application" means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application;

(H) "Council" means the city council of the city of Duluth;

(I) "FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency;

(J) "FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency;

(K) "Height" means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an Antenna or lightening protection device;

(L) "Migratory bird flight path" means, the zone of jurisdictional land located from the Lake Superior and Saint Louis River shorelines to no less than two miles inland or where Skyline Parkway runs parallel to the shoreline, an area from the shoreline to Skyline Parkway or two miles inland, whichever is greater;

(M) "Modification" or "modify" means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility

feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything;

(N) "NIER" means non-ionizing electromagnetic radiation;

(O) "Personal wireless facility" See definition for "wireless telecommunications facilities";

(P) "Personal wireless services" or "PWS" or "personal telecommunications service" or "PCS" shall have the same meaning as defined and used in the 1996 telecommunications Act;

(Q) "Repairs and maintenance" means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted;

(R) "Special use permit" means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the city;

(S) "Stealth" or "stealth technology" means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

(T) "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems;

(U) "Telecommunication site" See definition for wireless telecommunications facilities;

(V) "Telecommunications structure" means a structure used in the provision of services described in the definition of 'wireless telecommunications facilities';

(W) "Temporary" means temporary in relation to all aspects and components of this Section 50-35(ff), something intended to, or that does not exist for more than ninety (90) days;

(X) "Tower" means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal;

(Y) "Wireless telecommunications facilities" means and includes a "telecommunications site" and "personal wireless facility." It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including, but

not limited to, buildings, church steeples, silos, 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 facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC;

(5) ~~The construction of new towers shall, where possible, be avoided when there are existing high buildings or other structures in the area that can reasonably be used to house the telecommunications facilities.~~ Overall policy and desired goals for special use permits for wireless telecommunications facilities. In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this section 50-35(ff), the city hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

(A) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;

(B) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;

(C) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;

(E) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;

(D) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

(F) That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;

~~(6) Whenever possible, new towers shall be built in zones for manufacturing or commercial uses as opposed to zones for residential uses;~~ Special use permit for wireless telecommunications facilities required; exceptions;

(A) Except as otherwise provided by this subsection no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities as of [insert the effective date of this Ordinance] without having first obtained a special use

permit for wireless telecommunications facilities;

(B) All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before [insert effective date of this Ordinance] shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-35(ff);

(C) Any repair and maintenance of a wireless facility does not require an application for a special use permit;

(D) The following shall be exempt from this Section 50-35(ff):

1. The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by St. Louis County, the state or federal government;

2. Any facilities expressly exempt from the city's siting, building and permitting authority;

3. Over-the-Air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;

4. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications;

5. Facilities exclusively for providing

unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower;

~~(7) New towers shall, where possible, be constructed to accommodate multiple telecommunications users and thus minimize the proliferation of the towers, if such multiple use capacity can be attained using reasonable height limitations;~~ Special use permit applications; requirements. In addition to the requirements set forth in this Section 50, Article IV, the following additional requirements apply to applications for special use permits for wireless telecommunications facilities:

(A) The city may reject applications not meeting the requirements of this Section 50-35(ff) or as authorized by Minnesota Statutes Section 15.99;

(B) Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;

(C) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information;

(D) The application must include documentation verifying the applicant's right to proceed as proposed on the site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required;

(F) The application shall include a written

statement:

1. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the city in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable city, state and federal laws, rules and regulations;

2. That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the state;

(G) Where a certification is called for in this Section 50-35(ff), such certification shall bear the signature and seal of an appropriate registered professional licensed in the state;

(H) In addition to all other required information as stated in this Section 50-35(ff), all applications for the construction or installation of new wireless telecommunications facilities or modification of an existing facility shall contain the following information:

1. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;

2. Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the city. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites

that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

3. The name, address and phone number of the person preparing the report;

4. The name, address, and phone number of the property owner and applicant, and to include the legal name of the applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;

5. The postal address and tax map parcel number of the property;

6. The zoning district or designation in which the property is situated;

7. The size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

8. The location of nearest residential structure;

9. The location, size and height of all existing and proposed structures on the property which is the subject of the application;

10. The type, locations and dimensions of all proposed and existing landscaping and fencing;

11. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;

12. The number, type and model of the antenna(s) proposed with a copy of the specification sheet;

13. The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to

accommodate multiple users;

14. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

15. The frequency, modulation and class of service of radio or other transmitting equipment;

16. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

17. Signed documentation such as the "Checklist to Determine Whether a facility is Categorically Excluded" found in Appendix A of the FCC publication titled "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures and Practical Guidance" dated June 2, 2000 to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

18. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

19. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

20. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design;

21. Certification documentation of structural analysis, including calculations that the

telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all city, state and federal structural requirements for loads, including wind and ice loads;

22. A written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support wireless facilities is in compliance with FAA Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application;

