

ORDINANCE NO. 2004- 03

AN ORDINANCE ADOPTING CHAPTER 18.110 OF THE HEBER CITY MUNICIPAL CODE, TELECOMMUNICATION FACILITIES

REGULATING TELECOMMUNICATION FACILITIES IN THE INCORPORATED HEBER CITY AREA

BE IT ORDAINED BY THE HEBER CITY COUNCIL AS FOLLOWS: There is hereby added to the Heber City Municipal Code Chapter 18.110, which is to read as follows:

**CHAPTER 18.110 TELECOMMUNICATION FACILITIES**

**18.110.010 Purpose.**

The purposes of this ordinance are:

- A. To regulate wireless services antennas and related electronic equipment and structures.
- B. To provide for the orderly establishment of wireless services facilities in the City.
- C. To minimize the number of antenna support structures by encouraging the use of stealth facilities, by encouraging the co-location of multiple antennas on a single structure, by encouraging the location of antennas on pre-existing support structures, and by encouraging the use of City and Government-owned property for antenna support structures.
- D. To establish siting, appearance, and safety standards that will help mitigate potential impacts related to the construction, use and maintenance of wireless services facilities.
- E. To comply with the Telecommunications Act of 1996 by establishing regulations that (1) do not prohibit or have the effect of prohibiting the provision of wireless services, (2) do not unreasonably discriminate among providers of functionally equivalent services, and (3) are not based on the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions.

**18.110.020 Findings.**

The City Council makes the following findings:

- A. Wireless services devices are an integral part of the rapidly growing and evolving telecommunications industry and present unique zoning challenges and concerns for the City.
- B. The City needs to balance the interests and desires of the telecommunications industry and its customers to provide competitive and effective telecommunications systems in the City, against the sometimes differing interests and desires of others concerning health, safety, welfare, aesthetics, and orderly planning of the community.
- C. The City has experienced an increased demand for wireless services facilities to be located in the City and expects the increased demand to continue into the future.
- D. It is in the best interests of the City to have quality wireless services available, which necessarily entails the erection of wireless services facilities in the City.
- E. The unnecessary proliferation of wireless services facilities throughout the City creates a negative visual impact on the community.
- F. The visual effects of wireless services facilities can be mitigated by fair standards regulating their siting, construction, maintenance and use.
- G. The City and other government entities own parcels of property spread throughout the City where wireless services facilities can be located so as to be as inoffensive as possible to the residents and businesses of the City.
- H. Spacing wireless services facilities evenly throughout the city reduces the negative impact created by the proliferation of telecommunication towers.
- I. Because of the height and appearance of some wireless services facilities, surrounding properties bear a disproportionate share of the negative impacts of a telecommunications tower.
- J. A private property owner who leases space for a wireless services facility is the only one who receives compensation for the facility, even though numerous other property owners in the area are adversely affected by the location of the facility.

- K. Encouraging wireless services facilities to be located on City and Government property, with lease payments paid to the City or other Governments instead of an individual property owner, indirectly compensates all citizens of the community for the adverse impacts of the facilities and is therefore the fairest method of distributing burden and benefit.
- L. Locating antennas on existing buildings and structures, or constructing an antenna as a stealth facility, creates less of a negative visual impact on the community than the erection of towers.
- M. Buildings and structures on public property are capable of being used to provide support for antenna arrays, thus reducing the proliferation of towers in all areas of the City.
- N. The public policy objectives to reduce the proliferation of telecommunication towers and to mitigate their impact can best be facilitated by encouraging the use of less visually intrusive antennas and permitting the locating of wireless communication systems on telecommunication towers and antenna support structures that are located on property owned, leased, or used by the City or other Governments.
- O. The requirements set forth in this ordinance for the placement of wireless services facilities on property owned, leased or used by the City or other Governments are necessary to protect the health, safety and general welfare of the community.
- P. The Utah Code grants cities the authority to create or acquire sites to accommodate the erection of telecommunication towers in order to promote the location of telecommunication towers in a manageable area and to protect the aesthetics and environment of the area. The law also allows the City to require the owner of any tower to accommodate the multiple use of the tower by other companies where feasible and to pay the City or other Governments the fair market rental value for the use of any City or other Government-owned site.

