

ARTICLE 14. WIRELESS COMMUNICATIONS

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PART I. GENERAL REQUIREMENTS

14.1. PURPOSE AND APPLICABILITY

14.1.1. Purpose and Compliance with Federal Law:

- A. The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the Town of Fairmont and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.
- B. The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures. The following standards shall apply to actions by the Town of Fairmont, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

Statutory Reference – N.C.G.S. § 160D-930.

14.1.2. **Applicability:** The regulations of this Article shall apply to the development and rehabilitation of wireless communication facilities in the planning jurisdiction of the Town of Fairmont.

14.1.3. **Local Authority.**

- A. The Town of Fairmont may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Article. Except as expressly stated, nothing in this Article shall limit the Town from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in NCGS 160D-9-30. For purposes of this Article, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

Statutory Reference – N.C.G.S. § 160D-932

14.2. CERTAIN USES NOT COVERED BY THIS ARTICLE

14.2.1. Wireless telecommunication towers that are used for emergency communication for Town and State personnel shall be exempt from the Town of Fairmont Zoning Ordinance and are not required to obtain a special use zoning permit.

14.3. INTERPRETATION AND DEFINITION

- A. Conflict with other ordinances. To the extent these development standards conflict with other ordinances for the town, these development standards shall control.
- B. Rules for words and phrases. For the purposes of section, words used in the present tense include the future tense; words in the singular number include the plural number, and words in the plural number include the singular number; the word "shall" is mandatory; the word "may" is permissive; the word "used" includes "designed" and "intended" or arranged to be used or occupied; and the word "person" includes a firm, association, organization, partnership, trust, foundation, company or corporation as well as an individual.
- C. Definitions. For the purpose of this section certain words, phrases and terms used herein shall be interpreted as stated in this subsection. The planning director or designee shall define any word, phrase or term not defined herein. The interpretation shall be based upon its common and ordinary usage in the region.

Abandon. Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Antenna. Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Antenna Array. An Antenna Array is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include Omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure.

Applicable codes. The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Application. A request that is submitted by an applicant for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, Town utility pole, or wireless support facility.

Attached Wireless Communication Facility. An Attached Wireless Communication Facility is an Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include but not be limited to utility poles, signs, water towers, rooftops, towers with

any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

Base station. A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Breakpoint technology. The engineering design of a monopole wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

Building permit. An official administrative authorization issued by the Town prior to beginning construction consistent with the provisions of G.S. 160D-11-10.

Carrier on Wheels "COW": A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Collocation. The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, Town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term 'collocation' does not include the installation of new utility poles, Town utility poles, or wireless support structures.

Communications facility. The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communications service. Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), of wireless services.

Communications service provider. A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Completed application. An application that contains all information and/or data necessary to enable the board or ordinance administrator to evaluate the merits of the application, and to make an informed decision with respect to the effect and impact of wireless facilities and/or wireless support structures on the Town in the context of the permitted land use for the particular location requested.

Concealed Wireless Facility - Any wireless facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.

Eligible facilities request. A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Equipment compound. An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

FAA. The Federal Aviation Administration or its duly designated and authorized successor agency.

FCC. The Federal Communications Commission or its duly designated and authorized successor agency.

FTA- Federal Telecommunications Act of 1996.

Fall zone. The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Free standing wireless support structure. A wireless support structure that is not supported by guy wires and ground anchors or other means of attached or external support.

Guyed wireless support structure. A style of wireless support structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building.

Land development regulation. Any ordinance enacted pursuant to this Part Chapter.

Major Modifications. Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Micro wireless facility. A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Minor Modifications. Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole. A single, freestanding pole-type structure supporting one or more Antenna.

Ordinary Maintenance. Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example, the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Replacement. Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Search ring. The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility. –A wireless facility that meets both of the following qualifications:

- a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
- b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Substantial modification. - The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below.

- a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support

structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

- c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Support Structure(s). A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies). Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower. A lattice-type or monopole wireless support structure, guyed or freestanding, that supports one or more Antennas.

