

The Walter H. Drane Co.

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July 1998

Summer Issue

New Ordinances

Listed below are the topics of some new ordinances we have seen recently and/or been requested to furnish Ohio municipalities. Please contact us if we can be of assistance to you in these or other areas. We would appreciate it if you would limit your request to a maximum of three topics.

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| 1. Motor Vehicle Noise | 11. Interim Structures |
| 2. Parental Responsibility | 12. Rabies Vaccination for Dogs
and Cats |
| 3. Frozen Dessert Vendors | 13. Public Improvement Contracts |
| 4. Temporary Outdoor Sales | 14. Parking Facility Tax |
| 5. Parking Commercial Vehicles
and Construction Equipment | 15. City Park Exclusion Zones |
| 6. Helmets for Minors Operating
Skateboards or Rollerblades | 16. Campaign Finance Expenditures
and Contributions |
| 7. Helmets for All Bicycle Operators | 17. Adult Entertainment Facilities |
| 8. Motor Vehicle Sales From Yard or
Treelawn | 18. Wireless Telecommunication
Facilities |
| 9. Cats Running At Large | |
| 10. Timber Harvesting | |

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STATE TRAFFIC AND CRIMINAL LAW CHANGES

The following sections of our model Traffic and General Offenses have been modified to accord with legislation passed by the General Assembly since the last newsletter. If our agreement with your municipality so provides, we will incorporate these amendments in the next supplement we prepare for your code.

<u>Section No.</u>	<u>ORC</u>	<u>Bill No.</u>	<u>Effective Date</u>	<u>Title and Description</u>
509.06, 509.07, 537.10	2917.21, 2917.31, 2917.32	HB 182	10-1-97	TELEPHONE HARASSMENT, INDUCING PANIC, MAKING FALSE ALARMS. (Enhances penalties.)
525.08	2921.32	HB 161	12-31-97	OBSTRUCTING JUSTICE. (Expands offense to include aiding a child who commits a delinquent act.)
533.06	2907.08	SB 82	1-30-98	VOYEURISM. (Modifies elements of and penalty for offense.)
533.01	2907.01	HB 32	3-10-98	SEXUAL CONDUCT. (Adds "without privilege to do so" to definition.)
339.07	4513.32	HB 425	7-29-98	TOWING REQUIREMENTS. (Expands exception for towing vehicles carrying agricultural produce from farm to place of storage.)

<u>Section No.</u>	<u>ORC</u>	<u>Bill No.</u>	<u>Effective Date</u>	<u>Title and Description</u>
537.15	2919.27	HB 302	7-29-98	TEMPORARY PROTECTION ORDER. (Adds element of protection for a person who has been a victim of menacing by stalking.)
509.06	2917.31	HB 382	7-22-98	INDUCING PANIC. (Increases penalty when the public place involved in the offense is a school.)
335.03	4507.05	SB 35	7-1-98	DRIVING WITH TEMPORARY INSTRUCTION PERMIT; CURFEW. (Lowers age requirements for, and revises regulations pertaining to, driving with temporary instruction permit including imposing curfew restrictions on minors between fifteen and a half and seventeen years of age.)

RECENT COURT DECISIONS

Listed below are some recent decisions involving Ohio municipal ordinances of a permanent and general nature:

CONSTITUTIONAL TESTS FOR ZONING ORDINANCES

Goldberg Cos. Inc. v. Richmond Hts. City Council (1998), 81 Ohio St. 3d 207. In an important case involving municipal zoning, the Ohio Supreme Court clarified the proper tests to be employed in determining the constitutionality of zoning ordinances. Initially the Court distinguished between two types of constitutional challenges to a zoning ordinance: the first alleges that an ordinance is unconstitutional as applied to the property in question and the second alleges that a taking of the property has occurred for which the owner is entitled to receive compensation. Traditionally the test to determine the validity of the first contention was that enunciated in *Euclid v. Ambler Realty Co. (1926), 272 U.S. 365, 395, 47 S. Ct. 114, 121, 71 L. Ed. 303, 314.*, whether the ordinance was “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare”. The second test is whether or not the ordinance denies the landowner the economically viable use of his or her land. Nevertheless, in three recent decisions the Ohio Supreme Court combined these two tests in considering whether or not the ordinance allowed the owner an economically feasible use of land even though there was no allegation that a taking had occurred. In the present case, the Supreme Court reestablished that the proper standard for determining the general constitutionality of zoning ordinances is the *Euclid v. Ambler Realty Co.* test. Only if an ordinance is thus found to be constitutional and it is alleged that a taking has occurred is it necessary to move to the second test and determine whether the zoning ordinance as applied to the landowner’s property constitutes a taking so as to entitle the owner to compensation.