**18.110.030 Definitions.**

- A. ANTENNA.** A device that transmits and/or receives telecommunications and/or radio signals for telecommunications.
- B. ANTENNA SUPPORT STRUCTURES.** Any structure that can be used for the purpose of supporting an antenna(s).
- C. ANTENNA, DRIVE TEST.** A temporary antenna which is used for field testing of telecommunications signals and possible locations but does not provide telecommunications to customers.
- D. ANTENNA, ENCLOSED.** An antenna or series of individual antennas entirely enclosed inside a structure including but not limited to a cupola or wall of a building or chimney.
- E. ANTENNA, FREESTANDING.** An antenna mounted on or within a stand-alone support structure including but not limited to a wooden pole, steel pole, lattice tower, utility pole, lift tower, light standard, flag pole or other vertical support.
- F. ANTENNA, ROOF MOUNTED.** An antenna or series of individual antennas mounted on a roof of a building.
- G. ANTENNA, TEMPORARY.** An antenna used for a time period of less than thirty (30) days.
- H. ANTENNA, WALL MOUNTED.** An antenna or series of individual antennas mounted fully against the exterior face of a building including on the face of a chimney or penthouse. A wall or face of a building is defined as the entire area of all exposed vertical surfaces of a building that are above ground and facing approximately the same direction.
- I. CITY.** The City of Heber, Utah.
- J. CITY-OWNED PROPERTY.** Real property that is owned, leased or controlled by the City.
- K. CO-LOCATION.** The location of telecommunication facility on an existing structure, tower or building in a manner that precludes the need for that telecommunications facility to be located on a free-standing structure of its own.
- L. EQUIPMENT SHELTER.** A cabinet or building used to house equipment for telecommunications facilities.

- M. GOVERNMENT-OWNED PROPERTY.** Real property that is owned, leased or controlled by an agency of State, Federal, or Local government other than Heber City.
- N. LATTICE TOWER.** A self-supporting three or four-sided, open steel frame structure used to support telecommunications equipment.
- O. MONOPOLE.** A single, self-supporting, cylindrical pole constructed without guy wires or ground anchors, that acts as the support structure for antennas.
- P. MONOPOLE ANTENNA WITH PLATFORM.** A monopole with antennas and antenna support structure exceeding two feet (2') in width, but not exceeding fifteen feet (15') in width or eight feet (8') in height.
- Q. MONOPOLE ANTENNA WITH NO PLATFORM.** A monopole with antennas and antenna support structure not exceeding two feet (2') in width or ten feet (10') in height.
- R. PERMITTED.** An application that is permitted pursuant through the standard building permit process.
- S. PERSONAL WIRELESS SERVICES.** Commercial mobile telecommunications services, unlicensed wireless telecommunications services, and common carrier wireless telecommunications exchange access services.
- T. PERSONAL WIRELESS SERVICES ANTENNA.** An antenna used in connection with the provision of personal wireless services.
- U. PERSONAL WIRELESS SERVICES FACILITIES.** Facilities for the provision of personal wireless services. Personal wireless services facilities include transmitters, antennas, structures, supporting antennas, and electronic equipment that is typically installed in close proximity to a transmitter.
- V. PRIVATE PROPERTY.** Any real property not owned by Heber City.
- W. STEALTH TELECOMMUNICATIONS FACILITY.** A telecommunications facility which is disguised as another object or otherwise concealed from public view.
- X. TELECOMMUNICATIONS.** The transmission between or among points specified by a user of information of the user's choosing without change in the form or content of the information as sent or received.

- Y. TELECOMMUNICATIONS FACILITY.** A Telecommunications Facility consists of antenna, equipment shelters and related structures used for transmitting and/or receiving telecommunications and/or radio signals.
- Z. TOWER.** A free-standing structure, such as a monopole tower, lattice tower, or guy tower, that is used as a support structure for antenna(s).
- AA. WHIP ANTENNA.** An antenna that is cylindrical in shape. Whip antennas can be directional or omnidirectional and vary in size depending on the frequency and gain for which they are designed.
- BB. TECHNICAL NECESSITY.** A particular design, placement, construction, or location of a telecommunications facility that is technically necessary for telecommunications consistent with the Federal Telecommunications Act of 1996, as amended.

#### **18.110.040      Applicability.**

This ordinance applies to both commercial and private low power radio services and facilities, such as "cellular" or PCS (personal communications system) communications and paging systems, and to wireless Internet service providers.