Town right-of-way. A right-of-way owned, leased, or operated by a Town, including any public street or alley that is not a part of the State highway system.

Town utility pole. A pole owned by a Town in the Town right-of-way that provides lighting, traffic control, or a similar function.

Utility pole. A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.

Water tower. A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

Wireless facility. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

- a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- b. Wireline backhaul facilities.
- c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or Town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider. Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider. A wireless infrastructure provider or a wireless services provider.

Wireless services. Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider. A person who provides wireless services.

Wireless support structure. A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a Town utility pole is not a wireless support structure.

Specific types of wireless support structures include:

- a. *Attached wireless support structure* means an antenna or antenna array that is secured to an existing building or structure with any accompanying pole or device which attaches it to the building or structure, together with transmission cables, and an equipment cabinet, which may be located either on the roof or inside/outside of the building or structure. An attached wireless facility is considered to be an accessory use to the existing principal use on a site.
- b. *Concealed wireless support structure*, sometimes referred to as a concealed or camouflaged facility, means a wireless support structure, ancillary structure, or wireless support structure equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site. There are two types of concealed wireless support structures: 1) attached and 2) freestanding. 1) Examples of concealed attached facility include, but are not limited to, the following: painted antenna and feed lines to match the color of a building or structure, faux windows, dormers or other architectural features that blend with an existing or proposed building or structure. 2) Freestanding concealed wireless support structures usually have a secondary, obvious function which may be, but is not limited to, the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole with or without a flag, or faux tree.
- c. *Freestanding wireless support structure* means any manned or unmanned location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, feed lines, and equipment cabinets, and may include an antenna support structure. A freestanding wireless support structure includes, but is not limited to, the following: guyed, lattice, or monopole support structures.
- d. *Non-concealed wireless support structure* means a wireless support structure that is readily identifiable as such and can be either freestanding or attached.

Statutory Reference – N.C.G.S. § 160D-931.

(Ord. 9/11/2001, Section 154-216)

14.4. WHEN SPECIAL USE PERMIT IS REQUIRED.

14.4.1. All applications for the construction or installation of a new wireless support structure or substantial modification of wireless support structures shall be permitted by a Special Use Permit. Applications for attached wireless support structures and collocations and eligible facilities requests shall be issued by the Zoning Administrator. Temporary emergency structures under *Section 14.12* shall also be issued by the Zoning Administrator.

14.4.2. Application Contents.

A. The application shall include:

- (1) A completed Special Use Permit application;
- (2) A sealed complete set of drawings prepared by a licensed architect or engineer that will include:
 - i. a site plan, elevation view and other supporting drawings.
 - ii. calculations and other documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith.
 - iii. information concerning specifications, antenna locations, equipment facility and shelters,
 - iv. plans for landscaping, parking, access, fencing and, if relevant as determined by staff, topography, adjacent uses and existing vegetation.

14.4.3. Submission Requirements. The application shall be accompanied by a site plan containing the information described above and a copy of the appropriate FCC license. The application and site plan shall be placed on the next available agenda in accordance with the agenda deadlines established by the Town.

14.4.4. Application Fees. A plan review fee and a Radio Frequency Intermodulation Study review fee (collocation applicants only) shall accompany each application. These fees may be used by the Town to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and Radio Frequency Intermodulation Study (if required).

14.4.5. Technical Assistance. In the course of its consideration of an application, the Town, the Zoning Administrator, the Planning Board or the Board of Commissioners may deem it necessary, in complex situations, to employ an engineer(s) or other consultant(s) qualified in the design and installation of wireless communication facilities to assist the Town in the technical aspects of the application. In such cases, any additional reasonable costs incurred by the Town not to exceed fifteen hundred dollars (\$1,500) for the technical review and recommendation shall be reimbursed by the applicant prior to the final Town hearing.

14.4.6. Administrative Review. Review of wireless communication facilities under this Section shall be conducted by the Zoning Enforcement Officer or the designee upon filing of a wireless communication facility application. The review shall be for the purpose of determining that the application is complete.

