

**AN ORDINANCE EXPRESSLY APPROVING A TEXT AMENDMENT
TO SECTION 400.400 OF THE ZONING CODE OF THE CITY OF TWIN
OAKS RELATING TO WIRELESS COMMUNICATIONS FACILITIES**

WHEREAS, the City of Twin Oaks, pursuant to Section 400.510 of the Twin Oaks City Code, has the authority to make amendments to the written text of its Zoning Regulations; and

WHEREAS, the Planning and Zoning Commission recommended approval of the proposed amendment of the Zoning Regulations on February 26, 2019 pertaining to Wireless Communications Facilities; and

WHEREAS, the Board of Aldermen, after careful and due deliberation, following a duly noticed public hearing held on March 20, 2019, has concluded that the adoption of the proposed amendment would be in the interests of health, safety and welfare of the citizens of the City;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF
THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

Section 1. Twin Oaks Zoning Regulations Section 400.400, “Telecommunications Towers,” is hereby amended by repealing that section in its entirety and adopting in its place a new Section 400.400 to read as follows:

Section 400.400 Telecommunication Towers.

A. Purpose. The purpose of this Section is to regulate the placement, construction, and Modification of Wireless Communications Facilities to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City. Specifically, this Section is intended to:

1. Provide for the appropriate location and development of Wireless Communications Facilities and systems to serve the citizens and businesses of the City;

2. Minimize adverse visual impacts of Wireless Communications Facilities through careful design, siting, landscape screening, and innovative camouflaging techniques that provide predictability for nearby property owners and others that future uses will not materially alter such approved aesthetic protections without zoning hearing procedures and input from interested parties to the extent possible;

3. Ensure that any new Wireless Communications Facilities are located in an area compatible with the neighborhood or surrounding community to the extent possible; and

4. Ensure that regulation of Wireless Communications Facilities do not have the effect of prohibiting the provision of personal wireless services, do not unreasonably discriminate among functionally equivalent providers of such service, and promotes the provision and availability of communication services within the City.

B. Legislative Findings and Applicability.

1. The Telecommunications Act of 1996, as amended, and the “Uniform Small Wireless Facility Deployment Act,” §§ 67.5110 to 67.5121 RSMo., preserves the authority of the City to regulate the placement, construction, and Modification of certain Wireless Communications Facilities and to protect the health, safety, and welfare of the public.

2. The City has been granted the authority to enact legislation to regulate the construction, placement, and operation of Wireless Communications Facilities pursuant to zoning powers established in Chapter 89, RSMo., as amended, and additionally pursuant to the general and specific police powers established by statute authorizing the regulations herein to protect the public health, safety, and welfare.

3. The FCC has exclusive jurisdiction over:

a. The regulation of the environmental effects of radio frequency emissions from telecommunication facilities, and

b. The regulation of radio signal interference among users of the radio frequency spectrum.

4. Consistent with the Telecommunications Act of 1996, the regulations of this Section will not have the effect of prohibiting the provision of personal wireless services and do not unreasonably discriminate among functionally equivalent providers of such service. The regulations also impose reasonable restrictions to protect the public safety and welfare and ensure opportunities for placement of Antenna with prompt approval by the City. This Section does not attempt to regulate in areas within the exclusive jurisdiction of the FCC.

5. Notwithstanding any ordinance to the contrary, the procedures set forth in this Section shall be applicable to all Wireless Communications Facilities existing or installed, built or modified after the effective date of this Section to the fullest extent permitted by law. No provision of this Section shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Section is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

C. Definitions. As used in this Section, the following terms shall have the meanings and usages indicated:

AGL (ABOVE GROUND LEVEL)

Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty (50) feet from the center location of measurement.

ANTENNA

Any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, texts, microwave, cellular telephone, and similar forms of communications. The term shall exclude satellite earth station antenna less than two (2) meters in diameter (mounted within twelve (12) feet of the ground or building-mounted) and any receive-only home television antenna.

CABINET

A structure for the protection and security of communications equipment associated with one (1) or more Antenna where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed four (4) feet by six (6) feet and height that does not exceed six (6) feet.

