



DATE: July 17, 2018

CASE #: TA-06-18

DESCRIPTION: Text Amendments to Articles 8 and 14 of the Concord Development Ordinance

PREPARED BY: Scott Sherrill | Senior Planner

SUMMARY

In response to changes in federal and state legislation in 2013 and 2017, these amendments incorporate a new framework for the review of wireless telecommunications facilities as well as a few proposed policy changes.

New Types of Review

Among the 2013 legislative changes was the establishment of different types of requests:

- Eligible facilities requests
- Substantial Modifications
- Collocations (which includes eligible facilities requests and substantial modifications)
- New wireless communications support structures

The 2017 legislative changes created another type of request:

- Small wireless facilities

The 2017 legislative changes also impose certain requirements with respect to receiving and responding to applications for small cell wireless permits, and imposed time restrictions (commonly referred to as “shot clocks”) on replying to applications for small cell wireless facilities. City Staff is working to develop procedures to comply with these requirements.

The proposed amendments establish administrative review requirements for eligible facilities requests, substantial modifications, and small wireless facilities, but require a special use permit for new non-qualifying wireless communications support structures (towers). Chapter 14 amendments incorporate the appropriate definitions. Assistant City Attorney Fred Johnson will be available to answer any questions about legal requirements.

Policy Changes

The drafted ordinance also contains a few policy changes:

- Requiring a fall zone for freestanding Wireless Communications Facilities of 1.5 times the height of the tower.

- Additional engineering information required
- Special use permit required for all new freestanding wireless support structures. Concealed structures were previously subject only to administrative review.
- New exemptions: routine maintenance, public safety facilities, amateur radio operators.
- Small wireless facilities handled in a new Section 8.9.

**AN ORDINANCE AMENDING ARTICLE OF THE CONCORD DEVELOPMENT
ORDINANCE, ENTITLED "USE REGULATIONS" AND ARTICLE 14 OF THE CONCORD
DEVELOPMENT ORDINANCE, ENTITLED "DEFINITIONS"**

WHEREAS, the City Council of the City of Concord, North Carolina, has adopted the Concord Development Ordinance (the "CDO");

WHEREAS, on July 17, 2018, the City of Concord's Planning and Zoning Commission reviewed changes to CDO Article 8 and Article 14, relating to wireless communication facilities and small cell wireless facilities, and made comments and recommendations.

WHEREAS, the City Council now wishes to amend Article 8 of CDO by (1) revising and restating Section 8.7; and (2) creating a new Section 8.9; and

WHEREAS, the City Council now wishes to amend Article 14 by adding certain definitions.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Concord, North Carolina, after due consideration and in the best interests of its citizens and property of Concord, that the following be adopted:

Section 1. That Article 8, Section 8.7 of the CDO be repealed and replaced, in its entirety, with the attached Article 8, Section 8.7.

Section 2. That a new Section 8.9 be added to Article 8 of the CDO as set forth in the attached Article 8, Section 8.9.

Section 3. That the following definitions be added to Article 14:

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

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.

CITY RIGHT-OF-WAY – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

CITY UTILITY POLE – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

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, city utility poles, water towers, buildings, or 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, city 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), or 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.

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.

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.

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.

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. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. 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. 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.

UTILITY POLE – A structure that is designed for and used to carry lines, cables, or 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 city 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 city utility pole is not a wireless support structure.

Adopted this [day] day of [month], 20[xx];

CITY COUNCIL
CITY OF CONCORD
NORTH CAROLINA

William Dusch, Mayor

ATTEST: _____

Kim J. Deason, City Clerk

ATTACHMENT A

TEXT OF ARTICLE 8, SECTIONS 8.7 AND 8.9

8.7 Wireless Communications Facilities Generally

8.7.1 Purpose and Applicability

A. ~~—This Section 8.7 applies to all telecommunications facilities except as specifically noted otherwise. Special procedures for qualifying small wireless facilities, qualifying utility poles, and qualifying city utility poles are addressed separately in Section 8.9.~~

~~A.B.~~ The purpose of this section is to:

1. ~~A.~~—Minimize the impacts of wireless communication facilities (WCFs) on surrounding areas by establishing standards for location, structural integrity and compatibility;
2. ~~B.~~—Encourage the location and collocation of wireless communication equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, effects upon the natural environment and wildlife, and to reduce the need for additional antenna-supporting structures;
3. ~~C.~~—Encourage coordination between suppliers of wireless communication services in the City of Concord;
4. ~~D.~~—Respond to the policies embodied in the Telecommunications Act of 1996 ~~in such a manner as not to unreasonably discriminate between providers and section 6409 of functionally equivalent personal wireless service or to prohibit or have the effect~~ Middle Class Tax Relief and Job Creation Act of prohibiting personal wireless service in 2012, 47 U.S.C. § 1455(a) and in accordance with the City rules promulgated by the Federal Communications Commission;
5. ~~E.~~—Protect the unique natural beauty and rural character of the City while meeting the needs of its citizens to enjoy the benefits of wireless communications services; and
6. ~~F.~~—Encourage the use of public lands, buildings and structures as locations for wireless telecommunications infrastructure as a method to establish a precedence of quality concealment products that will minimize the aesthetic impact of related infrastructure while generating revenue for the City.

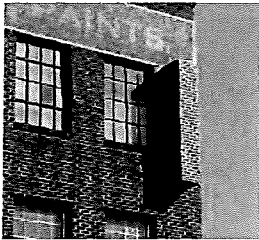


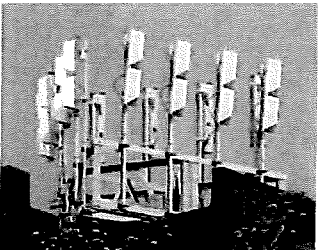
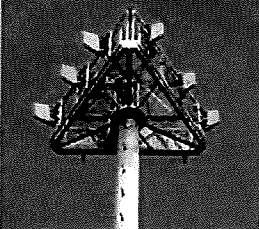
C. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of telecommunications facilities on privately-owned utility poles or wireless support structures, or on private property, without the

consent of the property owner or any person who has an interest in the property

8.7.2 SITING

WCFs and associated equipment shall be permitted in accordance with the use table in Section 8.2 subject to the following:

A. —Siting of a non-qualifying WCF shall be in accordance with the following siting alternatives hierarchy:

| Priority | Facility/ Structure Type | Location | Example |
|---|---|--|---|
| Ideal ↑ ↓ Less Desired | Concealed Attached Wireless Communication Facility | City or County Owned Site |  |
| | | Other Publicly Owned Site | |
| | | Non-Publicly Owned Site | |
| | Collocation or Combining on Existing Antenna Supporting Structure | City or County Owned Site |  |
| Other Publicly Owned Site | | | |
| Non-Publicly Owned Site | | | |
| Freestanding Concealed or Nonconcealed Attached WCF | City or County Owned Site |  or  | |
| | Other Publicly Owned Site | | |
| | Non-Publicly Owned Site | | |
| Freestanding WCF | City or County Owned Site |  | |

B. — In determining the order of ranking preference, the facility/structure type shall be evaluated first, and only after the facility/structure type has been identified shall the location be evaluated. Where a lower ranked alternative is proposed, the applicant must file relevant information as indicated below,

including, but not limited to an affidavit by a radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy within the Geographic Search Area, as determined by a qualified radio frequency engineer, higher ranked options are not technically feasible, practical, or justified given the location of the proposed WCF and the existing land uses of the subject property and surrounding properties within 300 feet of the subject property.