INTEREST ON INCOME TAX RETURNS

Cincinnati Imaging Venture v. Cincinnati (1996), 116 Ohio App. 3d.1. Cincinnati Imaging Venture (“CIV”) filed amended returns for the tax years 1989, 1990, and 1991 which were accepted by the City as filed on April 12, 1994. The refund was paid without interest. The City justified its nonpayment of interest on its interpretation of Section 311-27 of the Cincinnati Municipal Code. Under that interpretation interest was not payable if the refund was issued within ninety days of April 12, 1994. Ohio R.C. 718.06(D), however, requires that interest be paid on tax refunds commencing from the original date

f payment of the tax. At issue then was whether or not the City had the authority to pass an ordinance regulating the payment of interest on overpaid taxes which is in direct conflict with Ohio R.C. 718.06(D). Section 13, Article XVIII of the Ohio Constitution provides:

“Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities.”

The First District Court of Appeals held that Ohio R.C. 718.06(D) was a lawful enactment of the General Assembly pursuant to the authority contained in Section 13, Article XVIII of the Ohio Constitution. It also determined that Ohio R.C. 718.06(D) clearly states at what time the interest on overpaid taxes is to commence. Therefore the Court of Appeals affirmed the trial court’s judgment that the state statute preempted the City ordinance.

CATS RUNNING AT LARGE

City of Tallmadge v. Stevenson (1996), 113 Ohio App. 3d 504. Defendant was convicted in the Municipal Court of allowing cats to run at large in violation of Section 505.01(a) of the Tallmadge Codified Ordinances which provided as follows:

“No person being the owner or having charge of cattle, horses, swine, sheep, geese, ducks, goats, turkeys, chickens or other fowl or animals shall permit them to run at large upon any public place, or upon any unenclosed lands or upon the premises of another. (ORC 951.02)”

The Court of Appeals for the Ninth District reversed defendant’s conviction based upon two rules of statutory construction. The first is that ordinances defining offenses or penalties have to be strictly construed against the municipality, and liberally construed in favor of the accused. The second rule is that of ejusdem generis which states that when a particular class of objects is linked with term of broader significance, such as “other animal”, the latter term should be construed as referring to things of a similar character as those specifically listed. Therefore, according to the Court’s analysis, “other animal” as contained in the Tallmadge ordinance should be construed as referring to farm animals. It concluded that while cats may be found on farms, they more readily fit the category of domestic pets rather than that of farm animals.

INSPECTION OF VACANT BUILDINGS

State v. Finnell (1996), 115 Ohio App. 3d 583. Defendant was convicted under a Cincinnati ordinance of failing to obtain a vacant-building-maintenance license. In order

to obtain the license the ordinance required defendant to arrange for an inspection of his premises by the City. The defendant refused to do so claiming that such a warrantless inspection violated his rights under the Fourth Amendment. The Court of Appeals began its analysis by noting that the proper test for determining whether or not an owner's Fourth Amendment rights have been violated is whether there has been a violation of the owner's reasonable expectation of privacy. The Court determined that the defendant had some expectation of privacy for his vacant building even though it was lower than that for a home owner or for a business owner. Therefore, entry by the City into the premises could only be compelled by a formal warrant procedure. An exception to this procedure would exist if vacant building ownership was a "closely regulated industry" with substantial governmental interests. The Court of Appeals failed to find anything in the record to indicate that ownership of vacant buildings met the tests of this exception. Therefore, it concluded that since the ordinance did not contain an administrative warrant procedure the ordinance was facially unconstitutional.