This ordinance shall not apply to the following types of communications devices, although they may be regulated by other City ordinances and policies:

- A. Amateur Radio.** Any antenna owned and operated by an amateur radio operator licensed by the Federal Communications Commission.
- B. Satellite/television antenna.** Any device designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct satellite service.
- C. Cable.** Any cable television head-end or hub towers and antennas used solely for cable television services.

#### **18.110.050      Application Requirements.**

Any person desiring to develop, construct or establish a personal wireless services facility in the City shall submit an application for site plan approval to the City. The City shall not consider the application until all required information has been included. A complete application shall

include all elements of the proposed telecommunications facility and shall produce all information required by the telecommunications facility application. Applicants shall provide the following submittal requirements.

**A. Fee.** A fee of \$100.00

**B. Site Plan.** A site plan meeting the City's standard requirements for site plans.

**C. Written Information.**

**1. Environment.** A full description of the environment surrounding the proposed facility, including a description of adjacent uses, any adjacent residential structures, and any structures and sites of historic significance.

**2. Maintenance.** A description of the anticipated maintenance needs for the facility, including frequency of service, personnel needs, equipment needs, and traffic noise or safety impacts of such maintenance.

**3. Service Area.** A description of the service area for the antenna or tower and a statement as to whether the antenna or tower is needed for coverage or capacity.

**4. Location.** A map showing the site and the nearest or associated telecommunications facility sites within the network. Describe the distance between the telecommunications facility sites. Describe how this service area fits into the service network.

a. An Applicant proposing to erect a new telecommunications facility shall provide documentary evidence that a legitimate attempt has been made to locate the new telecommunications facility on City or Government owned properties, existing buildings or structures or co-location. Such evidence shall include a radio frequency engineering analysis of the potential suitability of existing buildings or structures or co-location sites in the radio frequency coverage area for the proposed telecommunications facility. Efforts to secure such locations shall be documented through correspondence between the applicant and the property

owner(s) of the existing buildings, structures or co-location sites.

- b. Applicants proposing to construct new telecommunications facilities shall document the locations of all of the applicant's existing telecommunications facilities that provide telecommunications within the City, as well as any changes proposed within the following twelve (12) month period, including plans to discontinue or replace such existing telecommunications facilities. Applicants shall provide competent testimony from a radio qualified professional regarding the suitability of potential telecommunications facility locations in relation to the applicant's existing telecommunications facilities.
- c. Each application shall include a site location alternative analysis describing the location of other sites considered for the proposed telecommunications facility, the availability of those sites, the extent to which other sites do or do not meet the applicant's telecommunications needs and the reason the subject site was chosen for the proposed telecommunications facility. The analysis shall address the following issues:
  - i. How the proposed location and telecommunications facility relate to the object of providing full telecommunications services within the City area;
  - ii. How the proposed telecommunications facilities relates to the location of the applicant's existing telecommunications facilities that provide telecommunications within and near the City;

iii. How the proposed telecommunications facility relates to the applicant's anticipated need for additional telecommunications facilities that provide telecommunications within and near the City;

iv. If applicable, how the applicant's plans specifically relate to, and are coordinated with, the needs of all other telecommunications providers within and near the City.

5. **Licenses and Permits.** Copies of all licenses and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of the antenna.
6. **Radio Frequency Emissions.** A written commitment to comply with applicable Federal Communications Commission radio frequency emission regulations.
7. **Visibility Impact.** A visual impact study, graphically simulating through models, computer enhanced graphics or similar techniques, the appearance of any proposed telecommunications facility and indicating its view from at least five (5) locations around and within one (1) mile of the proposed telecommunications facility will be most visible.
8. **Liaison.** The name of a contact person who can respond to questions concerning the application and the proposed facility. Include name, address, telephone number, facsimile number and electronic mail address, if applicable.
9. **Additional information requirements for monopoles.** If the applicant desires to construct a monopole, the applicant shall also submit a detailed written description of why the applicant cannot obtain coverage using existing buildings or structures.
10. **Additional information requirement for facilities not located on highest priority site.** If the applicant desires to locate antennas on a site other than the highest

priority site (as described in Section 18.110.070), the applicant shall provide the following information to the approving authority:

- a. Higher priority sites.** The identity and location of any higher priority sites located within the desired service area.
- b. Reason for rejection of higher priority sites.** The reason(s) why the higher priority sites are not technologically, legally or economically feasible.
- c. Justification for proposed site.** Why the proposed site is essential to meet the service demands of the geographic service area and the citywide network.