- C. — In all residential districts, non-qualifying WCFs shall only be permitted on parcels with a minimum lot size of five acres.
- D. — Nonconcealed attached non-qualifying WCFs shall only be allowed on communication transmission towers—and light stanchions, buildings, water towers, subject to approval of the Administrator.
- ~~E.~~ ~~WCFs~~E. In addition to locations authorized for non-concealed, attached WCFs in subsection D., concealed, attached WCFs shall be allowed on communication transmission towers, buildings, water towers, utility poles in city right-of-way (but only as permitted by city policy), city utility poles (but only as permitted by city policy), and light stanchions, subject to approval of the Administrator and in compliance with applicable this section and section 8.9.
- F. WCFs, wireless support structures, and associated equipment shall be constructed and maintained in conformance with all applicable building code requirements.
- ~~F.~~ ~~G.~~ WCFs and associated equipment shall not interfere with normal radio and television reception in the vicinity.
- ~~G.~~ ~~H.~~ Lighting shall not exceed the FAA minimum standard. Any lighting required by the FAA shall be of the minimum intensity and the number of flashes per minute (i.e., the longest duration between flashes) allowed by the FAA. Dual lighting standards shall be required and strobe lighting standards prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements.
- ~~H.~~ ~~I.~~ Commercial messages shall not be displayed on any WCF.
- ~~I.~~ ~~J.~~ The WCF equipment compound shall not be used for the storage of any excess equipment or hazardous materials, nor be used as habitable space. No outdoor storage yards shall be allowed in a WCF equipment compound.
- K. The WCF shall cause no signal or frequency interference with public safety facilities, traffic control devices, electric communication infrastructure, or water communication infrastructure and shall not

physically interfere with other attachments that may be located on the existing pole or structure.

- L. No WCF shall obstruct pedestrians or vehicular or bicycle access, obstruct sight lines or visibility for traffic, traffic signage, or signals; or interfere with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference

Qualifying WCFs shall not be required to meet the siting requirements listed in subparts A. through D..

8.7.3 DIMENSIONS

When permitted, a WCF shall conform to the following dimensional requirements:

A.—_Heights

- 1.—___ Attached WCF: The top of the WCF shall not be more than 20 feet above the building.
- 2.—___ Freestanding Concealed or Nonconcealed WCF: In all residential zoning districts, the maximum height shall be limited to 25 feet above the allowable building height of the underlying zoning district. In all nonresidential districts the maximum height shall be 199 feet. This measure shall include the foundation of the WCF, but exclude lightning rods for the dissipation of lightning or lights required by the FAA that do not provide support for any antennae.
- 3.—___ Mitigation of an existing WCF: The maximum height of a new WCF arising from mitigation shall not exceed 115% of the height of the tallest WCF that is being mitigated, to a maximum height of 199 feet.
4. Regardless of whether the facility is a qualifying WCF or a non-qualifying WCF, in no instance in an area zoned single family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed forty (40) feet above ground level, unless the city grants a mitigation waiver or a variance approving a taller utility pole, city utility pole, or wireless support structure. For the purposes of this subsection, single family residential shall mean properties with the following zoning designation, unless otherwise defined by law: RE, RL, RM-1, RM-2, RV, or RC.

B. Setbacks

- 1.—___ Attached WCF: The building or structure to which the WCF will be attached shall maintain the normal setbacks of the

district. The attached, WCF may encroach into the setback not more than 5 feet.

~~2. Freestanding Concealed WCF: In all districts, setbacks for WCFs shall be subject to the underlying zoning district. In residential districts, the WCF also shall not be any closer to an adjoining property line than the proposed facility is to the dwelling unit on the property on which it is proposed to be located.~~

~~3. Freestanding Nonconcealed.~~

2. Freestanding WCF: Setbacks for WCFs shall be determined according to the underlying zoning district, plus an additional ~~six~~eighteen inches for every one-foot of tower height. The approving authority may grant reductions to this setback requirement as a part of the special use permit approval. Qualifying freestanding WCFs shall be exempt from this provision.

~~4.~~ 3. Mitigation of an existing WCF: A new WCF approved as mitigation shall not be required to meet setback requirements so long as the new WCF is no closer to any property lines or dwelling units as the WCF being mitigated.

C. Buffers

1.-A landscaped buffer shall surround the base of the WCF equipment compound. Existing trees and shrubs on the site should be preserved and may be used in lieu of required landscaping where approved by the Administrator. Grading shall be minimized and limited only to the area necessary for the new WCF.

