

ORDINANCE 002/2005

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, PERTAINING TO PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES, ESTABLISHING CHAPTER 18.50, WIRELESS COMMUNICATIONS FACILITIES, OF THE MONROE MUNICIPAL CODE, AND INCLUDING A PURPOSE STATEMENT, DEFINITIONS, EXEMPTIONS, A POLICY STATEMENT, SITE SELECTION CRITERIA, PRIORITY OF LOCATIONS, SITING REQUIREMENTS ON PUBLIC PROPERTY, COLLOCATION AND DESIGN CRITERIA, PERMIT REQUIREMENTS AND LANDSCAPING REQUIREMENTS, NON-USE AND ABANDONMENT PROVISIONS, THIRD PARTY REVIEW, AND REMEDIES. (ZCA200301)

WHEREAS, on October 6, 2004 the City of Monroe City Council imposed a four month moratorium on the City's acceptance and approval of applications for use permits, building permits, and franchises for wireless telecommunications facilities, all as provided in Ordinance No. 027/2004, and

WHEREAS, on November 17, 2004 the City Council held a public hearing on the wireless telecommunications moratorium during which time it heard testimony from the public and City staff; and

WHEREAS, the City Council determined that continuance of the moratorium on wireless telecommunications facilities is in the public interest, and

WHEREAS, the City of Monroe Planning Commission has reviewed and considered regulations on wireless telecommunications facilities and prepared a draft new chapter to be inserted in the Monroe Municipal Code containing regulations on the location, performance standards, and review process for applications for such facilities, and

WHEREAS, a SEPA Environmental Determination of Non-Significance was issued by the Monroe Department of Community Development on January 5, 2005 with a comment period extending to January 20, 2005, and

WHEREAS, the Planning Commission held a public hearing on the proposed new regulations on January 24, 2005, and

WHEREAS, following the public hearing the Planning Commission has forwarded a recommendation of approval for the proposed regulations to the City Council,

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MONROE,
WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Establishing Chapter 18.50, Wireless Communications Facilities, of the Monroe Municipal Code is hereby established in the form attached as Exhibit A and incorporated by this reference.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 2nd day of February, 2005.

1st Reading: 02/02/05
Published: 02/09/05
Effective: 02/14/05

CITY OF MONROE, WASHINGTON

Donnetta Walser, Mayor

ATTEST:

Betty King, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

Exhibit A

Chapter 18.50

WIRELESS COMMUNICATIONS FACILITIES

Sections:

- 18.50.010 Purpose.
- 18.50.020 Definitions.
- 18.50.030 Exemptions.
- 18.50.040 Priority of locations.
- 18.50.050 Siting priority on public property.
- 18.50.060 Required submittals.
- 18.50.070 Co-location.
- 18.50.080 Design criteria.
- 18.50.090 Permits required.
- 18.50.100 Inspection requirements.
- 18.50.110 Landscaping/screening.
- 18.50.120 Non-use/abandonment.
- 18.50.130 Third party review.
- 18.50.140 Violation–Penalty.

18.50.010 Purpose.

A. The purpose of this chapter is to establish general guidelines for the siting of towers and antennas. The goals of this chapter are to:

1. enhance the ability of personal wireless service providers to provide such services throughout the city quickly, effectively, and efficiently;
2. encourage personal wireless service providers to locate towers and antenna in nonresidential areas;
3. encourage personal wireless service providers to co-locate on new and existing tower sites;
4. encourage personal wireless service providers to locate towers and antennas, to the extent possible, in areas where the adverse impact on city residents is minimal;
5. encourage personal wireless service providers to configure towers and antennas in a way that minimizes any significant adverse visual impact; and
6. provide for the wireless communications needs of governmental entities.

Accordingly, the city council finds that the promulgation of this chapter is warranted and necessary:

1. To manage the location of towers and antennas in the city;
2. To protect residential areas and land uses from potential adverse impacts of towers;
3. To minimize adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques;
4. To accommodate an increased need for towers to serve the wireless communications needs of city residents;

5. To promote and encourage co-location on existing and new towers as an option rather than construction of additional single-use towers, and to reduce the number of such structures needed in the future;

6. To consider the public health and safety of towers to the extent permitted by the Telecommunications Act of 1996; and

7. To avoid potential damage to adjacent properties through sound engineering practices and the proper siting of antenna support structures.