14.4.7. Planning Board Review. The Planning Board shall be the review authority for new wireless support structure or substantial modification of wireless support structures. The Planning Board shall follow the procedures outlined in *Article 6* for Quasi-Judicial hearings.

A. Tower Siting Conditions. The Planning Board may impose conditions and restrictions on the application or on the premises benefited as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the wireless communication facility with the surrounding property, in accordance with the purposes and intent of this Ordinance. The Planning Board may recommend additional development standards. Such conditions shall be in addition to the development criteria based upon the following findings:

- i. The wireless communication facility would result in significant adverse visual impact on nearby residences.
- ii. The conditions are based upon the purpose and goals of this Ordinance.
- iii. The conditions are reasonable and capable of being accomplished.

B. Action. Following the public hearing and presentation of evidence, the Planning Board shall take one of the following actions:

- i. Approve the application as submitted;
- ii. Approve the application with conditions or modifications;
- iii. Refer the application for additional information or neighborhood input, or
- iv. Recommend denial of the application in writing.

(Ord. 9/11/2001, Section 154-218)

14.5. EVALUATION OF LOCATIONS FOR NEW WIRELESS FACILITIES

14.5.1. The Town requires applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas (attached wireless support structures, concealed wireless support structures, freestanding wireless support structures, and non-concealed wireless support structures) and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value. The Town requires information as part of the application necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

Statutory Reference – N.C.G.S. § 160D-933(b)(3) and § 160D-933(f)

14.5.2. The following properties and structures are the potential Town-owned locations for attached facilities and new wireless towers within the Town:

Suitable Fairmont Sites			
Site #	Field Site Name	Underlying Zoning	Recommended WCF Use
1.	Water Tank #1 – 1775 Marion Stage Road	R-15	Antenna Attachments/Cell Tower
2.	Water Tank #2 – 520 Franklin Street	GB	Antenna Attachments
3.	Town Hall – 421 South Main Street	R-10	Antenna Attachments



Left: Water Tower #1 – 1175 Marion Stage Road. There is a cell tower on the town’s lot.

Right: Water Tower #2 – 520 Franklin Street



Front and Rear Views of Town Hall – 421 South Main. Antennas attached to building.

14.6. GENERAL REQUIREMENTS FOR ALL WIRELESS SUPPORT STRUCTURES

- 14.6.1. **Security of wireless support structures.** All wireless support structures shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, as follows:
- (a) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
 - (b) Transmitters and telecommunications control points must be installed in a manner to be readily accessible only to persons authorized to operate or service them.
- 14.6.2. **Signage.** Wireless support structures shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the facility, an emergency phone number(s), and FCC registration number, if applicable. The sign shall be on the equipment shelter or shed of the applicant and be visible from the access point of the site and must identify the equipment shelter of the applicant. The sign shall not be lighted unless the Town shall have allowed such lighting or unless applicable provisions of law require such lighting. No other signage, including advertising, shall be permitted on any wireless support structure, unless required by law.
- 14.6.3. **Access.** At a wireless support structure site, an access road, turn around space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- 14.6.4. **Setbacks.** All wireless support structures and broadcast facilities shall be set back from abutting property lines and recorded rights-of-way by the following distances: a distance equal to the height of the wireless support structure or broadcast facility tower or structure or use breakpoint technology. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.
- 14.6.5. **Fencing.** Wireless Communications Facilities with Support Structures shall be enclosed by an opaque fence (excluding slatted chain link) not less than 6 feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of State or Federal agencies.
- 14.6.6. **Radio Frequency Emissions/Sound.** The following radio frequency emissions standards shall apply to all Wireless Communications Facility installations:
- (a) **Radio Frequency Impact.** The FTA gives the FCC jurisdiction of the regulation of Radio Frequency (RF) emissions, and Wireless Communications Facilities that do not exceed the FCC standards shall not be conditioned or denied on the basis of RF impact.