#### **18.110.060 Approval Process.**

All telecommunication facilities shall be reviewed by the City pursuant to its standard site plan and building permit approval process. If the facility requires a conditional use permit, the review shall be pursuant to the City's standard Commercial Concept approval process in Section 17.38 of Heber City Code. It shall be unlawful to install any telecommunication facility without first having a permit from the Planning and Building Departments of the City. No building permit shall be issued for any project for which a site plan, amended site plan or conditional use permit is required, until the site plan, amended site plan or conditional use permit has been approved by the appropriate authority. In the event the Planning Department believes that a permitted application does not conform to applicable standards, the Department may refer the application to the Planning Commission for approval and interpretation through the Commercial Concept approval process in Section 17.38 of Heber City Code

#### **18.110.070 Location.**

- A. Priority of antenna site locations.** Personal wireless services antennas shall be located as unobtrusively as is reasonably possible. To accomplish this goal, the provider shall make a good faith effort to locate antennas on sites in the following order of priority:

1. **Structures located on City-owned property.** Existing buildings, structures and antenna support structures located on City-owned property.
2. **Structures located on Government-owned property.** Existing buildings, structures and antenna support structures located on Government-owned property.
3. **Monopoles located on City or Government-owned property.**
4. **Existing Structures.** Lawfully existing buildings, structures and antenna support structures on private property, provided that the buildings, structures or support structures are either: (1) located in a non-residential zone, or (2) located in a residential zone on property that is being used for non-residential uses (e.g. government, school or church).
5. **Monopoles on Non-residential Private Property.** Monopoles constructed on private property, provided that the private property is (1) located in a non-residential and non-C-3 commercial zone, or (2) located in a residential zone on property that is used for a non-residential use (e.g. government, school or church).
6. **Other.** Sites other than those listed above.

**B. Burden of Proof.** The applicant shall attempt to locate its antennas on sites in the order of priority set forth above. If the applicant desires to locate antennas on a site other than the highest priority site, the applicant shall have the burden of demonstrating to the approving authority why it could not locate antennas on sites with a higher priority than the site chosen by the applicant. To do so, the applicant shall provide the following information to the approving authority.

1. **Higher Priority Sites.** The identity and location of any higher priority sites located within the desired service area

**2. Reason for rejection of higher priority sites.**

The reason(s) why the higher priority sites are not technologically, legally or economically feasible. The applicant must make a good faith effort to locate antennas on a higher priority site. The City may request information from outside sources to justify or rebut the applicant's reasons for rejecting a higher priority site.

**3. Justification for proposed site.** Why the proposed site is essential to meet the service demands of the geographic service area and the citywide network.

**18.110.080 Uses**

**A. Permitted Uses**

**1. Existing Structures on City-owned property.**

Existing buildings, structures and antenna support structures located on City-owned property.

**2. Industrial Zone.** Monopoles, roof mounted, wall mounted, and stealth antenna on City, Government, or private property.

**3. Commercial Zones.** Roof mounted antenna located on private or public property when the antenna is 5 feet or less in height.

**B. Prohibited Uses.** The following antenna types and antenna locations are not permitted:

**1. Residential Zones.** All telecommunications facilities, including freestanding antenna, roof mounted antenna, wall mounted antenna, and stealth antenna on private property in residential zones

**2. Lattice Towers and Guy Towers.** All freestanding towers, including lattice towers, guy towers, and other towers, with the exception of monopoles, are prohibited in any zone.

**3. Monopoles in Residential Zones on Private Property.** All freestanding towers and monopoles located on residentially zoned private property, if the residentially zoned

property has a residential use (as opposed to a school, church, or other non-residential use).

**4. Freestanding towers and monopoles in the C-3 Commercial Zone.** All freestanding towers and monopoles are prohibited in the C-3 Commercial Zone.