B. New Uses. All new antennas shall comply with this chapter after the date of passage.

C. Existing Uses. All towers and antenna existing on the date of passage of this chapter shall be allowed to continue as they presently exist, but will be considered nonconforming uses. Routine maintenance shall be permitted on existing towers and antennas. However, new construction other than routine maintenance on existing towers, antennas, buildings or other facilities shall comply with the requirements of this chapter.

1. These standards were developed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the city and providing for wireless communications necessary for governmental purposes. These standards were designed to comply with the Telecommunications Act of 1996. The provisions of this title are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This title shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

2. To the extent that any provision of this title is inconsistent or conflicts with any other city ordinance this title shall control. Otherwise, this title shall be construed consistently with the other provisions and regulations of the city.

3. The city shall approve, approve with conditions, or deny the application in accordance with the time frames set forth in MMC Title 21, Development Review Procedures, and in accordance with other applicable ordinances.

18.50.020 Definitions. For the purpose of this title, the following terms shall have the meaning ascribed to them below:

“Abandonment” means: to cease operation for a period of 60 or more consecutive days.

“Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

“Antenna” means any exterior apparatus designed for telephonic, radio, data, internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for “cellular”, “enhanced specialized mobile radio” and “personal communications services”, telecommunications services, and its attendant base station.

“Antenna height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Antenna support structure” means any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

“Applicant” means any provider or any person, partnership, company, or government agency that files an application for any permit necessary to install, maintain, or remove a personal wireless service facility within the city.

“Balloon test” means a test for a reasonable period of time, not less than three consecutive workdays, whereby a balloon of sufficient size to replicate the size of the top of a proposed tower and antenna array is tethered to the ground at the location of the proposed base for a pending new tower application and the balloon is suspended at the height that replicates the height of the proposed tower and antenna array. No trees shall be removed to conduct the balloon test.

“Cable acts” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Telecommunications Act of 1996, and as hereafter amended.

“Cable operator” means a telecommunications carrier providing or offering to provide “cable service” within the city as that term is defined in the cable acts.

“Cable television service” means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

“Cable television service provider” means a service provider that provides cable television services within the City under a franchise.”

“Camouflaged” means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure, or new structure, tower, or mount within trees so as to be significantly screened from view.

“Cell site” or “site” means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

“City” means the City of Monroe.

“City property” means all real property owned by the city whether in fee ownership or other interest.

“Co-location” means the use of a personal wireless service facility or cell site by more than one personal wireless service provider.

“Conditional use permit” or “CUP” means a process and approval as described in MMC Title 21, Administration of Development Regulations, and in the MMC Title 18, Zoning.

“COW” means “cell on wheels.” A cell on wheels or other temporary personal wireless communications facility shall be permitted for a maximum of 90 days in any 365 day period or during an emergency declared by the City.

“Design” means the appearance of personal wireless service facilities, including such features as their materials, colors, and shape.

“EIA” means the Electronics Industry Association.

“Equipment enclosure” means a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies and emergency generators.

“Excess capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications facilities.

“Facilities” means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communications and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Franchise” means the general authority granted by the City Council to a telecommunications service provider or to a cable television service provider to use city rights-of-way to provide services to locations within the city. A franchise issued by the city is a master permit within the meaning of RCW 35.99.010(3).

“Governing authority” means the city council of the City of Monroe.

“Governmental entity” means the State of Washington, Snohomish County, the city, municipally owned utilities, and special purpose districts including the school, fire and library districts.

“Grantee” means both licensees and franchisees granted certain rights and obligations as more fully described herein.

“Hearings examiner” means the duly appointed hearings examiner of the city.

“License” means the general authority granted by the city to a service provider to use city rights-of-way to provide telecommunications services to locations outside of the city. A license issued by the city is a master permit within the meaning of RCW 35.99.010(3).