2.-If the proposed WCF is the principal use of the property then landscaping per Article 11, Landscaping and Buffering, shall be applicable. Additionally a buffer equivalent to that required for an Industrial use adjoining a Residential use shall be provided around the WCF equipment compound.

3.-If the proposed WCF is to be located in front of an existing structure on the same zone lot, a street buffer shall also be required.

~~4.~~ 4. In addition to the required landscape buffer, on sites in residential districts adjoining public rights-of-way an opaque fence shall surround the WCF equipment compound.

D. -Aesthetics

1.-Concealed attached WCFs, including feed lines and antennae, shall be designed so as to be compatible with the façade, roof,

wall or structure on which it is affixing so that it matches the existing structural design, color and texture.

- 2.-Freestanding concealed WCFs shall be designed so as to be compatible with adjacent structures and landscapes to the extent feasible with specific design considerations as to height, scale, color and texture.
- 3.-Freestanding nonconcealed WCFs, including those used for mitigation, shall be limited to monopole type antenna support structures.

E. Collocation Capacity

New non-qualifying wireless support structures must provide for collocation capacity as set forth herein:

- Freestanding nonconcealed structures up to 120 feet in height shall accommodate at least two antenna arrays.
- Freestanding nonconcealed structures between 121 feet and 150 feet shall accommodate at least three antenna arrays.
- Freestanding nonconcealed structures between 151 feet and 199 feet shall be engineered and constructed to accommodate at least four antenna arrays.

8.7.4 APPLICATION REQUIREMENTS

In addition to all of the requirements of site plan and Special Use Permit review (if required), the following information must be supplied with the site plan and use permit (if required) application for WCFs:

- ~~A. Identification of the intended user(s) of the WCF.~~
- ~~B. A report of diligent efforts to locate based on the hierarchy established elsewhere in this Section.~~
- ~~C. Certification by a registered engineer or other qualified professional regarding service gaps or service expansions that are addressed by the proposed WCF ("the proposed service"), and accompanying maps and calculations.~~
- ~~D. Evidence that no existing wireless communications facility can accommodate the applicant's proposed facility; or that use of such existing facilities would prohibit personal wireless services in the area of the City to be served by the proposed antenna-supporting structure.~~
- ~~E. Evidence submitted to demonstrate that no existing wireless communications facility could accommodate the applicant's proposed facility may consist of any of the following:~~

- ~~1. No existing wireless communications facilities located within the Geographic Search Area meet the applicant's engineering requirements.~~
- ~~2. Existing wireless communications facilities are not of sufficient height to meet the applicant's engineering requirements, and cannot be increased in height.~~
- ~~3. Existing wireless communications facilities do not have sufficient structural strength to support the applicant's proposed wireless communications facilities and related equipment, and the existing facility cannot be structurally improved.~~
- ~~4. Other limiting factors that render existing wireless communications facilities unsuitable.~~

~~F. A report regarding the adequacy of alternative existing facilities or the mitigation of existing facilities to meet the applicant's need or the needs of the service providers desiring to locate on the proposed WCF, if the applicant is not a service provider, and the reasons these existing facilities cannot be used. Alternative existing facilities include all potentially useable utility distribution towers and other elevated structures within the proposed service area that would provide additional service to the users of the WCF. Documentation included in the report may include such things as calculations regarding coverage capability of supporting necessary equipment, or other relevant data; lease negotiations; or other information. Technical data included in such documentation shall be certified by a registered engineer or other qualified professional. The report shall include, in narrative form, the feasibility of any alternatives the applicant may have considered and their impact on adjacent properties, including, but not limited to:~~

~~A. 1. For an eligible facilities request:~~

- ~~1. Existing equipment on the wireless tower or base station~~
- ~~2. Proposed new equipment~~
- ~~3. Copy of lease agreement. Such submissions need not disclose financial lease terms.~~
- ~~4. Name and contact information for applicant as well as any contractors or consultants performing work on behalf of the applicant~~
- ~~5. Application fee~~

~~B. For a substantial modification or a new non-qualifying wireless support structure:~~