POWER OF REFERENDUM UNDER CHARTER

Buckeye Community Hope Found v. Cuyahoga Falls (1998), 81 Ohio St. 3d 559. Council of the City of Cuyahoga Falls passed an ordinance approving a plan for the development of land in order to build an apartment complex. The City subsequently sought to enjoin use of the referendum process to challenge the ordinance claiming that the ordinance was administrative in nature. Section 1 of Article II of the Ohio Constitution provides:

"The initiative and referendum posers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

The Ohio Supreme Court agreed that the Cuyahoga Falls ordinance was administrative in nature but held that the citizens of Cuyahoga Falls had reserved the powers of referendum on all ordinances under its charter. Section 2, Article IX of the City Charter provides that "the electors shall have the power to approve or reject at the polls any ordinance or resolution passed by the Council..." It held that by its very terms the constitutional provisions were not self-executing but merely reserved the right to the people to adopt a referendum procedure. Therefore, referendum powers are to be exercised in the manner provided under Ohio R.C. 731.28 et seq. for statutory plan municipalities and the charter, if so provided, for charter municipalities. Citing prior case law, the Supreme Court affirmed that such charter provisions could be either more restrictive or less restrictive than the referendum provisions enacted by the General Assembly and not limited by the phrase "legislative action" as contained in the constitutional provision.

UNLICENSED AND INOPERABLE VEHICLES

City of Cincinnati v. Wallpe, First District Court of Appeals, Hamilton C-960635 (September 26, 1997.) Defendant was convicted in Hamilton County Municipal Court of violating Section 511-31 of the Cincinnati Municipal Code. Section 511-31 prohibits the storing of unlicensed or inoperable vehicles on residential property for more than three days unless they are not open to view. Among other issues the defendant contended that since he was not required to have operable vehicles licensed under Ohio R.C. Chapter 4503 if they were not driven on public highways, such requirement could not be imposed by the City. The Court of Appeals agreed with the defendant on this issue and remanded the case for a new trial. It held that if a vehicle is not operated on public roads or highways there can be no licensing requirement. It quoted with approval the following statement expressed in *State v. Avery* (C.P. 1968), 15 Ohio Misc. 1, 31, 234 N.E. 2d 622, 623: “Most certainly (R.C. 4503.11) could have no force and effect against a motor vehicle which is not using the highway in any manner. The law would not require a person who stores motor vehicles on a lot to file such an application and register in the event the motor vehicles are not using the highways”.

FIRE-DAMAGED STRUCTURE SECURITY FUND

COMMENT

We sent a notice to clients in the early 1980s about the enactment of Ohio R.C. 3929.86. It has recently come to our attention that we should probably do so again since a number of Ohio municipalities have not adopted legislation to implement its procedures within their municipalities. Ohio R.C. 3929.86 provides that no insurance company doing business within the State shall pay a claim of a named insured for fire damage to a structure located within a municipal corporation where the amount recoverable for the loss under all policies exceeds five thousand dollars without complying with the provisions of Ohio R.C. 3929.86.

Ohio R.C. 3929.86(C) provides that when the loss exceeds sixty percent of the aggregate limits of liability, the insurance company shall transfer two thousand dollars for each fifteen thousand dollars of insurance proceeds to a designated officer of the municipality. The monies are then placed in a separate fund to be used as security against the total cost of removing, repairing or securing the structure.

Please note that Ohio R.C. 3929.86 only applies to those municipalities that have adopted legislation authorizing the procedure described in Ohio R.C. 3929.86(C) and (D). A certified copy of the legislation has to be filed with the Superintendent of Insurance. The ordinance or resolution also has to also designate the officer authorized to carry out

the duties of that section.

Set forth below is the ordinance adopted by the City of Hamilton.

CHAPTER 1530
Fire-Damaged Structure Security Fund

1530.01 Adoption of procedures.

1530.02 Unsafe buildings to be removed or repaired.

CROSS REFERENCES

Fire damaged structure security fund - see Ohio R.C. 3929.86

1530.01 ADOPTION OF PROCEDURES.

The procedures contained in Ohio R.C. 3929.86(C) and (D) relating to recovery of costs incurred by the City in repairing, removing or securing fire-damaged buildings or other structures are hereby incorporated and adopted by reference and made a part of this chapter with the same force and effect as though set out in full herein.
(Ord. 86-12-77. Passed 12-23-86.)