“Modification” means the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.

“Mount” means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts:

A. Building Mounted. A personal wireless service facility mount fixed to the roof or side of a building.

B. Ground Mounted. A personal wireless service facility mount fixed to the ground, such as a tower.

C. Structure Mounted. A personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

“Occupy” means to construct, install, maintain, own, or operate telecommunications facilities located within city rights of way. The mere passage of electronic signals over, under, or through rights of way via telecommunications facilities owned by another telecommunications provider does not constitute occupying the rights of way.

“Overhead facilities” means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

“Person” means corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

“Personal wireless service,” “personal wireless service facilities,” and “facilities” used in this title shall be defined in the same manner as in Title 47, United States Code, Section 332 (c)(7)(C), as they may be amended now or in the future, and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

“Provider” means every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual that provides personal wireless service over personal wireless service facilities.

“Rights-of-way” means land acquired or dedicated for public roads and streets but does not include (a) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (b) structures, including poles and conduits, located within the right-of-way; or (c) federally granted railroad rights-of-way acquired under 43 U.S.C., Section 912, and related provisions of federal law, that are not open for motor vehicle use.

“Right of Way Use permit” means the authorization by which the City grants permission to a service provider to enter and use the right-of-way at a specific location for the purpose of installing, maintaining, repairing, or removing identified facilities.

“Screening” means a continuous fence and/or evergreen landscaped planting that effectively obscures the property it encloses.

“Service provider” means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating or managing any facilities used to provide and providing telecommunications or cable television services for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.

“State” means the state of Washington.

“Surplus space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

“Secondary use” means a use subordinate to the principle use of the property, such as commercial, residential, utilities, etc.

“Security barrier” means a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

“Telecommunications carrier” includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of providing telecommunications services to locations outside the city.

“Telecommunications service” means transmission of information, except cable television service, by wire, radio, optical cable, electromagnetic, or other similar means, for hire, sale, or resale to the general public. For the purposes of definition “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service excludes the over-the air transmission of broadcast television or broadcast radio signals, facilities necessary for governmental purposes, the city shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The city shall approve, approve with condition, or deny the application in accordance with the time frames set forth in MMC Title 21, Administration of Development Regulations, and in accordance with other applicable ordinances.

“Telecommunications service provider” includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering telecommunications services, except cable television service, to residents, businesses or other locations within the City.

“Tower” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

“Underground facilities” means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

“Usable space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.“

“Utility facilities” means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within rights-of-way and used or to be used for the purpose of providing utility or telecommunications services.

“Unlicensed wireless services” means commercial mobile services that operate on public frequencies and do not need an FCC license.

“Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized to regulate and oversee

telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

18.50.030 Exemptions. The following are exempt from the provisions of this chapter and shall be permitted in all zones:

- A. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.
- B. Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.
- C. Radar systems for military and civilian communication and navigation.
- D. Wireless radio utilized for temporary emergency communications in the event of a disaster.
- E. Licensed amateur (ham) radio stations.
- F. Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.
- G. Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height, type or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this chapter are maintained.
- H. Subject to compliance with all other applicable standards of this chapter, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until 30 days after the completion of such emergency activity.
- I. A COW or other temporary personal wireless telecommunications facility shall be permitted for a maximum of 90 days in any 365 day period or during an emergency declared by the city.

18.50.040 Site selection criteria.

- A. Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall evaluate different sites to determine which site will provide the best screening and camouflaging while providing adequate service to satisfy its function in the applicant's local grid system. If the applicant proposes a site that does not provide the best opportunities for screening and camouflaging then the applicant must demonstrate by engineering evidence why the facility can not be located at the site where it can be best screened and camouflaged and why the antenna must be located at the proposed site. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.
- B. Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.
- C. Low power mobile radio service facilities shall be located and designed to minimize any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

D. In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened by placing them in trees to the extent that it does not result in significant signal degradation.

18.50.050 Priority of locations. The order of priorities for locating new personal wireless service facilities shall be as follows:

A. Place antennas and towers on appropriate rights-of-way and existing structures, such as buildings, towers, and water towers in the industrial and commercial zoning districts.