DIRECTOR

The Code Enforcement Official or his/her designee or official acting in such capacity.

DISGUISED SUPPORT STRUCTURE

Any freestanding, manmade structure designed for the support of Antenna, the presence of which is camouflaged or concealed as an appropriately-placed architectural or natural feature. Depending on the location and type of disguise used such concealment may require placement underground of the utilities leading to the Disguised Support Structure. Such Disguised Support Structures may include, but are not limited to, clock towers, campaniles, observation towers, light standards, flagpoles, and artificial trees. For purposes of this definition, a structure “camouflaged or concealed as an appropriately-placed and designed architectural or natural feature” shall mean:

- i. It is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located;
- ii. It does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate;
- iii. It cannot be identified as a Support Structure by persons with reasonable sensibilities and knowledge;

- iv. Its equipment, accessory buildings, or other aspects or attachments relating to the Disguised Support Structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated; and
- v. It is of a height, design, and type that would ordinarily occur at the location and neighborhood selected.

EXISTING STRUCTURE

Any structure capable of supporting Wireless Communications Facilities (other than a Support Structure) in full conformance with the design and other requirements of this Section and is: (1) existing prior to the date of all applicable permit applications seeking City authorization for installation of such facilities thereon and (2) not built or installed in anticipation of such specific installation or erected as a means to evade approvals applicable to a non-existing structure.

FAA

The Federal Aviation Administration.

“FAST-TRACK” SMALL WIRELESS FACILITY OR FAST-TRACK

A Small Wireless Facility that meets the following requirements for an Antenna and associated equipment:

- i. No more than seven cubic feet (7ft³) in volume (comprised of no more than twenty-seven square feet (27ft²) of exterior surface area, excluding the surface width equal to the width of the Existing Structure or Utility Pole to which it is mounted, on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches (4”) or less). Volume shall be the measure of the exterior displacement of the Antenna and associated equipment;
- ii. Located with the consent of the owner on an Existing Structure or Utility Pole, or concealed within or on a replacement Utility Pole if the appearance is not materially altered and the replacement Existing Structure or Utility Pole is no more than five feet (5’) taller;
- iii. Not exceeding six feet (6’) above the top of an Existing Structure or Utility Pole for a total height not exceeding forty-five feet (45’) (nor taller than more than six feet (6’) above the average of similar poles within three hundred feet (300’)).

FCC

The Federal Communications Commission.

INCIDENTAL USE

Any use authorized herein that exists in addition to the principal use of the property.

MODIFICATION

Any addition, deletion, or change, including the addition or replacement of Antenna, or any change to a Support Structure requiring a building permit or other governmental approval.

SHELTER

A building for the protection and security of communications equipment associated with one (1) or more Antenna and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected Antenna is prohibited.

SMALL WIRELESS FACILITY

An Antenna and associated equipment that meets the following:

- i. An Antenna of no more than six cubic feet (6ft³) in volume; and
- ii. All other associated equipment, to the extent permitted by applicable law to be calculated, of cumulatively no more than twenty-eight cubic feet (28ft³) in volume; provided that no single piece of equipment on the Utility Pole shall exceed nine cubic feet (9ft³) in volume, and no single piece of ground mounted equipment shall exceed fifteen cubic feet (15ft³) in volume.

SUPPORT STRUCTURE

A Tower or Disguised Support Structure.

TOWER

A structure designed for the support of one (1) or more Antenna and including guyed towers, self-supporting (lattice) towers or monopoles but not Disguised Support Structures, Utility Poles, or buildings. The term shall also not include any Support Structure including attachments of sixty-five (65) feet or less in height owned and operated solely for use by an amateur radio operator licensed by the FCC.

UTILITY POLE

A pole that is or may be used for wireline communications, lighting, traffic control, signage, or a similar function, which may also support a Small Wireless Facility or Fast-Track.

WIRELESS COMMUNICATIONS FACILITY

Any Antenna, Small Wireless Facility, Fast-Track, Cabinet, Shelter, and Support Structure, and associated equipment.