1530.02 UNSAFE BUILDINGS TO BE REMOVED OR REPAIRED.

No insurance company doing business in the State shall pay a claim of a named insured for fire damage to a building or other structure located within the City where the amount recoverable for the fire loss to the building or other structure under all insurance policies exceeds five thousand dollars (\$5,000) and the loss equals or exceeds sixty percent (60%) of the aggregate limits of liability on all fire policies covering the building or structure unless there is compliance with the following procedures:

(a) When the loss agreed to between the named insured or insureds and the insurance company or insurance companies equals or exceeds sixty percent (60%) of the aggregate limits of liability on all fire policies covering the building or structure, the insurance company or companies, in accordance with Ohio R.C. 715.26(F) shall transfer from the insurance proceeds to the Director of Finance in the aggregate of two thousand dollars (\$2,000) for each fifteen thousand dollars (\$15,000), and each fraction of that amount, of a claim, or, if at the time of a proof of loss agreed to between the named insured or insureds and the insurance company or companies, the named insured or insureds have submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure, shall transfer from the insurance proceeds the amount specified in the estimate. Such transfer of proceeds shall be on a pro rata basis by all companies insuring the building or structure. Policy proceeds remaining after the

transfer to the City may be disbursed in accordance with the policy terms. The named insured or insureds may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure after the transfer, and the Director of Finance, after notifying the Superintendent of Inspectional Services, shall return the amount of the fund in excess of the estimate to the named insured or insureds, provided that the City has not commenced to remove, repair or secure the building or other structure.

(b) Upon receipt of proceeds by the City as authorized by this section, the Director of Finance shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing or securing the building or structure incurred by the City, pursuant to Ohio R.C. 715.261 and the provisions of this chapter. When transferring the fund as required in subsection (a) hereof, an insurance company shall provide the City with the name and address of the named insured or insureds, whereupon the City shall contact the named insured or insureds, certify that the proceeds have been received by the City and notify them that the following procedure will be followed: the fund shall be returned by the Director of Finance to the named insured or insureds when repairs, removal or securing of the building or other structure has been completed and the required proof has been received by the Ohio Department of Insurance, provided that the City has not incurred any costs for repairs, removal or securing. However, the fund shall be returned to the named insured or insureds no later than sixty days after the Ohio Department of Insurance receives the required proof. If the City has incurred any costs for repairs, removal or securing of the building or other structure, such costs shall be paid from the fund and if excess funds remain, the City shall transfer, no later than sixty days after all such costs have been paid, the remaining funds to the named insured or insureds after repair, rebuilding or removal has been completed. Nothing in this section shall be construed to limit the ability of the City to recover any deficiency under Ohio R.C. 715.261.

Nothing in Ohio R.C. 3929.86(C), as adopted by this chapter shall be construed to prohibit the City and the named insured or insureds from entering into an agreement that permits the transfer of funds to the named insured or insureds if some other reasonable disposition of the damaged property has been negotiated.

(Ord. 92-9-77. Passed 9-9-92.)

WIRELESS TELECOMMUNICATIONS FACILITIES

COMMENT

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The following model ordinance is an approach used by several municipalities to deal with the siting and regulation of wireless telecommunication facilities, including towers, which have proliferated under licenses issued by the Federal Communications Commission ("FCC") and as facilitated by the federal Telecommunications Act of 1996, as codified at 47 U.S.C. Section 332(c)(7). Although the Telecom Act does not preempt local regulation of such facilities, the Act does place two broad constraints upon local regulation: (1) local regulations shall not unreasonably discriminate between providers of functionally equivalent services; and (2) local regulations shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Additionally, local communities cannot regulate such facilities on the basis of the environmental effects of radio frequency emissions.

Whatever the regulatory scheme adopted by a local municipality, as with any land use regulation, it should be tailored to the specific land use development plan, topographic and other conditions specific to that community. Not only should the regulatory scheme take into consideration the federal Telecom Act but also state statutory and case law with respect to land use and the use of government owned property, other than property owned by the local municipality. Land use planning, technical and legal assistance should be sought by the municipality with respect to this specialized area of regulation.

CHAPTER _____
WIRELESS TELECOMMUNICATION FACILITIES
REGULATIONS AND WIRELESS TELECOMMUNICATION
FACILITIES OVERLAY DISTRICT (WTFO)

____.01 PURPOSE.

These regulations are established to provide for the construction and use of Wireless Telecommunication Facilities in the City. The regulations allow Wireless Telecommunication Facilities as a permitted use, conditional use, or accessory use depending upon the specific land areas of the City in which, and circumstances under which, they are proposed to be located. The purpose of these regulations is to balance the competing interests created by the federal Telecommunications Act of 1996 (Public Law 104-104, codified at 47 U.S.C. §§ 151 et seq.) and the interests of the City in regulating Wireless Telecommunication Facilities for the following reasons:

- A.** To provide for orderly development within the City;
- B.** To protect property values;
- C.** To maintain the aesthetic appearance of the City, including, but not limited to, its unique residential character, [historic character,] unobstructed open spaces and attractive commercial/office areas;
- D.** To protect residential properties, open spaces and the nonintensive commercial zoning districts which are characteristic of the City from the adverse effects of Towers and related Facilities;
- E.** To promote Collocation of Wireless Telecommunications Facilities in order to decrease the total number of Towers in the City;
- F.** To provide for and protect the health, safety and general welfare of the residents and visitors of the City; and
- G.** To maintain, where possible, the integrity of the existing zoning regulations contained in the Zoning Ordinance.