B. Place antennas and towers in districts zoned Professional Office, Public Open Space and Limited Open Space.

C. Place antennas and towers in Residential zoning districts.

1. An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a nonresidential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

2. Applicants are required to demonstrate: (i) that they have contacted the owners of structures in excess of 30 feet within a one-quarter mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals; (ii) have asked for permission to install the antenna on those structures; and (iii) were denied for reasons other than the ability or refusal of the applicant to pay a market rate for use of the alternative structures.

3. The information submitted by the applicant shall include (i) a map of the area to be served by the tower or antenna, (ii) its relationship to other cell sites in the applicant's network, and (iii) an evaluation of existing buildings taller than 30 feet, within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

18.50.060 Siting priority on public property.

A. Where public property is sought to be utilized by an applicant, priority for the use of city-owned land for wireless antennas and towers will be given to the following entities in descending order:

1. City of Monroe;

2. Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the City of Monroe and private entities with a public safety agreement with the City of Monroe;

3. Other governmental entities, for uses that are not related to public safety; and

4. Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, internet, paging, and similar services that are marketed to the general public.

B. Minimum Requirements. The placement of personal wireless service facilities on city-owned property must comply with the following requirements:

1. The facilities will not interfere with the purpose for which the city-owned property is intended;
2. The facilities will have no significant adverse impact on surrounding private property;
3. The applicant shall obtain adequate liability insurance naming the city as loss payee and commit to a lease agreement that includes equitable compensation for the use of public land and other necessary provisions and safeguards. The city shall establish fees after considering comparable rates in other cities, potential expenses, risks to the city, and other appropriate factors;
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the costs of removing the facilities;
5. The lease shall provide that the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice the city may require the applicant to remove the facilities at the applicant's expense. Telecommunication facilities serving essential government services and other government agencies shall have priority over other users.
6. The applicant must reimburse the city for any related costs that the city incurs because of the presence of the applicant's facilities;
7. The applicant must obtain all necessary land use approvals; and
8. The applicant must cooperate with the city's objective to encourage co-locations and thus limit the number of cell sites requested.

C. Special Requirements for Parks. The use of city-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

1. The Park Board has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the city council for consideration;
2. In no case shall personal wireless service facilities be allowed in designated critical areas (except aquifer recharge areas) unless they are co-located on existing facilities;
3. Before personal wireless service facilities may be located in public parks, visual impacts and disruption of normal public use shall be mitigated;
4. Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;
5. Personal wireless service facilities may be located in park maintenance facilities.

18.50.070 Required submittals and testing.

Required submittals include:

- A. Complete application for conditional use permit, including State Environmental Policy Act (SEPA) checklist.
- B. A balloon test is required for any proposed antenna tower. The balloon test shall be conducted prior to the hearing on the permit application. The purpose of the balloon test is to enable the applicant, abutting and neighboring property owners, and the city to better understand the height and visual impact of the proposed tower and antenna

array and to provide useful evidence for consideration before the hearing examiner on the permit application. A balloon test is also required when an application proposes to add (20) twenty feet or more to the height of an existing wireless facility.

C. Other related requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of MMC Title 21, Administration of Development Regulations, and other applicable ordinances:

D. If a balloon test is not required then a photo-simulation of the proposed facility from affected residential properties and public rights-of-way at varying distances must be provided. If a balloon test is required, then photos of the balloon test from six locations located approximately 300 feet from the base of the proposed tower and spaced evenly around the proposed tower shall be submitted within two weeks after the commencement of the balloon test;

E. A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

F. A signed statement indicating that (1) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (2) the applicant and/or landlord agree to remove the facility within 60 days after abandonment;

G. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

H. A site plan clearly indicating the location, type and height of the proposed tower or antenna support structure and antenna, accessory buildings, fencing, landscaping, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower; and all other items required in this chapter

I. A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the city;

J. Legal description of the parcel, if applicable;

K. The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

L. A landscape plan showing specific landscape materials;

M. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

N. A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

O. A statement by the applicant that the design of the tower will accommodate co-location of additional antennas for future users;

P. The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

Q. The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC; and

R. At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the city.

18.50.080 Co-location. To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities on existing or new towers is encouraged as follows:

A. Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such co-location is permitted by right and a new or additional conditional use permit approval is not required, unless additional height or dimensions are proposed, except that co-location shall be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this chapter.