D. Application Procedures; Timing.

1. Applications. Applications for permitted, administrative, or conditional uses pursuant to this Section shall be subject to the supplementary procedures in this Section. Applications shall be submitted to the City as a complete application on forms provided by the City. A “complete application” shall be an application submitted on the forms provided by the City, fully executed by the applicant, identifying the specific approval sought, and containing all attachments, fees as may be established to reimburse the City for its inspection and review costs, and information as required thereon or by the City, consistent with this Section. Applications shall be accompanied by a building permit application and other applicable forms.

2. Proof of Owner Consent. Applications for permitted, administrative, or conditional uses pursuant to this Section shall be required to provide proof of owner consent, which shall minimally include:

- a. Written consent to pursue the application by all fee simple owners of the underlying real estate (or where located in street right-of-way, the right-of-way owner thereof), including when the proposed location is also in a utility easement; and
- b. Written consent to pursue the application of the owner of the structure on which such Facility is to be placed, if different than applicant.

3. Timing. Applications shall be decided upon within a reasonable time, subject further to state or federal specific additional time requirements as may apply to the particular application.

E. General Requirements. The requirements set forth in this Section shall be applicable to all Wireless Communications Facilities installed, built, or modified after the effective date of this Section to the full extent permitted by law. Such zoning review and approvals required in this Section shall be in addition to any other generally applicable permitting requirement, including applicable building, excavation, or other right-of-way permits

1. Permitted or Incidental Use. Towers may be either a principal or incidental use in all non-residential zoning districts, subject to any applicable requirement herein and relating to yard or setback. An Incidental Use subject to a leasehold interest of a person other than the lot owner may be approved for a Tower only if the leasehold area separately meets all requirements for a separate subdivided lot, including dedicated access, parking,

setbacks, and lot size, applicable to a primary use in the district in which the use is proposed as if it was a separate subdivided lot. No other district shall allow Towers unless required by law. All other wireless facilities other than Towers, may be a principal or Incidental Use in all districts subject to the requirements herein.

2. Building Codes, Safety Standards, And Zoning Compliance. Wireless Communications Facilities shall be constructed and maintained in compliance with all standards contained in applicable state and local building codes. A certified engineer's structural report shall be required for all applications to construct a new or modify, or any way alter, a Support Structure, a Utility Pole, or Antenna, including Small Wireless Facility and Fast-Track, unless waived upon application to the Director stating why such report is unnecessary to the specific application and a determination in the discretion of the Director approving such statement. In addition to any other approvals required by this Section, no Wireless Communications Facility or portion thereof shall be erected, replaced, or expanded prior to receipt of a Certificate of Zoning Compliance, unless otherwise required by law, and the issuance of a Building Permit. For sites within the right-of-way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map; (2) Wireless Communications Facilities shall be installed and maintained as not to obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of such right-of-way by authorities or authorized right-of-way users; and (3) such use shall be required to obtain applicable permits and comply with the City's ROW management rules and regulations set forth in Chapter 515.

3. Regulatory Compliance. All Wireless Communications Facilities shall meet or exceed current standards and regulations of the FAA, FCC, and any other local, state, or federal agency with the authority to regulate such Wireless Communications Facilities. Should such standards or regulations be amended, then the owner shall bring such devices and structures into compliance with the revised standards or regulations within the time period mandated by the controlling agency. No approval for any placement, construction, or Modification of any Wireless Communications Facilities permitted by this Section shall be granted for any applicant having an uncured violation of this Section any zoning regulation regarding the lot on which the structure is proposed, or any other governmental regulatory requirement related to such Antenna or Support Structures within the City unless preempted by applicable law.

4. Security. All Wireless Communications Facilities shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build, or modify a Wireless Communications Facilities. Additional measures may be required as a condition of the issuance of a building permit or as deemed necessary by the Board of Aldermen in the case of conditional use permit or development plan process approvals.

5. Lighting. Antenna, Small Wireless Facilities, Fast-Track, and Support Structures shall not be lighted unless required by the FAA or other state or federal agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application to install, build, or modify the Antenna, Small Wireless Facilities, Fast-Track, or Support Structure. Equipment Cabinets and Shelters may have lighting only as approved by the Board of Aldermen as part of conditional use permit approval or development plan process approval as applicable.