- (b) FCC Compliance. In order to provide information to its citizens, copies of ongoing FCC information concerning Wireless Communications Facilities and RF emissions standards may be requested from time to time. Applicants for Wireless Communications Facilities shall be required to provide information with the application on the measurement of the effective radiated power of the facility and how this meets the FCC standards.
- (c) Sound Prohibited. No unusual sound emissions such as alarms, bells, buzzers or the like are permitted.

14.6.7. **Structural Integrity**. Wireless Communications Facilities with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antennas Towers and Antenna Support Structures" (or equivalent), as it may be updated and amended. Each Support Structure shall be capable of supporting multiple antenna arrays.

14.6.8. **Collocation Agreement**. All applicants for Wireless Communications Facilities are required to submit a statement with the application agreeing to allow and reasonably market collocation opportunities to other Wireless Communications Facility users. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers.

14.6.9. **Pre-existing wireless communications facility**. Wireless communications facilities which were installed prior to the effective date of the ordinance from which this article is derived shall be considered as nonconforming.

14.6.10. **Amateur radio exclusion**. This section shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator.

14.6.11. **Relationship to other ordinances**. Except for historic districts, this section shall supersede all conflicting requirements of other ordinances regarding the locating and permitting of wireless communication facilities.

14.6.12. **Airport zoning**. Any wireless communication facility located or proposed to be located in airport areas governed by the Federal Aviation Administration shall also comply with the provisions of all applicable local, state and federal airport regulations.

14.6.13. **Building codes**. Construction of all wireless communication facilities shall comply with the requirements of the state building codes and permitting process in addition to the requirements of this section.

(Ord. 9/11/2001, Section 11-217)

14.7. ATTACHED WIRELESS SUPPORT STRUCTURES

14.7.1. Concealed and non-concealed.

- (a) The top of the attached wireless support structure shall not be more than 20 feet above the existing or proposed building or structure.
- (b) An attached wireless support structure and its equipment compound shall be subject to the setbacks of the underlying zoning district. When an attached wireless support structure is to be located on a nonconforming building or structure, then the existing permitted nonconforming setback shall prevail.
- (c) Feed lines and antennas shall be designed to architecturally match the facade, roof, wall, or structure on which they are affixed so that they blend with the existing structural design, color, and texture.

14.7.2. **Attached non-concealed wireless support structures.** Shall only be allowed on electrical transmission towers and existing light stanchions subject to approval by the ordinance administrator and utility company.

14.7.3. **Permit application.** Applications and site plans for attached wireless support structures shall be submitted to the Zoning Enforcement Officer and accompanied by a nonrefundable application fee as established by the Town Board of Commissioners per the fee schedule. The application fee is subject to change by resolution of the Town board of commissioners. Zoning Permits shall be the permit issued for attached wireless support structures.

(Ord. 9/11/2001, Section 11-217)

14.8. COLLOCATIONS AND ELIGIBLE FACILITIES REQUESTS OF WIRELESS SUPPORT STRUCTURES

14.8.1. A Special Use Permit is not required for a wireless support structure collocation or eligible facilities requests of wireless support structures if the work does not constitute a substantial modification of a wireless support structure.

14.8.2. A certification that the applicant is in compliance with all relevant FCC Code of Federal Regulations pertaining to type of service offered during the term of the collocation permit.

14.8.3. An applicant who holds an antenna collocation permit for wireless support structure shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless support structure in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or federal government, including, but not limited to, the most recent editions of the National Electrical Safety Code and the National Electrical Code, the EIA/TIA-222 G as amended, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In

the event of a conflict between or among any of the preceding codes the more stringent code shall apply.

14.8.4. A collocation or eligible facilities request application is deemed complete unless the Town provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A Town may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state, and local safety requirements. A Town may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

14.8.5. The Town shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the Town shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

14.8.6. The Town requires a fee not to exceed \$1,000 for technical consultation and the review of a collocation or eligible facilities request application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. The Town may engage a third-party consultant for technical consultation and the review of a collocation or eligible facilities request application. The fee imposed by a Town for the review of the application may not be used for either of the following:

(a) Travel expenses incurred in a third party's review of a collocation application.