The regulations establish a hierarchy of acceptable land areas for the location of Wireless Telecommunication Facilities through the establishment of such use as a permitted use in certain zoning districts, as a conditional use in certain zoning districts and in an overlay zoning district (“Wireless Telecommunication Facilities Overlay District” or “WTFO District”), or as a permitted accessory use for erection of Antennas only, which determination is dependent upon the location and characteristics of such land areas.

Where applicable, the regulation governing the Wireless Telecommunications Facilities Overlay District shall control and supersede wherever it is inconsistent with other provisions of the Zoning Ordinance. If no inconsistency exists between the provisions of this WTFO District and the provisions of the underlying zoning district, the underlying zoning district regulations and other provisions of this Zoning Ordinance shall remain in full force and effect and shall regulate all land use and development.

_____.02 **DEFINITIONS.**

As used in this section:

- A. **“Collocation”** means the use of a Wireless Telecommunication Facility by more than one wireless telecommunication provider.
- B. **“Lattice”** means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation.
- C. **“Monopole”** means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- D. **“Personal Wireless Services”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by federal law at 47 U.S.C. §332(c)(7).
- E. **“Technically Suitable”** means the location of a Wireless Telecommunication Antenna(s) reasonably serves the purpose for which it is intended within the band width of frequencies for which the owner or operator of the Antenna(s) has been licensed by the Federal Communications Commission (FCC) to operate without a significant loss of communication capability within developed areas of the City.

- F.** “**Telecommunication(s)**” means the technology that enables information to be exchanged through the transmission of voice, video or data signals by means of electrical or magnetic systems and includes the term “Personal Wireless Services.”
- G.** “**Wireless Telecommunication Antenna**” or “**Antenna**” or “**Antenna Array**” means the physical device or array of physical devices through which an electromagnetic, wireless telecommunication signal authorized by the FCC is transmitted or received. Antennas used by amateur radio operators are excluded from this definition.
- H.** “**Wireless Telecommunication Equipment Shelter**” or “**Equipment Shelter**” means the structure or cabinet in which the electronic receiving and relay equipment for a Wireless Telecommunications Facility is housed.
- I.** “**Wireless Telecommunication Facility**” or “**Facility**” means a facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines for the provision of Personal Wireless Services.
- J.** “**Wireless Telecommunication Tower**” or “**Tower**” means any structure, other than a building, that elevates the Wireless Telecommunication Antenna and may include accessory transmission and receiving equipment.

____.03 APPLICABILITY.

No person shall construct, erect, maintain, extend or remove a Wireless Telecommunication Facility in the City without compliance with the provisions of this Chapter.

____.04 USE REGULATIONS.

A. Permitted use.

- (1) A Wireless Telecommunication Tower shall be permitted in any interstate highway right-of-way.

- (2) A Wireless Telecommunication Tower shall be permitted on or within an easement or parcel used for electric high tension power lines on support towers.

B. Conditionally permitted use.

1. *Antennas.*

The erection or construction of a Wireless Telecommunication Antenna(s) on an existing Wireless Telecommunication Tower may be permitted as a conditional accessory use as a Collocation on such a Tower provided that all electronic and relay equipment for the Wireless Telecommunication Antenna shall be housed within the existing Equipment Shelter or as such Shelter may be expanded. Such use may be approved by the Planning Commission upon submission of an application to the Building Commissioner which meets all applicable regulations of this Chapter related to the placement of the Wireless Telecommunication Equipment and related Facilities associated with such Antenna(s).

2. *Towers.*

A Wireless Telecommunication Tower may be permitted as a conditional use only in the areas indicated as a WTFO District on the Zoning Map in the following Districts:

Such use may be approved by the Planning Commission upon submission of an application to the Building Commissioner, provided the applicant demonstrates compliance with each of the following Collocation requirements in this Section, as well as the standards set forth in Section _____.05.