**C. Conditional Uses.** The following are conditional uses:

1. Monopoles located in residential and commercial zones on City and Government owned property.
2. Monopoles located in commercial zones (except C-3 Commercial Zone) on private property.
3. Roof mounted antenna located in commercial zones on City, Government, and private property when the roof antenna exceeds 5 feet in height.
4. Wall mounted antenna located in commercial zones on City, Government, or private property.
5. Enclosed/Stealth antenna located in residential zones on City, Government, and private property containing non-residential uses.
6. Enclosed/Stealth antenna located in commercial zones on public and private property.
7. Antennas proposed for any other location, provided that the use is not prohibited by this ordinance, and the applicant complies with other applicable laws and regulations.

**18.110.090 Co-location.**

Unless otherwise authorized by the approving authority for good cause shown, every new monopole shall be designed and constructed to be of sufficient size and capacity to accommodate at least two additional wireless telecommunications providers on the structure in the future.

Any conditional use permit for a monopole may be conditioned upon the agreement of the applicant to allow co-

location of other personal wireless providers on such terms as are common in the industry. Co-location on a lot may be permitted by the Planning Commission if all setbacks, design and landscape requirements are met for each telecommunications facility. The application shall include any existing or approved, but unbuilt, telecommunications facility within the telecommunications area that may meet the needs of the applicant. The supplied documentation shall evaluate the following factors:

- A. Structural capacity of the antenna towers;
- B. Geographic telecommunications area requirements;
- C. Mechanical or electrical incompatibilities;
- D. Inability or ability to locate equipment on existing antenna towers; and
- E. Any restriction or limitation of the Federal Communication Commission that would preclude the shared use of the antenna tower.

#### **18.110.100 Lease Agreement.**

Applicants for telecommunication facilities on public facilities shall sign and agree to a development agreement with the public agency addressing items including, but not limited to access and security, maintenance of site and facilities, utility costs, and a fee for use of the public facility. The City shall enter into a standard lease agreement with the applicant for any facility built on City property. The lease shall contain the condition that the site plan and/or conditional use permit must first be approved by the approving authority before the lease can take effect, and that failure to obtain such approval renders the lease null and void.

#### **18.110.110 Development Standards for Telecommunications Facilities**

##### **A. Standards for Antennas and Antenna Support**

**Structures.** Personal wireless services facilities are characterized by the type or location of the antenna structure. There are four general types of antenna structures allowed by this ordinance: wall mounted antennas; roof mounted antennas; monopoles with no platform; and monopoles with a platform. If a particular type of antenna structure is allowed

by this ordinance as a permitted or conditional use, the minimum standards for that type of antenna are as follows, unless otherwise provided in a conditional use permit:

**1. Wall Mounted Antennas.**

- a. Maximum Height.** Wall mounted antennas may not extend above the roof line of the building or structure or extend more than twelve (12) inches from the face of the building.
- b. Setback.** Wall mounted antennas shall not be located within one hundred feet (100') feet of any residence.
- c. Mounting Options.** Antennas mounted directly on existing parapet walls, penthouses, or mechanical equipment rooms are considered to be wall mounted antennas if no portion of the antenna extends above the roof line of the parapet wall, penthouse, or mechanical equipment room.
- d. Color.** Wall mounted antennas, equipment and supporting structures shall be painted to match the color of the building or structure or the background against which they are most commonly seen. Antennas and the supporting structure on the building shall be architecturally compatible with the building. Whip antennas are not allowed on a wall mounted antenna structure.

**2. Roof Mounted Antennas.**

- a. Maximum Height.** Roof mounted antenna, placed on a flat roof, may extend up to ten (10) feet above the existing structure, provided that the antenna setback from the edge of the roof is a minimum distance equal to or greater than the height of the antenna. Roof mounted antenna, placed on a pitched roof, may extend a maximum of five (5) feet above the existing structure.

- b. Setback.** Roof mounted antennas shall be located at least five feet (5') from the exterior wall of the building or structure, and at least fifty (50') feet from any residence.
- c. Mounting options.** Roof mounted antennas may be mounted on top of existing penthouses or mechanical equipment rooms if the antennas and antenna support structures are enclosed or visually screened from view. The screening structure may not extend more than eight (8') feet above the existing roof line of the penthouse or mechanical equipment room.
- d. Color.** Roof mounted antennas, equipment and supporting structures shall be painted to match the color of the building or structure or the background against which they are most commonly seen. Antennas and supporting structures shall be architecturally compatible with the building.