The applicant must submit detailed plans to the planning department to determine if the conditional use can be waived. No building permit will be issued until approval is granted.

B. The city may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower.

C. To reduce the number of antenna support structures needed in the city in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for technical or physical reasons.

D. Unless co-location is not feasible: (i) an applicant's site plan shall reserve an area for other providers' equipment near the base of the applicant's tower. A first right-of-refusal (which is either executed or maintained while the providers personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement; and (ii) the site plan for towers must propose space for at least one comparable provider.

E. All personal wireless service providers or lessees or agents thereof shall cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the city may require a third party technical study, at the expense of the applicant to resolve the dispute.

F. While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening.

18.50.090 Design criteria.

A. As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

B. All facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

1. **Setback.** A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential zones or where a proposed tower is on property abutting a residential use, towers shall be set back from all property lines a distance equal to 100 percent of tower height as measured from ground level. In all other zones, or where a proposed tower site does not adjoin an existing residential use, towers shall be set back a minimum of 30 feet. When making a decision on a variance application to reduce setbacks, the Hearing Examiner shall consider the following:

- a. Impact on adjacent properties;
- b. Alternative sites for personal wireless facilities; and
- c. The extent to which screening and camouflaging will mitigate the effects of the personal wireless facilities.

2. **Right-of-Way Setback Exception.** The setback requirement is waived if the antenna and antenna support structure are located in the city right-of-way: provided the antenna is attached to an existing utility pole and does not increase the height of the utility pole and/or extend above the utility pole by more than 10 feet. Wireless facilities attached to utility poles are permitted in all zones subject to license or franchise agreements with the City.

3. **Tower and Antenna Height.** The applicant shall have the burden of demonstrating that the tower and antenna is the minimum height required to meet the proven communications need. No tower or antenna that is taller than this minimum height shall be approved. No tower or mount together with antenna shall exceed 60 feet in all single-family, multi-family residential, Downtown Commercial, and Professional Office zones or 110 feet in other zones.

4. **Tower Separation.** In no case shall towers be located closer than 500 feet from another tower whether it is owned or utilized by applicant or another provider, unless the city designates areas where multiple towers can be located in closer proximity.

5. **Color.** Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

6. **Lights, Signals and Signs.** No signals, lights, or signs shall be permitted on towers unless required or allowed by the FCC or the FAA. Should lighting be required, in cases where there are residents located within a distance that is 300 percent of the height of the tower, then dual mode lighting shall be requested from the FAA.

7. **Fencing.** A well-constructed wall or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Access to the tower shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view by a minimum eight-foot-wide landscaping strip.

8. **Landscaping.**

A. **Landscaping.** Landscaping, as described herein, shall be required to buffer personal wireless service facilities to soften the appearance of the cell site. The city may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the

required landscaping. Wire fencing may be allowed if it is fully screened. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

B. Buffers. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the city may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

1. A row of evergreen trees a minimum of six feet tall at planting a maximum of six feet apart shall be planted around the perimeter of the fence.

2. A continuous hedge at least 36 inches high at planting capable of growing to at least 48 inches in height within 18 months shall be planted in front of the tree line referenced above.

3. To guarantee required landscaping the applicant shall provide the city with a 2-year landscape maintenance guarantee in accordance with MMC 18.78.060.

4. In the event that landscaping is not maintained at the required level after the 2-year landscape guarantee period, the city after giving 30 days' advance written notice may maintain or establish the landscaping and bill both the owner and lessee for such costs until such costs are paid in full.