- ~~1. A complete site plan, certified by a professional engineer or other qualified professional, which demonstrates that the site and the wireless support structure complies as proposed with~~

the standards set forth in this Section 8.7. The site plan shall include:

- a. Height;
- b. ~~2.~~ Configuration;
- c. ~~3.~~ Location;
- d. ~~4.~~ Mass and scale;
- e. ~~5.~~ Materials and color;
- f. ~~6.~~ Illumination; and
- g. ~~7.~~ Information addressing the following items:
 - i. The extent of any commercial development within the Geographic Search Area search ring of the proposed facility
 - ii. The proximity of the antenna support structure to any residential dwellings;

• ~~The proximity of the antenna support structure to any residential dwellings;~~

~~ii.iii. The proximity of the antenna support structure to any public buildings or facilities; and~~

• ~~The existence of tall and like antenna support structures within the Geographic Search Area of the proposed structure.~~

~~iii.iv. Certification, certification by a registered engineer that the WCF facility has sufficient structural integrity to accommodate multiple users, and the number of additional users that can be accommodated on the proposed WCF. All freestanding nonconcealed WCFs shall be engineered and constructed to accommodate multiple users, as indicated below:~~

- ~~▪ Freestanding nonconcealed WCFs up to 120 feet in height shall accommodate at least two antenna arrays.~~
- ~~▪ Freestanding nonconcealed WCFs between 121 feet and 150 feet shall accommodate at least three antenna arrays.~~
- ~~▪ Freestanding nonconcealed WCFs between 151 feet and 199 feet shall be engineered and constructed to accommodate at least four antenna arrays.~~

2. Certification-Identification of the intended user(s);

3. Documentation from the FAA that the facility meets or exceeds applicable lighting is the minimum lighting required by the FAA;

2.4. Documentation that the power output levels do not exceed federally approved levels or American National Standards Institute (ANSI) standards as adopted by the FCC in order to protect the public from unnecessary exposure to electromagnetic radiation; for power density, whichever provides the stricter requirements.

~~• A statement that the proposed facility is the Least Visually Obtrusive, as defined in Art. 14, and that the proposed facility conforms with State of the Art, as defined in Art. 14, or alternatively, that State of the Art technology is unsuitable for the proposed facility. Costs of State of the Art technology that exceed customary facility development costs shall not be presumed to render the technology unsuitable.~~

5. A statement of the number of collocation sites and documentation regarding structural integrity

6. A copy of the lease agreement. Such submissions need not disclose financial lease terms.

7. Documentation consisting of a certificate of insurance showing evidence of general liability coverage of at least \$1,000,000 and the certificate shall contain a requirement that the insurance company notify the city 30 days prior to the cancellation, modification, or failure to renew the insurance coverage required.

8. Certification from a professional engineer that the structure has been designed to and will withstand 100 miles per hour wind velocity.

9. Relevant FCC licensing;

10. Name and contact information for applicant as well as any contractors or consultants performing work on behalf of the applicant

11. Application fee.

C. In addition to the requirements listed in subsection B. above, for a new non-qualifying wireless support structure:

1. A written report demonstrating applicants' meaningful efforts to secure shared use of existing wireless support structures. Copies of written requests and responses for shared use shall

be provided with the application, along with any letters of rejection stating the reasons for rejection. The applicant shall provide information necessary to determine whether collocation is reasonably feasible. Collocation is not reasonably feasible if it is technically or commercially impractical to locate on an existing wireless support structure or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value.

2. Seismic analysis of the tower, stamped and sealed by a professional engineer or other qualified professional.

3. Delineation of the fall zone for the structure;

4.4. Simulated photographic evidence of the proposed WCFs structure's appearance from all residential areas within 1,500 feet, and from other vantage points chosen by the City.city.

5. Supplemental information may be required by Section 8.7.4.B.

8.7.5 THIRD PARTY REVIEW

Where due to the complexity of the methodology or analysis required to review an application for a wireless communication facility, the Administrator may require the applicant to pay for a technical review by a third party expert, the costs of which shall be in addition to other applicable fees. Based on the results of the expert review, the approving authority may require changes to the applicant's application or submittals.