### **3. Monopoles with no Platform.**

- a. Maximum Height and Width.** The maximum height of the monopole or monopole antenna shall be thirty-five (35) feet. The entire antenna structure mounted on the monopole shall not exceed two feet (2') in width. The antenna itself shall not exceed ten feet (10') in height.
- b. Setback.** Monopoles shall be set back a minimum of 115% of the height of the monopole from any residential lot line, measured from the base of the monopole to the nearest residential lot line.
- c. Color.** Monopoles, antennas, and related support structures shall be painted a neutral color, or a color to match the background against which they are most commonly seen.

#### 4. Monopoles with Platform.

- a. **Maximum Height and Width.** The maximum height of the monopole or monopole antenna shall be thirty-five (35) feet. The antennas and antenna mounting structures on the monopole shall not exceed eight feet (8') in height or fifteen feet (15') in width. The antenna itself shall not exceed ten feet (10') in height.
- b. **Setback.** Monopoles shall be set back a minimum of 115% of the height of the monopole from any residential lot line, measured from the base of the monopole to the nearest residential lot line.
- c. **Color.** Monopoles, antennas, and related support structures shall be painted a neutral color, or a color to match the background against which they are most commonly seen.

#### 18.110.120 Additional Conditional Use Permit Considerations.

In addition to the City's standard conditional use permit considerations, the approving authority shall consider the following factors when deciding whether to grant a conditional use permit for a personal wireless services facility:

- A. **Compatibility.** Compatibility of the facility with the height, mass and design of buildings, structures and uses in the vicinity of the facility.
- B. **Screening.** Whether the facility is located relative to existing vegetation, topography and structures in a manner that optimizes visual screening.
- C. **Disguise.** Whether the facility can be or has been disguised in a manner to mitigate potential negative impacts on surrounding properties.
- D. **Parcel Size.** Whether the facility is located on a parcel of sufficient size to adequately support the facility.

- E. Location on Parcel.** Whether the structure is situated on the parcel in a manner that can best protect the interests of surrounding property owners, but still accommodate other appropriate uses of the parcel.
- F. Compliance with Telecommunications Ordinance.** Whether the proposed facility complies with the telecommunication facilities ordinance.
- G. Compliance with General Plan.** Whether the proposed facility complies with the intent, goals, and policies of the General Plan.
- H. Compliance with the Underlying Zone.** Whether the proposed facility complies with the intent, uses, and standards of the underlying zone and applicable supplemental zoning regulations.

**18.110.130 Additional Regulations for Monopoles and Towers.**

- A. Distance from other Monopoles.** Monopoles and towers shall be located at least two thousand feet (2000') from each other, except upon a showing of necessity by the applicant, or upon a finding by the City that a closer distance would adequately protect the health, safety and welfare of the community. This distance requirement shall not apply to antennas attached to lawful structures such as transmission towers, utility poles, outdoor lighting structures, and water tanks.
- B. Location on Parcel.** Monopoles shall be located as unobtrusively on a parcel as possible, given the location of existing structures, nearby residential areas, and service needs of the applicant. Monopoles shall not be located in a required landscaped area, buffer area or parking area.

**18.110.140 Area Limitations for Wall and Roof Mounted Antennas.**

Any building may have a combination of wall and roof mounted antennas. The total area for all wall and roof mounted antennas and supporting structures on any one building shall not exceed the lesser of sixty (60) square feet or 5 percent (5%) of each exterior wall of the building.

18.110.150      **Safety.**

**A. Regulation Compliance.**

**1. Compliance with FCC and FAA Regulations.** All operators of personal wireless services facilities shall demonstrate compliance with applicable Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) regulations, including FCC radio frequency regulations, at the time of application and periodically thereafter as requested by the City. Failure to comply with the applicable regulations shall be grounds for revoking a site plan or conditional use permit approval.

**2. Other Licenses and Permits.** The operator of every personal wireless services facility shall submit copies of all licenses and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of the facility to the City, shall maintain such licenses and permits in good standing, and shall provide evidence of renewal or extension thereof upon request by the City.

**B. Protection Against Climbing.** Monopoles shall be protected against unauthorized climbing by removing the climbing pegs from the lower 20 feet of the monopole.

**C. Fencing.** Monopoles and towers shall be fully enclosed by a minimum 6-foot tall fence or wall, as directed by the City, unless the City determines that a wall or fence is not needed or appropriate for a particular site due to conditions specific to the site.