9. Screening. Screening, camouflaging or otherwise integrating a telecommunications facility into existing structures on the site in order to make the facility as visually unobtrusive as possible, shall take priority over increased height to accommodate co-location. A personal wireless telecommunications facility shall be integrated through location and design to blend in with the existing "character" of the site so as to be visually unobtrusive or screened. To be considered screened the tower or mount shall be placed amongst and adjacent to (within 20 feet) of the drip line of three or more trees at least 75 percent of the height of the facility. To ensure the screening trees are preserved the following note shall be recorded on the property title:

"All trees within 50 feet of the telecommunications facility located on this property, which serve to screen the telecommunications facility shall be retained for the life of the telecommunications facility. Screening trees may only be removed if deemed diseased or dangerous by a certified arborist. Before any trees can be removed a report from the certified arborist shall be submitted to the City for review and approval. Unless approved by the City, only that portion of the tree required to remove the hazard can be removed."

10. Required Parking. If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the city. Security fencing should be colored or should be of a design which blends into the existing environment.

11. Antenna Criteria. Antenna on or above a structure shall be subject to the following:

a. The antenna shall be architecturally compatible with the building and wall on which it is mounted, and shall be designed and located so as to minimize any adverse aesthetic impact.

b. The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project more than 16 feet above the roofline, including parapets.

c. The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

d. The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

e. If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

f. The antenna and any accessory buildings must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

g. Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the city, in the city's sole discretion.

h. On buildings 30 feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

1. The city finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

2. Roof mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

3. No portion of the antenna may exceed 16 feet above the height of the existing building.

I. For antenna attached to the roof or sides of a building at least 30 feet in height, an existing tower, a water tank, or a similar structure the antenna must be either: An omnidirectional or whip antenna no more than seven inches in diameter and extending no more than 16 feet above the structure to which they are attached; or A panel antenna no more than two feet wide and six feet long, extending above the structure to which they are attached by no more than 10 feet.

If the antenna is placed on the roof or above the top of a building, it shall provide a minimum setback equal to the height of the panel antenna from the rooftop edge.

Antenna, antenna arrays, and support structures not on publicly owned property shall not extend more than 16 feet above the highest point of the structure on which they are mounted. The antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of 100 miles per hour

without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

j. Guy Wires Restricted. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached.

k. If a proposed antenna is located on a building or a lot subject to a land use permit, approval is required prior to the issuance of a building permit.

12. Equipment Structures.

a. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

b. The maximum floor area is 300 square feet and the maximum height is 12 feet. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than 250 feet from the tower or antenna. Depending upon the aesthetics and other issues, the city, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

c. Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means, as specified herein or in other city ordinances.

d. In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

e. Roof mounted. Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

Equipment buildings, antenna, and related equipment shall occupy no more than 25 percent of the total roof area of the building the facility is mounted on, which may vary in the city's sole discretion if co-location and an adequate screening structure is used.

13. Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this chapter shall bring their towers and antennas into compliance with the revised standards and regulations within three months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the city to remove a provider's facilities at the provider's expense.

14. Building Codes – Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes and the applicable standards for towers that are published by the Electronic Industries Association (“EIA”), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring the

tower into compliance with such standards. If the owner fails to bring its tower into compliance within 30 days, the city may remove the tower at the owner's expense.

15. Structural Design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer that demonstrates compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC RF Emission standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

16. Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

18.50.100 Permits required. In addition to the other provisions of this chapter the following permits are required unless otherwise stated:

A . A conditional use permit is required for all proposed antenna towers.

B. A variance from the height limit may be granted if the applicant can show by evidence that the additional height is necessary to provide adequate service to the residents of the city and no other alternative is available. When granting a variance the examiner shall require that a significant portion of the of the tower and related facilities be screened by existing trees or existing structures.

1. The purpose of this subsection is to provide a means of increasing the maximum height of tower and antenna in specific instances where the strict application of those limits would deprive a tower or antenna operator from achieving the minimum height required to meet the proven communications need.