8.7.6 MITIGATION

To qualify as WCF mitigation, a proposal shall accomplish a minimum of one of the following:

A.—_Reduce the number of overall WCFs;

B.—_Reduce the number of nonconforming WCF types; or,

C.—_Replace an existing WCF with a new WCF to improve network functionality resulting in compliance with this section.

8.7.7 ———APPROVAL AUTHORITY

A.——_The Administrator shall be responsible for the approval of eligible facilities requests, substantial modifications, concealed attached WCFs, collocationcollocations or combining on existing antenna supporting structures, freestanding concealed WCFs, and nonconcealed attached WCFs, and mitigation of existing WCFs.

B.——_All nonconcealed-freestanding non-qualifying WCFs shall be subject to a special use permit. In addition to the requirements for

use permits, the approving authority, in determining whether a non-qualifying WCF is in harmony with the area or the effects and general compatibility of a non-qualifying WCF with adjacent properties may consider the aesthetic effects of the non-qualifying WCF as well as mitigating factors concerning aesthetics. The Planning and Zoning Commission may disapprove an application on the grounds that the non-qualifying WCFs aesthetic effects are unacceptable, or may condition approval on changes in non-qualifying WCF height, design, style, buffers, or other features of the non-qualifying WCF or its surrounding area. Such changes need not result in performance identical to that of the original application. Factors relevant to aesthetic effects are: the protection of the view in sensitive or particularly scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways and historic sites, the concentration of non-qualifying WCFs in the proposed area, and whether the height, design, placement or other characteristics of the proposed non-qualifying WCF could be modified to have a less intrusive visual impact. The approving authority, when considering a use permit for freestanding non-qualifying WCFs, shall not be required to make a determination of the electromagnetic field (EMF) effects of the non-qualifying WCF on the health of the public. The documentation required by this section that stipulates that the non-qualifying WCF not exceed the federal limits for power density requirements shall satisfy the applicant's compliance with this required finding. If the approving authority determines that the proposed additional service, coverage, or capacity to be achieved by the location of the proposed non-qualifying WCF can be achieved by use of one or more alternative non-qualifying WCF or by one or more non-qualifying WCFs sited in alternative locations that better serve the stated purposes set forth in this section, it may disapprove the proposed non-qualifying WCF application.

8.7.8 EXEMPTIONS

- A.—Satellite earth stations (satellite dishes).
- B.—Regular maintenance and/or upgrade of antenna elements of any existing wireless communications facility that does not include the addition of any new antenna elements, feed lines, and associated support equipment on the facility or the placement of any new wireless communications facility.
- C.—A government-owned wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City, except that such facility must comply with all federal and state requirements. No wireless communications facility shall be

exempt from the provisions of this division section beyond the duration of the state of emergency.

- D.—Antenna supporting structures, antennae and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the Federal Communications Commission.
- E. Routine maintenance of existing telecommunications facilities, including activities associated with regular and general upkeep of transmission equipment, and the replacement of existing telecommunications facilities with facilities of the same size
- F. Public safety facilities.

- H. Any telecommunications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
- I. Small wireless facilities that meet the height requirements of G.S. 160A-400.55(b)(2) unless they are collocated (i) in a city right-of-way within any zoning district or (ii) outside the city rights of way on property other than single family residential, except that the City reserves jurisdiction over access to city utility poles, city-owned electric poles, and other city-owned equipment pursuant to CDO Section 8.9.5.
- J. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities as defined in N.C.G.S. Chapter 160A, Part 3E, that are suspended on cables strung between existing utility poles or city utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the City rights-of-way and who is remitting taxes under G.S. 105-64.4(a)(4c) or (a)(6).
- K. Any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, to the extent consistent with applicable codes. This exemption does not apply to a stadium or athletic facility owned or otherwise controlled by the city.