Collocation

- a. There is no Technically Suitable space for the applicant's Antenna(s) and related Facilities reasonably available on an existing Tower, building or structure within the geographic area to be served. With the application, the applicant shall list the location of every Tower, building or structure that could support the proposed Antenna(s) or area where it would be Technically Suitable to locate so as to allow it to serve its intended function. The applicant must demonstrate that a Technically Suitable location is not reasonably available on an existing Tower, building or structure. If another existing Tower, building or structure is Technically Suitable, the applicant must demonstrate that it has requested to Collocate on the existing Tower, building or structure and the Collocation request was rejected by the owner of the Tower, building or structure. In all circumstances, owners of existing Towers shall promptly respond in writing to requests for Collocation, but in no event shall they respond more than thirty (30) days from the date of receipt of a written request for Collocation. If another Tower, building or structure is Technically Suitable, the applicant must further show that it has offered to allow the owner of that other Tower, building or structure to Collocate an Antenna(s) on another Tower, building or structure within the City which is owned or controlled by the applicant, if any, on reasonably reciprocal terms and the offer was not accepted.
- b. All applicants for construction or erection of Wireless Telecommunication Towers shall be required to construct on a base Tower structure and structure foundation that is designed to be buildable up to, but not including two hundred (200) feet above grade. Such structure shall be designed to have sufficient structural loading capacity to accommodate at least _____ (___) Antenna platforms or

Antenna arrays of equal loading capacity for _____ (____) separate providers of service to be located on the structure when constructed to the maximum allowable height. The Wireless Telecommunication Facility shall also be designed to show that the applicant has enough space on its site plan for an Equipment Shelter large enough to accommodate at least _____ (____) separate users of the Facility. If an Equipment Shelter is initially constructed to accommodate _____ (____) user, space shall be reserved on site for Equipment Shelter expansions to accommodate up to at least _____ (____) separate users. Agreements to the provisions of this subsection must be included in the applicant's lease with the landowner, if different from the owner/user of the Tower. Written documentation must be presented to the Building Commissioner evidencing that the landowner of the property on which the Tower is to be located has agreed to the terms of this subsection. As an additional condition of issuing a conditional use permit, the owner/user shall respond in writing to any inquiries regarding Collocation of another user of the Facility within thirty (30) days after receipt of a written inquiry. Copies of all written requests to Collocate and all written responses shall be sent to the Zoning Commissioner.

C. Permitted Accessory Use.

The installation of a Wireless Telecommunication Antenna(s) where the construction or erection of a Tower is not proposed by the applicant, shall be permitted as an accessory use on existing buildings or structures in any of the following zoning districts in the City:

_____.

In addition, all Wireless Telecommunication Facilities shall not be located greater than _____ (____) feet above the roof line of an existing building or structure to which it is attached. All electronic and relay equipment for the Wireless Telecommunication Antenna shall be housed within the existing building or structure, if possible. To the extent the remaining standards of this Chapter are applicable to the situation involving the installation of a Wireless Telecommunication Antenna(s) on an existing building or structure, such standards shall govern the installation.

_____.05 **MINIMUM STANDARDS FOR CONSTRUCTION
ERECTION, MAINTENANCE AND REMOVAL.**

Except as otherwise provided in this Chapter, all Wireless Telecommunication Facilities shall comply with the following standards:

A. Spacing.

There shall be a separation of a minimum of _____ (_____) mile(s) between Wireless Telecommunication Towers, including a separation of at least _____ (_____) mile(s) from any such Tower located outside the City's corporate limits.

B. Height.

The maximum height of a free-standing Wireless Telecommunication Tower, including its Antenna and all appurtenances, shall be less than two hundred (200) feet above grade. The height of any Equipment Shelter shall not exceed _____ (_____) feet from the approved grade. The maximum height of any Wireless Telecommunication Antenna or Equipment Shelter, installed on an existing building or structure pursuant to Section _____.04C hereof, shall be no greater in height than _____ (_____) feet above the roof line of the existing building or structure to which it is attached.

C. Setbacks.

All Wireless Telecommunication Towers shall be set back from property lines a distance of _____ (____) feet. Otherwise, all Wireless Telecommunication Facilities, other than Towers, shall comply with the required setbacks in the zoning district in which they are located. In no event shall a Wireless Telecommunication Tower or Facility be located in front of the principal building on the lot, if any, or in front of the front yard setback line as shown on the zoning map when no principal building is present on the lot.