**D. Security Lighting Requirements.** Monopoles and towers shall comply with the FAA requirements for lighting. As part of the conditional use permit consideration, the City may also require security lighting for the site. If security lighting is used, the lighting impact on surrounding residential areas shall be minimized by using indirect lighting, where appropriate.

**E. Abandonment.** The applicant, or the applicant's successor(s) and/or assign(s) shall be responsible for the removal of unused telecommunications facilities within ninety (90) days of abandonment of use. If such tower is not removed by the property owner, then the City may employ all legal measures, including as necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in dismantling and disposal of the tower, including court costs and reasonable attorney fees.

**1. Notice.** Notice to remove shall be given in writing by personal service, or by certified mail addressed to the operator's last known address.

**2. Violation.** Failure to remove the antennas and monopoles after receiving written notice to remove is a violation of the terms of this Chapter. The City may initiate criminal and/or civil legal proceeding against any person, firm, entity or corporation, whether acting as principal, agent, property owner, lessee, lessor, tenant, landlord, employee, employer or otherwise, for failure to remove antennas and monopoles in accordance with this Chapter. The City may seek a civil injunction requiring the removal of any structures on the site in accordance with this Chapter. Any lease agreement with the City may also stipulate failure to remove the antennas and monopoles after receiving written notice to do so pursuant to this Chapter automatically transfers ownership of the antennas, monopoles, support buildings and all other structures on the site to the City.

**3. Nuisance.** Abandoned, unmaintained, or telecommunication devices that pose an immediate threat to public health and safety are hereby declared to be a nuisance.

**18.110.160 Site Requirements.**

**A. Setbacks.** The placement of telecommunications facilities on a lot shall comply with the setbacks of the underlying zone as stated herein. Telecommunications facilities shall comply with the setbacks for main structures and shall not be determined accessory structures.

**B. Use of Property.** The telecommunications facility shall be an ancillary use on the lot on which it is placed. The lot shall contain a separate principal use.

**C. Regulations for Accessory Structures.**

**1. Storage Areas and Solid Waste Receptacles.** No outside storage or solid waste receptacles shall be permitted on the site.

**2. Equipment Enclosures.** All electronic and other related equipment and appurtenances necessary for the operation of any personal wireless services facility shall, whenever possible, be located within a lawfully pre-existing structure or completely below grade. When a new structure is required to house such equipment, the structure shall be harmonious with, and blend with, the natural features, buildings and structures surrounding such structure. Equipment Shelters located outside of an existing building shall require a conditional use permit approval from the Planning Commission for compliance with the Design Compatibility. The Planning Commission shall make a finding that the equipment in or shelter for equipment, meets the Design Theme and is in compliance with **17.38.050 Design Requirements**, and Architectural Design Guidelines, if applicable, or Heber City Design Guidelines.

**3. Accessory Buildings.** Freestanding accessory buildings used with a personal wireless services facility shall not exceed 350 square feet and shall comply with the setback requirements for structures in the zone in which the facility is located.

**D. Parking.** The City may require a minimum of one (1) parking stall for sites containing a monopole, tower, and/or accessory buildings, if there is no parking available on the site.

**E. Maintenance Requirements.** All personal wireless services facilities shall be maintained in a safe, neat and attractive manner.

**F. Landscaping.** All sites with a personal wireless services facility shall be landscaped in accordance with the zone requirements where the facility is located.

**G. Height.** The height shall be measured from the grade or roof beneath to the top of the antenna or mounting hardware, whichever is higher.

**H. Design Compatibility.**

1. Antenna and associated equipment shall incorporate materials and colors present in the context of the surrounding Area. Stealth telecommunications facilities shall be designed in a manner to blend with the existing and natural environment. Monopoles, antennas, and any associated buildings or equipment shall be painted to blend with the surroundings which they are most commonly seen. The color shall be determined on a case-by-case basis by the Planning Commission for conditional uses and the Planning Department for permitted uses. Within six months after the facility has been constructed, the planning commission or the Planning Department may require the color be changed if it is determined that the original color does not blend with the surroundings.