6. Advertising. Except for a Disguised Support Structure in the form of an otherwise lawfully permitted sign, the placement of signage and advertising on structures regulated by this Section is prohibited other than required safety signage.

7. Design.

a. Color. Subject to the requirements of the FAA or any applicable state or federal agency, Wireless Communications Facilities and attachments shall be painted a neutral color consistent with the natural or built environment of the site or an alternative painting scheme approved by the Director, or the Board of Aldermen in the case of conditional use permits, consistent with the requirements of this Section. Unpainted galvanized steel Support Structures are not permitted.

b. Ground Equipment. When authorized, equipment Shelters or Cabinets shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located. All equipment shall be either placed underground, contained in a single Shelter or Cabinet, or wholly concealed within a building or approved walled compound.

c. Antenna Design. Antenna attached to a Disguised Support Structure or Tower shall be contained within the Disguised Support Structure or within or mounted flush on the surface of the Tower to which they are mounted. Antenna attached to an existing building, Utility Pole, or structure shall be of a color identical to or closely compatible with the surface to which they are mounted. Antenna on the rooftop or attached to a building shall be screened or constructed and/or colored to match the structure to which they are attached. All Antenna shall be designed disguised or, if otherwise permitted, maximally concealed on or within the Support Structure. Unless demonstrated to be technologically unfeasible, exposed or separated Antenna on "crows' nest" platforms are prohibited.

d. Height. Support Structures and Antenna shall be no taller than necessary and shall not exceed the height limitation of any airport overlay zone as may be adopted by the City or other regulatory agency. Support Structures and Antenna may exceed underlying zoning district height restrictions for buildings and structures only where shown to be necessary, provided that no reasonable

alternative exists. To the extent permitted by applicable law, district height restrictions shall be considered by the City in determining the appropriateness of the design and location of the application under the applicable standards for approval. No Support Structure or Antenna shall be approved at a height exceeding one hundred twenty (120) feet AGL unless the applicant clearly demonstrates that such height is required for the proper function of the applicant's system.

e. Monopole Design. All Towers shall be of a monopole design. Lattice, guyed Towers, or other non-monopole Tower designs shall not be permitted.

f. Compound Walls/Landscaping. All Towers shall be surrounded by a minimum six-foot high decorative wall constructed of brick, stone, or comparable masonry materials and a landscaped buffer strip of not less than ten (10) feet in width and planted with materials which will provide a visual barrier to a minimum height of six (6) feet. The buffer strip shall be exterior to any security wall. In lieu of the required wall and buffer strip, an alternative means of screening may be approved by the Board of Aldermen as part of conditional use permit approval or development plan process approval, but only upon demonstration by the applicant that an equivalent degree of visual screening will be achieved. Landscaping or other improvements may be required for Disguised Support Structures if needed to implement an approved disguise.

g. Setbacks. All Support Structures, including any portions of any Wireless Communications Facilities thereon and associated structures, fences, and walls (except for parking associated with the Wireless Communications Facility) shall be separated from any right-of-way, sidewalk or street, alley, parking area, playground, or other building, and from the property line of any adjacent property at least a horizontal distance equal to the height of the Support Structure, including any portions of any Wireless Communications Facilities thereon. .

h. Storage. Vehicle or outdoor storage on any Wireless Communications Facilities site is prohibited, unless otherwise permitted by the zoning district.

i. Parking. On-site parking for periodic maintenance and service shall be provided at all Support Structure locations consistent with the requirements of Section **400.400**.

j. Decorative Poles. In districts where there are Utility Poles which were specifically designed for their aesthetic nature and compatibility with the built environment of that district, as determined by the City, such Utility Poles shall be deemed to be decorative Utility Poles. Such decorative Utility Poles, when authorized to be replaced by an applicant for Wireless Communications Facilities

pursuant to applicable law and in compliance with this Section and Code, shall only be replaced with a substantially similar decorative Utility Pole which matches the aesthetics and decorative elements of the original decorative Utility Pole being replaced. Such replacement expenses shall be bore wholly by the applicant seeking to place Wireless Communications Facilities on such decorative Utility Pole.