8.7.9 INTERFERENCE WITH PUBLIC SAFETY COMMUNICATIONS

- A.—In order to facilitate the City's regulation, placement, and construction of WCFs and their interaction with the City's Public Safety Communications Equipment, all applicants requesting a

permit for a WCF under this section shall agree in a written statement, to the following:

- 1.— Compliance with Good Engineering Practices as defined by the FCC in its Rules and Regulations;
 - 2.— Compliance with FCC regulations regarding susceptibility to radio frequency interference (RFI), frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to RFI; and
 - 3.— In the case of co-location of telecommunications facilities, the applicant, together with the owner of the site, shall provide a composite analysis of all users of the site to determine that the applicant's proposed facilities will not cause RFI with the City's Public safety Communications Equipment, electric communication infrastructure, and water communication infrastructure.
- B.— When a specific base station is identified as causing RFI with the City's and the County's Public Safety Communications Equipment, electric communication infrastructure, or water communication infrastructure, the following steps shall be taken:
- 1.— Upon notification by the City and/or County of interference with Public Safety Communications equipment, electric communication infrastructure, or water communication infrastructure, the owners of the WCF equipment shall utilize the hierarchy and procedures set forth in the FCC's Wireless Telecommunications Bureau's Best Practices Guide. If the WCF owner fails to cooperate with the City in applying the procedures set forth in the Best Practices Guide in order to eliminate the interference, then the City may take steps to contact the FCC to eliminate the interference.
 - 2.— If there is a determination of RFI with the City's Public Safety Communications Equipment, electric communication infrastructure, or water communication infrastructure, the party which caused the interference shall be responsible for reimbursing the City for all costs associated with ascertaining and resolving the interference, including, but not limited to, any engineering studies obtained by the City and/or County to determine the source of the interference.

8.9. Special Regulations for Eligible Facilities Requests and Collocations Qualifying Wireless Communications Facilities; Access to City Right of Way; Access to City

Equipment

8.9.1 ELIGIBLE FACILITIES REQUESTS. Collocation and eligible facilities requests, as defined in G.S. 160A-400.51 or 47 U.S.C. 1455, shall be processed in accordance with G.S. 160A-400.52, 160A-400.53, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the City solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent City from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in CDO Section 8.7.

8.9.2. COLLOCATION OF QUALIFYING SMALL WIRELESS FACILITIES

- A.** A Qualifying Small Wireless Facility (or Qualifying WCF) shall mean, for the purposes of this section, a Small Wireless Facility, as defined in G.S. 160A-400.51, that meets the height requirements of 160A-400.55(b).
- B.** Qualifying Small Wireless Facilities are subject to administrative review if collocated (i) in a city right-of-way within any zoning district or (ii) outside the city rights of way on property other than single family residential. Qualifying Small Wireless Facilities are generally subject to the requirements of 8.7 and 8.7.4.
- C.** Qualifying Small Wireless Facilities shall only be subject to administrative review and shall not be subject to the Siting Requirements of 8.7.2 A. through D. Applications for Qualifying Small Wireless Facilities shall include an attestation that the small wireless facilities shall be collocated on the utility pole (but only if allowed by City policy), city utility pole (but only if allowed by City policy), or wireless support structure and that the small wireless facilities shall 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.
- D.** The City shall process Qualifying Small Wireless Facility applications in accordance with the time frames and requirements set forth in G.S. 160A-400.54(d).
- E.** 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.
- F.** Applications for Qualifying Small Wireless Facilities shall be subject to a fee as set forth in the City's Adopted Fees, Rates and Charges schedule, provided that such fee shall be in compliance with G.S. 160A-400.54(d). Applications may be subject to a technical consulting fee, provided that such fee shall be in compliance with G.S. 160A-400.54(f).
- G.** An abandoned small wireless facility shall be removed within 180 days of

abandonment.