2. Panel Antennas shall be no more than five square feet (5 sq. ft.) in Area per face.

**18.110.170 Site Disturbance.**

Any application, temporary or permanent, which requires the removal of significant vegetation or proposes any new, or improvements to driveways or roads a length greater than twenty feet (20') and/or a width greater than ten feet (10') wide, shall require a conditional use permit. As used herein, "Significant Vegetation" includes trees six inch

(6") in diameter or greater measured four feet six inches (4'6") above the ground, groves of small trees or clumps of oak and maple covering an Area of twenty square feet (20 sq. ft.) or more measured at the drip line. Plans must show all such trees within twenty (20) feet of a proposed telecommunications facility. The Planning Department shall determine the Limits of Disturbance and may require mitigation for loss of Significant Vegetation.

**18.110.180 Signs.**

Signs shall only be permitted if they are related to the health and safety of the general public. All proposed signs shall be submitted with the telecommunications facility application and subject to review by the Planning Department for compliance with Chapter 18.104, Sign Regulations.

**18.110.190 Subdivision and Condominium Covenants.**

Many Subdivision and Condominium Covenants may address the location of telecommunications facilities within Condominium units and the lots of a Subdivision. The City is not a party to those covenants, and no permit from the City shall effect the enforceability of such covenants which might be more restrictive than this ordinance. Applicants for the installation of telecommunications facilities are advised to determine what private land use restrictions apply to their site before applying for the permit from the City. If the proposed installation is within the Common Area of a Condominium or Planned Unit Development, and the application submitted is not in the name of the Home Owner's Association or management committee, the applicant shall provide a letter from the Home Owner's Association or management committee indicating consent to the location of the telecommunications facilities within the Common Area has been granted as a part of the permit application filed with the City.

**18.110.200 Expansion, alteration, and nonconforming uses.**

This ordinance shall not make existing, non-conforming and/or illegal telecommunication facilities legal or conforming. Any expansion or alteration of a telecommunications facility shall comply with the provisions and procedures of this ordinance. Expansion and alteration

include any change to the facility, including but not limited to structural, electrical, aesthetic and functional changes. Non-conforming telecommunication facilities, when expanded or altered, shall meet the requirements of this ordinance.

- A. Any pre-existing facilities located in a commercial or industrial zone which were placed without a building permit prior to the effective date of this ordinance may apply for a building permit and be approved if the facility meets the application height, setback and location provisions of this ordinance, subject to Section 18.110.070.
- B. Existing, illegal facilities which cannot or do not meet the height, setback, and location provisions of this ordinance may apply to the Board of Adjustment for a special exception. The Board may approve such an exception, only upon condition it meet all of the following findings:
  - 1. That the existing facility was erected prior to the effective date of this ordinance.
  - 2. That the existing facility is compatible, aesthetically and otherwise, with the surrounding uses.
  - 3. That the facility does not present a prominent position by itself to the skyline, as viewed from the public street, and if so, that said facility may be moved within the site to a position so as not to be visibly prominent in the skyline.
  - 4. That the facility is currently being used and has not been abandoned for a period longer than that allowed by Section 18.110.150 E, of this ordinance.
- C. The Board may place any additional conditions of approval it may deem fit and advisable to safeguard the aesthetics of the community as viewed from the public street.
- D. As part of the Conditional Use permit approval for modification of an existing monopole, the Planning Commission may waive the height and setback requirements for approved co-location monopoles in


existence prior to this ordinance which are located within the I-1 Industrial Zone.

This ordinance shall take effect and be in force from and after (a) its adoption, (b) a copy has been deposited in the office of the City Recorder, and (c) a short summary of it has been published in the Wasatch Wave or a complete copy has been posted in three public places within Heber City but not prior to the 4 day of March, 2004.


ADOPTED AND PASSED by the City Council of Heber City, Utah this 4 day of March, 2004, by the following vote:

|                               | AYE      | NAY   |
|-------------------------------|----------|-------|
| Councilman Terry Wm. Lange    | <u>X</u> | _____ |
| Councilman Vaun Shelton       | <u>X</u> | _____ |
| Councilman David R. Phillips  | <u>X</u> | _____ |
| Councilman John Burns         | <u>X</u> | _____ |
| Councilwoman Shari K. Lazenby | <u>X</u> | _____ |

APPROVED:

  
\_\_\_\_\_  
Mayor Lynn L. Adams

ATTEST:

  
\_\_\_\_\_  
RECORDER  
(Seal)

Date of First Publishing: 3-10-04