23. If the proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version;

24. A demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the wireless telecommunications facility;

25. A written description and drawing showing how the applicant shall effectively screen from view the base and all related equipment and structures of the proposed

wireless telecommunications facility;

26. If a new tower, proposal for a new antenna attachment to an existing structure, or other modification will add to a visual impact, the application shall include a Visual Impact Assessment, which shall include the following:

i. If the application is for a new tower or seeks to increase the height of an existing structure , a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage to illustrate locations from which the proposed installation may be seen;

ii. Photo simulations of before and after views from key viewpoints both inside and outside of the city as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at the pre-application meeting. The applicant shall also provide a map showing the locations of where the pictures were taken and distance from the proposed structure;

iii. A written description of the visual impact of the proposed facility including, and as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening;

(I) All applications for the construction or installation of a new tower facility shall also contain the

following additional information and comply with the following additional requirements:

1. A written report demonstrating the applicant's meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the city. Copies of written requests and responses for shared use shall be provided to the city in the application, along with any letters of rejection stating the reason for rejection;

2. Prior to the public hearing on the application the applicant shall hold a balloon test. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven and fourteen days in advance of the first test date in a newspaper with a general circulation in the city. The applicant shall inform the city's land use supervisor, in writing, of the dates and times of the test, at least fourteen days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the application;

3. A written report examining the feasibility of designing the proposed tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations;

(J) The following standards shall apply to the location of wireless telecommunications facilities:

1. Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, one being the highest priority and six ~~seven~~ being the lowest priority:

i. On existing towers or other structures on city owned properties;

ii. On existing towers or other structures on other property in the city;

iii. A new tower on city owned properties;

iv. A new tower on properties in areas zoned for industrial use;

v. A new tower on properties in areas zoned for commercial use;

vi. A new tower on properties in areas zoned for residential use;

2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site;

3. An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option.

If such option is not proposed, the applicant must explain to the reasonable satisfaction of the city why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship;

4. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application;

5. The city may approve any site located within an area in the above list of priorities, provided that the city finds that the proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood;

(K) It is the policy of the city to prefer locating on existing towers or others structures without increasing the height. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within two miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used;

(L) An applicant intending to locate on an existing tower or other suitable structure shall document the intent of the existing owner to permit its use by the applicant. Shared use shall consist only of the minimum antenna array technologically

required to provide service primarily and essentially within the city, to the extent practicable, unless good cause is shown;

(M) The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the city, to the extent practicable, unless good cause is shown;

(N) If lighting is required, applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and Federal regulations;

~~(8) New towers shall, where reasonably possible, be designed to blend into the proposed site so as to minimize its visual impact on the surrounding area.~~ General requirements applicable to all wireless telecommunications facilities;

(A) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;

(B) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity;

(C) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. facilities located within the migratory bird flight path shall utilize stealth or concealment technology;

(D) All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state Building and Electrical Codes, where appropriate;

(E) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure

adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;

(F) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or United States, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.;

(G) A holder of a special use permit granted under this Section 50-35(ff) shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;

(H) The holder of a special use permit shall notify the city of any intended modification of a wireless Telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility.

(I) All new towers shall be structurally

designed to accommodate at least four (4) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

1. The foreseeable number of FCC licenses available for the area;

2. The kind of wireless telecommunications facilities site and structure proposed;

3. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;

4. Available space on existing and approved towers;

5. New guyed towers are prohibited.

(J) Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records;

(K) The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use applicant;

2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;

3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference;

(L) No tower constructed after [insert effective date of ordinance], including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with city, state, or federal statute, law, code, rule or regulation;

(M) No tower constructed after [insert effective date of ordinance] including allowing for all attachments, shall exceed seventy-five (75') feet in height within the Migratory Bird Flight Path;

(N) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;

(O) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-35(ff);

(P) Wireless telecommunications facilities and

antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;

(Q) Wireless telecommunications facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;

(R) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent of the height of the tower or structure, or the existing setback requirement of the underlying zoning district,

whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;

(S) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and manner of execution, in an amount which shall be set in accordance with Section 31-6(a) of this Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-35(ff) and conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original special use permit.

(T) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;

1. For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers, employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in Minnesota Statutes

Section 466.04;

2. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;

3. The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;

4. Renewal or replacement policies or certificates shall be delivered to the building official at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace;

5. No permit necessary to the site preparation or construction of a permitted wireless telecommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;

6. Notwithstanding the requirements noted in this sub-section no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities;

(U) All special use permits approved for wireless telecommunication facilities located on city property after [insert effective date of ordinance] shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and

its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

(9) ~~Telecommunications facilities and equipment used in conjunction with the tower shall not create unacceptable noise levels for the surrounding area;~~ Application review process; retention of expert assistance; fees; and reimbursement by applicant.