(b) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

Statutory Reference – N.C.G.S. § 160D-934(b)

14.9. COLLOCATION OF SMALL WIRELESS FACILITIES

14.9.1. Except as expressly provided in this Article, the Town shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

14.9.2. The Town may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

14.9.3. Small wireless facilities that meet the height requirements of G.S. 160D-936(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city rights-of-way on property other than single-family residential property.

14.9.4. The Town requires the applicant to obtain a permit to collocate a small wireless facility. The Town shall receive applications for, process, and issue such permits subject to the following requirements:

- (a) The Town may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.
- (b) The wireless provider shall complete an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.
- (c) A zoning permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- (d) The zoning permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.

14.9.5. Denial of Application.

- (a) The Town may deny an application only on the basis that it does not meet any of the following:
 - (i) the city's applicable codes,
 - (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment,
 - (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way, or
 - (iv) the historic preservation requirements in G.S. 160D-936(i).
- (b) The Town must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee.

- (c) The Town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- 14.9.6. An application shall include an attestation that the small wireless facilities must be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities must be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- 14.9.7. An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of the Town shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The Town may issue a separate permit for each collocation that is approved.
- 14.9.8. The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- 14.9.9. Subject to the limitations provided in G.S. 160A-296(a)(6), the Town may charge an application fee that shall not exceed the lesser of:
- (a) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities,
 - (b) the amount charged by the city for permitting of any similar activity, or
 - (c) one hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.
- 14.9.10. Subject to the limitations provided in G.S. 160A-296(a)(6), the Town may impose a technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The Town may engage an outside consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:
- (a) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.

- (b) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement. In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

14.9.11. The Town may require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

14.9.12. The Town shall not require an application or permit or charge fees for:

- (a) routine maintenance,
- (b) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller, or
- (c) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

14.9.13. Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

Statutory Reference – N.C.G.S. § 160D-935

14.10 WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES IN EXISTENCE ON THE DATE OF ADOPTION OF THIS ORDINANCE.

Wireless facilities and wireless support structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

14.11. RESERVED

PART II. ADMINISTRATION

14.12. TOWERS ALLOWED BY ADMINISTRATIVE REVIEW

14.12.1. The following Wireless Communication Facilities may be allowed within Fairmont on an emergency basis by Administrative Review only:

- (a) **Temporary Wireless Communications Facilities.** Temporary wireless communications facilities may be permitted by administrative approval for a term not to exceed 90 days. Once granted, a temporary wireless communications facility permit may be extended for an additional 90 days upon evidence of need by the applicant. In case of emergency (i.e., storm damage to an existing tower or other circumstances resulting in the interruption of existing service) the administrative review shall be expedited to the extent feasible.

14.13. SHARED FACILITIES AND COLOCATION POLICY

14.13.1. All new wireless communication facilities shall be engineered, designed and constructed to be capable of sharing the facility with other applicants, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities.

14.14. REMOVAL OF ABANDONED SUPPORT STRUCTURES

14.14.1. Under the following circumstances, the board or Zoning Enforcement Officer may determine that the health, safety, and welfare interests of the Town warrant and require the removal of wireless facility and/or wireless support structures:

- (a) A wireless facility and/or wireless support structures with a permit have been abandoned (i.e., not used as a wireless facility and/or wireless support structure) for a period exceeding 90 days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
- (b) Permitted wireless facility and/or wireless support structures fall into such a state of disrepair that it creates a public health or safety hazard;
- (c) A wireless facility and/or wireless support structures that have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required major special use permit or antenna collocation permit, or any other necessary authorization.