8.9.3 Small Wireless Facilities Standards.

Small Wireless Facilities shall meet the following standards:

- A. To protect the unique aesthetics of the City, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the City prefers that small wireless facilities be located outside the public right-of-way; collocated on existing non-city utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.
- B. Small wireless facilities shall cause no signal or frequency interference with public safety facilities, traffic control devices, electric communication infrastructure, or water communication infrastructure, and shall not physically interfere with other attachments that may be located on the existing pole or structure.
- C. No portion of a small wireless facility, to include a utility pole or city utility pole associated with a small wireless facility (to the extent allowed under City policy), may be placed in the public right-of-way in a manner that:
 - a. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.
- D. An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment.
- E. Small wireless facilities located in designated historic districts or on property designated as a historic landmark shall be required to obtain a Certificate of Appropriateness.
- F. All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed. All radios, network equipment, and batteries will be enclosed in a pedestal cabinet near the pole, or in a pole-mounted cabinet, or under a pole-mounted shroud
- G. The top of a qualifying WCF shall not be more than 10 feet above the building, utility pole, city utility pole, or wireless support structure on which it is collocated.
- H. Utility poles and city utility poles associated with small wireless facilities: Each modified or replacement utility pole (to the extent allowed under City policy) or city utility pole (to the extent allowed under City policy) shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single-family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground, unless a variance is granted;

or fifty (50) feet above ground level on all other property.

I. Where a new pole must be installed to support a small wireless facility in a city right of way, these additional standards apply:

1. Wireless installations shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of ANSI 222 Version G and shall exceed current NESC clearance requirements from energized conductors. All installations on poles shall be in compliance with the City of Concord Technical Standards Manual.

2. Wireless installations shall be on non-conductive poles.

3. Cabinets should be consistent in size and no larger than standard DOT streetlight signal cabinets.

4. Any new poles installed shall be on an inert material, so as not to rust or corrode and not leach any compounds or toxic substances into the ground.

8.9.4. ACCESS TO CITY RIGHT OF WAY

A. Subject to GS 160A-400.54 and other applicable requirements, wireless providers may collocate small wireless facilities along, across, upon, or under any City right of way. Subject to GS 160A-400.55 and other applicable requirements, wireless providers may place, maintain, modify, operate, or replace associated utility poles (to the extent allowed under City policy), city utility poles (to the extent allowed under City policy), conduit, cable, or related appurtenances and facilities along, across, upon, and under any City right of way. The placement, maintenance, modification, operation, or replacement of utility poles (to the extent allowed under City policy) and city utility poles (to the extent allowed under City policy) associated with the collocation of Qualifying Small Wireless Facilities shall be subject to the review process outlined in Section 8.9.2 or 8.9.3 as applicable; however the City may require additional information to evaluate loading on city utility poles, evaluate the credentials of contractors working on city utility poles, and ensure that proposed replacement poles are consistent and compatible with other city utility poles in the area. If replacement of a city utility pole is necessary to accommodate a small wireless facility, all costs shall be borne by the applicant.

B. A Wireless Provider may apply to place utility poles in the City rights-of-way, or to replace or modify utility poles (to the extent allowed under City policy) or city utility poles (to the extent allowed under City policy) in the public rights-of-way, to support the collocation of small wireless facilities. Such applications shall be processed in accordance with Section 8.9.3. Proposals for new utility poles may also be evaluated for separation from existing poles in accordance with city policies and procedures.

C. The City of Concord is an excluded entity as defined under NCGS 160A-400-

56(i). Nothing in the section shall be construed to require that the City approve collocations on City-owned utility poles or City-owned electric poles, and such collocations shall not be permitted except in accordance with City code and policy including, without limitation, the City of Concord Technical Standards Manual.

- D. Applicants for access to City Rights of Way shall comply with policies and procedures for encroachments in City rights of way, including applicable undergrounding procedures.

8.9.5. ACCESS TO CITY UTILITY POLES, CITY-OWNED ELECTRIC POLES, AND OTHER CITY OWNED EQUIPMENT

- A. The City of Concord is an excluded entity as defined under NCGS 160A-400-56(i). Access (including replacements, modifications, and attachments) to City-owned utility poles, city-owned electric poles, or other city-owned equipment except in accordance with this Article, City code, City policy, and applicable safety requirements, including without limitation, the City of Concord Technical Standards Manual, is prohibited.