(A) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site;

(B) An applicant shall submit to the city the

number of completed applications determined to be needed at the pre-application meeting;

(C) At the time that an application is submitted for a special use permit for a new tower, or for modifying or co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, or for a temporary facility, the applicant shall pay the applicable non-refundable application fee which shall be set in accordance with Section 31-6(a) of this Code;

(D) The city may hire any consultant or expert necessary to assist the city in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be shall be set in accordance with Section 31-6(a) of this Code;

(E) The placement of the deposit with the city shall precede the pre-application meeting. The city will maintain a separate escrow account for all such funds. The city's consultants shall invoice the city for its services related to the application. The total amount of the funds needed for the review of the application may vary depending on the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. If at any time

during the process this escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be refunded to the applicant;

(F) Except as provided in this sub-section, a public hearing shall be held by the city as required by Section 50-32.2. In order that the city may notify nearby landowners, the application shall contain the names and address of all landowners whose property is located within 750 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located;

(G) The land use supervisor may administratively approve an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the tower or structure, including attachments thereto;

(H) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary;

(I) The city may refer any application or part thereof to any advisory, other committee or commission for a non-binding recommendation;

(J) After the public hearing and after formally considering the application, the city may approve, approve with

conditions, or deny a special use permit. The burden of proof for the granting of the permit shall always be upon the applicant;

(K) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements;

2. Conflict with the historic nature or character of a neighborhood or historical district;

3. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;

4. The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city, or employees of the service provider or other service providers;

5. Conflicts with the provisions of this Section 50-35(ff);

6. The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of Minnesota Statutes Section 15.99;

(L) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit.

~~(10) New towers shall comply with all applicable laws,~~

~~including, but not limited to, the state building code and federal communications and aeronautics statutes, rules and regulations;~~
Enforcement;

(A) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;

(B) Under the following circumstances, the city may declare the wireless telecommunications facility a public nuisance and take all available enforcement actions including, but not limited to, revocation of the special use permit:

1. The wireless telecommunications facility has been abandoned. For purposes of this paragraph a facility is deemed abandoned if it is not used as wireless telecommunications facility for a period exceeding ninety consecutive 90 days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

2. The wireless telecommunications facility fall into such a state of disrepair and creates a health or safety hazard;

3. The wireless telecommunications facility has been located, constructed, repaired, maintained, or modified without first obtaining the required special use permit, or in any manner that constitutes a violation of this Section 50-35(ff);

4. For a violation of the conditions and provisions of the special use permit.

(C) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;

(D) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the land use supervisor;

(E) Notwithstanding anything in this sub-section to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject

to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city exercise all available legal rights;

(F) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or this Section 50-35(ff);

(G) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;

(11) Relief and Appeal;

(A) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section 50-35(ff) may request such, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. The burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the city in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the city, its residents

and other service providers;

(B) Any order of the building official or final administrative decision of the land use supervisor may be appealed as provided in Section 50-17 of the Code;

(C) Any final decision of the city may be appealed as provided in Minnesota Statutes Section 462.361;

(gg) Tennis courts and sports courts;

(hh) Off-site parking for schools, grades K-12, located within an R district. When a school cannot accommodate all parking stalls on-site, or the result is considered detrimental and un-aesthetic to the school site and the surrounding neighborhood, an off-site parking lot may be granted a special use permit provided the following minimum standards and conditions are met, and further provided that the minimum standards shall not limit the city council's authority to impose additional conditions and safeguards as provided in Section 50-32:

(1) A landscape plan is submitted;

(2) The parking lot provides a minimum landscaped or naturally vegetated setback area of 15 feet adjacent to the right-of-way and all adjacent properties. Landscaping elements must screen out at least 50 percent of the view of the parking lot between ground and an elevation eight feet above the parking lot. Decorative fencing can be used in conjunction with landscaping; chain link fencing is prohibited;

(3) The parking area shall have a minimum 30 percent canopy cover at maturity;

(4) The location, size and number of curb cuts shall be designed to minimize traffic congestion or hazard in the area; curbing shall be provided to define parking and landscaped areas and

to direct stormwater runoff;

(5) The proposed parking lot shall be designed to minimize pollutants in stormwater runoff to the lowest level possible applying the best available technology;

(6) If the parking lot is to be illuminated, light fixtures shall be designed and shielded so that light is directed onto the parking area and directed away from adjacent property and traffic. Illumination shall be done by full cut-off, downcast luminaries mounted on poles not to exceed 20 feet in height above the parking lot.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

PLNG/ATTY MAL:cjk 5/21/2010

STATEMENT OF PURPOSE: This ordinance is a complete replacement of Section 50-35(ff) of the Code. Part (ff) provides for the conditions under which a special use permit for a wireless telecommunications facility may be issued. These facilities are commonly referred to as "cell towers". The new section provides a comprehensive and technical standard for the review and approval of these facilities.