2 The Examiner shall have the authority to grant a variance from the maximum height allowed for tower or antenna when, in his/her opinion, the conditions as set forth in subsection (C) herein have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

3. Before a height variance can be granted, it shall be shown that the applicant demonstrates all of the following:

a. That there is evidence that additional height is required to provide adequate service to the residents of the city and that no other alternative is available;

b. That there are special circumstances applicable to the subject property such as shape, topography, location, or surroundings that prevent the operator from achieving the minimum height required to meet the proven communications need;

c. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity;

d. That any visual impacts will be mitigated to the greatest extent possible using camouflage or screening, including but not limited to strategic placement next to existing buildings or vegetation or incorporation with architectural features of existing buildings or structures;

e. That the location of the tower and antenna has been chosen so as to minimize the visibility of the facility from residentially zoned land and to minimize the obstruction of scenic views from public properties; and

f. That the variance is the minimum necessary to grant relief to the applicant.

4. The applicant has the burden of proving that the proposed variance meets all of the criteria in subsection (3) of this section, Decision Criteria.

5. The examiner may approve an application for a variance with additional requirements above those specified in this title or require modification of the proposal to comply with specified requirements or local conditions.

6. The examiner shall deny a variance if the proposal does not meet or cannot be conditioned or modified to meet subsection (3) of this section,

a. Project permit review procedures are specified in MMC Title 21, Administration of Development Regulations. The following table specifies the permits required for the various types of personal wireless service facilities that meet the standards of this chapter:

Permit Table¹

Type of Use	Conditional Use²	Over Counter	Variance
Towers < 60 Feet ⁴			
Towers > 60 Feet	X		X ³
Towers > 110 Feet ⁴	X		X
Existing Structure Mounted			
Building Mounted		X	
Co-Location		X	
Tower Modification			X ⁵

Notes:

1. Right-of-Way and Site Development Permits may also be required depending on type and location of facilities.
2. Towers must be located in other than in Downtown Commercial, and Professional Office zones
3. In residential, Downtown Commercial, and Professional Office zones
4. Towers must be located on non-residential property.
5. For towers in excess of 110 feet outside of residential, Downtown Commercial and Professional Office zones.

18.50.110 Inspection requirements. Within 60 days of any required safety inspection performed in accordance with EIA and FCC standards, the facility operator shall file a copy of the report with the city. Each year after the facility becomes operational the facility operator shall file with the city a copy of maintenance reports for the prior 12 months. -The applicant shall provide a financial guarantee in the form of a bond or other financial instrument acceptable to the city in an amount sufficient to reimburse all costs associated with facility removal should it be necessary.

18.50.120 Non-use/abandonment.

A. Abandonment. No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of Monroe by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the city's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined in the reasonable discretion of the city within which to:

1. Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

2. In the event that abandonment as defined in this chapter occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove the portion of the tower that exceeds the minimum height required to function satisfactorily.

Notwithstanding the forgoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the providers towers in the city or surrounding area then all of the towers within the city shall similarly be reduced in height.

3. Dismantle and remove facility. If the tower, antenna, foundation, and facility are not removed within the 60-day time period or additional period of time allowed by the city, the city may remove such tower, antenna, foundation, and related facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the paragraph above, this provision shall not become effective until all providers cease using the facility.

At the earlier of 60 days from the date of abandonment without reactivating or upon completion of dismantling and removal, city approval for the facility shall automatically expire.

18.50.130 Third party review. Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The city may require a technical

review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third party expert may be by mutual agreement between the provider and the city, or, at the discretion of the city, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site that was selected by a provider. Based on the results of the expert review, the city may require changes to the provider's application. The expert review shall address the following:

- A. The accuracy and completeness of submissions;
- B. The applicability of analysis techniques and methodologies;
- C. The validity of conclusions reached; and
- D. Any specific technical issues designated by the city.

18.50.140 Violation–Penalty.

A. Any person violating any of the provisions of this chapter upon conviction shall be punishable by a fine not to exceed \$1,000 or by imprisonment for a period of up to 90 days, or by both such fine and imprisonment, for each day during which an offense occurs.

B. In addition to receiving any monetary remuneration, the city shall have the right to seek injunctive relief for any and all violations of this chapter, for relief under Chapter 21.70 MMC and all other remedies provided at law.