8. Public Property. Wireless Communications Facilities located on property owned, leased, or otherwise controlled by the City shall be subject to the requirements of this Section. A license or lease with the City authorizing the location of such Wireless Communications Facilities shall be required for each site.

9. As-Built Plans. Within sixty (60) days of completion of the initial construction and any additional construction, two (2) complete sets of plans drawn to scale and certified as accurately depicting the location of all Wireless Communications Facilities constructed shall be furnished to the City.

10. Historic Preservation; 30-Day Hearing Period. To the extent permitted by law, approval shall not be issued for any Wireless Communications Facility that the Director or Board of Aldermen determines would create a significant negative visual impact or otherwise have a significant negative impact on the historical character and quality of any property within a Historic Preservation District or such District as a whole. For collocation of any certified historic structure as defined in Section 253.545 RSMo., in addition to all other applicable time requirements, there shall be a thirty-day (30) time period before approval of an application during which one or more public hearings on collocation to a certified historic structure are held. The City may require reasonable, technically feasible and technological neutral deign and concealment measures as a condition of approval of a Wireless Communications Facility within a historic district.

F. Administration. The Director shall have the authority to establish forms and procedures consistent with this Section and applicable federal, state, and local law to ensure compliance and to facilitate prompt review and administration of applications.

G. Permitted Use.

1. Uses. The placement of Wireless Communications Facilities fully conforming with the General Requirements in this Section are permitted in all zoning districts only as follows:

a. Collocations on Existing Support Structures. The attachment of additional or replacement complying Antenna or Shelters to any Tower existing on the effective date of this Section or subsequently approved in accordance with this Section, or as otherwise authorized by state or federal law where local zoning is preempted, provided that building permit requirements, national safety codes, and other applicable codes including recognized accepted industry standards for

structural, safety, capacity, reliability, and engineering are satisfied, including specifically the requirement to submit a certified structural engineering report as provided in Section E.

b. Antenna on Existing Buildings/Structures. In all districts, except not on single-family residential or two-family dwellings, the mounting of Antenna on any existing building or structure (other than a Support Structure or Utility Pole) provided that the presence of the Antenna and equipment is concealed by architectural elements or fully camouflaged by painting a color identical surface to which the Antenna are attached and further provided that all requirements of this Section and the underlying zoning ordinance are met.

c. Antenna on High-Voltage Towers. The mounting of Antenna on or within any existing high-voltage electric transmission Tower, but not exceeding the height of such Tower by more than ten (10) feet provided that all requirements of this Section and the underlying zoning ordinance are met.

d. New, replacement, And Modified Utility Poles. New, replacement, or modified Utility Poles, at heights below the height limitations outlined in this Subdivision, and collocation of Small Wireless Facilities on the same shall be a permitted use in all districts except single-family residential and historic districts provided the proposed installation does not:

- i. Materially interfere with the safe operation of traffic and control equipment or City-owned communications equipment;
- ii. Materially interfere with compliance with the American Disabilities Act, or similar federal or state standards regarding pedestrian access or movement;
- iii. Materially obstruct or hinder the usual travel or public safety on the rights-of-way;
- iv. Materially obstruct the legal use of the rights-of-way by the City, utility, or other third-party;
- v. Fail to comply with the spacing requirements within Section 515.090;
- vi. Fail to comply with applicable national safety codes, including recognized engineering standards for Utility Poles or Support Structures;
- vii. Fail to comply with the decorative pole replacement requirements herein;

- viii. Fail to comply with undergrounding requirements within Section 515.090; or
- ix. Interfere or impair the operation of existing utility facilities, or City or third-party attachments.