D. Design.

1. All Wireless Telecommunication Towers shall be of a Monopole design, as opposed to a Lattice design. No guy wired Towers shall be permitted. All wires and conduit servicing Antennas shall be located inside the Tower.
2. All Wireless Telecommunication Facilities shall be subject to review by the Architectural Board of Review (ABR) for the purpose of enhancing the compatibility of the Facilities with their surroundings. The color of a Wireless Telecommunication Tower and/or Antennas shall be as determined by the ABR for the purpose of minimizing its visibility, unless otherwise required by the FCC or the Federal Aviation Administration (FAA).
3. The Wireless Telecommunication Antennas shall be of a panel design and mounted flush to the Tower, building or structure which elevates the Antennas, unless the applicant can demonstrate that it is not feasible from an engineering standpoint to use such Antennas or to mount them in such a fashion.

E. Landscaping.

A landscape buffer area of not less than _____ (____) feet in depth shall be placed between the Wireless Telecommunication Facilities and the public rights-of-way and any adjacent properties from which there is a direct view of the Facilities, other than the Tower itself. The landscape buffer area shall have a tight screen fence of hardy evergreen shrubbery not less than _____ (____) feet in height. The landscaping shall be continuously maintained and promptly restored, if necessary.

F. Engineering Report.

A report shall be prepared and submitted by a qualified and licensed professional engineers and shall provide proof of compliance with all applicable federal, state, county, and City regulations. The report shall include a detailed description of the Wireless Telecommunication Tower, Antenna(s), Equipment Shelter, and appurtenances, and shall certify that radio frequency emissions are in compliance with the regulations of the FCC.

G. Maintenance.

1. The applicant shall submit a plan documenting how the Wireless Telecommunication Facility will be maintained on the site in an ongoing manner that meets industry standards.
2. On each biennial anniversary of the issuance of the building permit for a Wireless Telecommunication Facility, or not more than ninety (90) days prior thereto, the owner/user shall submit to the City a report prepared by a licensed professional engineer(s) which shall verify continued compliance of the Facility with all governmental requirements including, but not limited to, the structural integrity and stability of any Towers or Antennas, electrical safety standards, and auxiliary power source safety standards.

H. Lighting Prohibited.

Except as required by law, a Wireless Telecommunication Antenna or Tower shall not be illuminated and lighting fixtures or signs shall not be attached to the Antenna or Tower. If lighting is required by FAA regulations, the most visually nonobtrusive “state-of-the-art” lighting available shall be used, unless otherwise required by the FAA.

I. Security.

1. Climbing rungs or other apparatus designed to assist a person to climb a Wireless Telecommunication Tower shall be located on the Tower no lower than _____ (___) feet above grade.
2. Other security measures for the Facility shall be determined by the Planning Commission as is appropriate under the circumstances of the particular application.

J. Advertising Prohibited.

No advertising sign(s) or devices shall be permitted anywhere on a Wireless Telecommunication Facility site.

K. Outdoor Storage.

There shall be no outdoor storage of equipment or other items on the Wireless Telecommunication Facility site except during the Facility construction period and to supply temporary emergency power to the Facility only during a power outage.

L. Access to Facility.

The access driveway to the Wireless Telecommunication Facility shall, whenever feasible, be provided along with circulation driveways of the existing use on the lot, if any. Where use of an existing driveway is not feasible, the driveway to the Facility shall be a minimum of _____ (____) feet in width with a minimum overhead clearance of _____ (____) feet and shall be setback a minimum of _____ (____) feet from the nearest side or rear lot line. This driveway shall meet the load limitations for fire equipment. If the access road to the Facility is more than _____ (____) feet from the public right-of-way, a turnaround shall be provided for emergency vehicles at the site and a bypass, adequate for emergency vehicles, with an approachable access shall be provided for each additional _____ (____) feet of the driveway. There shall be a maximum of _____ (____) off-street parking space(s) on the Facility site.