- 14.4.2. If the board or ordinance administrator makes such a determination as noted in *Section 14.4.1*, the board or Zoning Enforcement Officer shall notify the holder of the special use permit or antenna collocation permit for the wireless facility and/or wireless support structure within 48 hours that said wireless facility and/or wireless support structure are to be removed, the board or Zoning Enforcement Officer may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless facility and/or wireless support structure.
- 14.4.3. The holder of the major special use permit or antenna collocation permit, or its successors or assigns, shall dismantle and remove such wireless facility and/or wireless support structure, and all associated structures and facilities, from the site and restore the site as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the board or ordinance administrator. However, if the owner of the property upon which the wireless facility and/or wireless support structure are located wishes to retain any access roadway to the wireless facility and/or wireless support structure, the owner may do so with the approval of the board.
- 14.4.4. If the wireless facility and/or wireless support structure are not removed or substantial progress has not been made to remove the wireless facility and/or wireless support structure within 90 days after the permit holder has received notice, then the board or Zoning Enforcement Officer may order officials or representatives of the Town to remove the wireless facility and/or wireless support structure at the sole expense of the owner or major special use permit or antenna collocation permit holder.
- 14.4.5. If the Town removes, or causes to be removed, wireless facility and/or wireless support structure, and the owner of the wireless facility and/or wireless support structure does not claim and remove it from the site to a lawful location within ten days, then the Town may take steps to declare the wireless facility and/or wireless support structure abandoned, and sell them and their components.
- 14.4.6. Notwithstanding anything in this section to the contrary, the board or ordinance administrator in the case of an antenna collocation permit may approve a temporary use permit/agreement for the wireless facility and/or wireless support structure, for no more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless facility and/or wireless support structure shall be developed by the holder of the major special use permit or antenna collocation permit, subject to the approval of the board or ordinance administrator in the case of an antenna collocation permit, and an agreement to such plan shall be executed by the holder of the major special use permit or antenna collocation permit and the Town. If such a plan is not developed, approved and executed within the 90-day time-period, then the Town may take possession of and dispose of the affected wireless facility and/or wireless support structure in the manner provided in this section.

14.15. NONCONFORMING WIRELESS COMMUNICATION FACILITIES

- 14.15.1. Wireless communication facilities in existence on the date of the adoption of the ordinance from which this article is derived which do not comply with the requirements of this article (nonconforming wireless communications facilities) are subject to the following provisions:

- (a) Expansion. Nonconforming wireless communication facilities may continue in use for the purpose now used, but may not be expanded without complying with this article except as further provided in this section.
- (b) Additions. Nonconforming wireless communications facilities may add additional antennas (belonging to the same provider or other providers) subject to administrative review under this article.
- (c) Repairs or reconstruction. Nonconforming wireless communications facilities which become damaged due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions subject to the provisions of this article. Provided, however, that if the damage to the wireless communication facility exceeds 50 percent of replacement cost, said wireless communication facility may only be reconstructed or repaired in compliance with this article.

14.15.2. Any nonconforming wireless communications facility not in use for six months shall be deemed abandoned and all rights as a nonconforming use shall cease.

14.16. REVOCATION OF TOWER AND ANTENNA USE APPLICATIONS

14.16.1. The approval of any tower and antenna use application issued pursuant to this article may be revoked.

- (a) If the approval results from a Special Use Permit process, consult Section 6.3 for the process of revocation.
- (b) If the approval results from a Zoning Permit process, consult Section 5.15 for the process of revocation.

14.17. CIVIL PENALTY

14.17.1. Civil penalties may be applied to wireless communications facilities, as may be needed.

14.18. ANNUAL REVIEW

14.18.1. Wireless Communication Facilities with an approved Special Use Permit shall report annually to the Town on operations to certify that the facility is still in use. Such communication shall be in the form of a letter from the Owner of the facility and directed to the Zoning Enforcement Officer.

14.19. FEES

14.19 1. The Board of Commissioners shall establish fees for all permits related to telecommunications towers and facilities. The Board may set a technical consultation fee to offset the actual, direct and reasonable administrative costs incurred for review, processing, and approval of a collocation application. The Town may also engage and compensate a third-party consultant for technical

consultation and the review of a collocation application.