M. Accessory Equipment Shelter.

One (1) Equipment Shelter(s) accessory to a Wireless Telecommunication Tower or Antenna shall be permitted on a lot. The size of an Equipment Shelter shall depend on the total number of separate entities having Antennas located at the Facility. The maximum total size of an Equipment Shelter for _____ (____) entities having Antennas at a Facility shall be _____ (____) square feet. The maximum cumulative size of Equipment Shelter(s) for _____ (____) entities having Antennas at a Facility shall be _____ (____) square feet. The maximum cumulative total size of all Equipment Shelters for more than _____ (____) entities having Antennas at a Facility shall be _____ (____) square feet. The maximum height of an Equipment Shelter shall not exceed _____ (____) feet above the approved grade at the site for an Equipment Shelter with a pitched roof and a maximum height of _____ (____) feet above the approved grade at the site for an Equipment Shelter with a flat roof. The roof and facade of the Equipment Shelter shall be compatible as to architectural design and materials with the principal building on the lot, if any, and shall be subject to review by the Architectural Board of Review pursuant to Chapter _____ of the _____ Code. Where it is technically feasible and reasonably practical, an existing building or structure on a lot shall be used to shelter the equipment associated with a Wireless Telecommunication Facility.

Any Equipment Shelter located on the roof of an existing building shall comply with Section _____.04C of this Chapter.

N. Undergrounding of Utilities.

All utility lines from the utility source to the Wireless Telecommunication Facility shall be underground.

O. Time Limit for Commencement and Completion.

After issuance of a building permit to construct a Wireless Telecommunication Facility, the applicant shall commence and complete construction as required by Section _____ of the _____ Code.

P. Abandonment and Removal of Facilities.

1. The applicant for the Wireless Telecommunication Facility shall be required as a condition of issuance of a building permit to post a cash or surety bond acceptable to the Director of Law of not less than _____ dollars (\$_____) per vertical foot from grade of the Wireless Telecommunication Facility. If an access drive which is separate from an existing access drive on the property is required to be constructed for a Wireless Telecommunication Facility, the owner/operator of the Facility shall also be required as a condition of issuance of a building permit to post a cash or surety bond acceptable to the Director of Law of not less than _____ dollars (\$_____) per linear foot of access drive. The bond(s) shall insure that an abandoned, obsolete or destroyed Wireless Telecommunication Facility and/or access drive shall be removed within _____ (____) days of cessation of use or abandonment. Any successor-in-interest or assignee of the applicant shall be required to additionally execute such bond, as principal, to insure that the bond will be in place during the period of time that the successor-in-interest or assignee occupies the Facility.

2. The owner/user of the Wireless Telecommunication Facility shall, on no less than an annual basis from the date of issuance of the building permit, file a declaration with the Building Commissioner as to the continuing operation of each of its Facilities within the City.
3. If at any time the use of the Wireless Telecommunication Facility is discontinued for _____ (____) consecutive days, the Facility shall be deemed abandoned. The Building Commissioner shall notify the owner/user in writing and advise that the Facility must be reactivated within _____ (____) days or it must be dismantled and removed from the site and the site restored to a landscaped condition within that same _____ (____)-day period, all at the cost of the owner/user. The owner/user shall have the right to appeal the Building Commissioner's decision to require removal of an abandoned Facility to the Board of Zoning Appeals pursuant to Section _____ of the Zoning Code.

1243.06 FEES.

In addition to any other fees required under the City's Zoning Code and Building Code, the Building Commissioner shall collect the following fees in connection with applications for Facilities covered by this Chapter.

- A. New Wireless Telecommunication Facility - _____ dollars (\$_____) deposit upon which expenses incurred by the City will be drawn and the unused balance, if any, returned to the applicant upon final inspection prior to authorization of commencement of the use.
- B. New Wireless Telecommunication Antenna and related Facilities (without a Tower) - _____ dollars (\$_____).
- C. Annual inspection fee - _____ dollars (\$_____).

- D. The applicant for a Wireless Telecommunication Tower and/or Antenna Facility shall be responsible for all expenses incurred by the City for any technical and/or engineering services deemed necessary by the the Building Commissioner, the Planning Commission, the Board of Zoning Appeals, or the Architectural Board of Review to perform any reviews required by the Codified Ordinances which are not covered by the fees set forth in this Section.

1243.07 EXEMPTION OF CERTAIN CITY PROPERTY.

Regardless of the provisions of this Chapter, a Wireless Telecommunication Facility may be permitted on any property owned or controlled by the City and used for public services and shall be constructed, erected, maintained, extended and removed under such conditions, standards and regulations as required by the City Council.

1243.08 WAIVER

The Planning Commission may waive provisions of this Chapter as applied to any Wireless Telecommunication Facility application pending before the Planning Commission. The City Planning Commission shall make a determination on a proposed waiver of any provisions of this Chapter based on the following criteria:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.