New, replacement, or Modification of Utility Poles under the following circumstances shall not be considered a permitted use under this Section:

- (1) Proposals to construct or modify a Utility Pole which exceeds the greater of:
 - i. Fifty feet (50') AGL; or
 - ii. More than ten feet (10') above the tallest existing Utility Pole as of January 1, 2019 within five hundred feet (500') of the proposed Utility Pole in the City'; and
 - (2) Proposals to collocate on an existing Utility Pole in place on August 28, 2018 which exceeds the height of the existing Utility Pole by more than ten feet (10').
2. Application. Application for a permitted use under this Section shall require submission of an application with proof of owner consent as required by Subsection D.2 and an application fee of five hundred dollars (\$500.00) as required to partly cover the City's actual costs, but not to exceed such amounts as may be limited by law. If the applicant is not a Wireless Services Provider, then the applicant must submit evidence of agreements or plans, or otherwise provide attestations to the same, which conclusively demonstrate to the City that the proposed site(s) will become operational and used by a Wireless Services Provider within one year of the permit's issuance date. For any application for a Small Wireless Facility, the applicant shall provide an attestation that the proposed Small Wireless Facility complies with the volumetric limitations as required to meet the definition of a Small Wireless Facility in accordance with this Section and pursuant to applicable law. Applicant shall also submit a certified structural analysis as required in the General Requirements of this Section. Applications requesting any information that is prohibited by federal or state law under the applicable circumstance shall be deemed inapplicable to the subject application. The Director shall issue a decision on the application for a permitted use within the time-frame permitted by applicable law. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

H. Administrative Approval.

1. Uses. The placement of Wireless Communications Facilities fully conforming with the General Requirements in this Section are permitted in all zoning districts by administrative permit approved by the Director only as follows:

a. Disguised Support Structures. The construction of a Disguised Support Structure, provided that all related equipment shall be placed underground or concealed within the structure. Equipment may be placed in an appropriately concealed Cabinet if the Disguised Support Structure is incidental to an industrial, commercial, or other non-residential use and fits with the natural built environment or the Disguised Support Structure. Any Disguised Support Structure shall have as a condition of approval, unless expressly exempted in the approval, an obligation and corresponding covenant recorded on the property that runs with the land to the benefit of the City on behalf of the public, prohibiting Modifications to the Disguised Support Structure that eliminate or are materially detrimental to the disguise, unless such proposed Modification is approved by a duly authorized zoning or conditional use approval. If the applicant does not wish to have such a covenant, the application shall not qualify for administrative permit approval, unless another mechanism is proposed and approved to ensure that the disguise is not subsequently eliminated or materially detrimentally altered.

b. "Fast-Track" Small Wireless Facilities. An application for a Fast-Track may be approved administratively by the Director, subject to meeting the following requirements:

i. General Requirements. The following requirements shall generally apply to all Fast-Track located within the City:

- (1) The Fast-Track shall substantially match any current aesthetic or ornamental elements of the Existing Structure or Utility Pole, or otherwise be designed to maximally blend in to the built environment, with attention to the current uses within the district at the proposed site;
- (2) Any portion above the Existing Structure or Utility Pole shall be concealed and of the same dimensions and appearance so as to appear to be a natural extension of the Existing Structure or Utility Pole in lieu of an enclosure or concealment;
- (3) The Fast-Track equipment shall not emit noise audible from the building line of any residentially zoned or used property; and

- (4) Location, placement, and orientation of the Fast-Track shall, to the extent feasible, minimize the obstruction to, or visibility from, the closest adjacent properties unless otherwise required by the City for safety reasons.

ii. Additional Requirements When Sited Near Pedestrian and Vehicle Ways. When a Fast-Track is proposed to be located on an Existing Structure or Utility Pole on or adjacent to public or private streets, sidewalks, or other pedestrian or vehicle ways:

- (1) Only one Fast-Track shall be permitted per structure or Utility Pole in the Rights-of-Way;
- (2) The height of all portions of the Fast-Track shall be located at least eight feet (8') above ground level;
- (3) No ground equipment shall be permitted; and
- (4) No portions of the Fast-Track shall extend horizontally from the surface of the Utility Pole or Existing Structure more than sixteen inches (16").

iii. Waiver for Good Cause Shown. Additionally, the Director may for good cause shown increase any one or more of the maximum volumetric specifications from the definition of a Fast-Track by up to fifty percent (50%) if the applicant demonstrates that it:

- (1) Does not in any location nationally use equipment capable of meeting the specifications and the purpose of the equipment; and
- (2) Cannot feasibly meet the requirements as defined and described.

The Board of Aldermen may further waive one or more of the requirements found in the definition of Fast-Track, or from i. General Requirements or ii. Additional Requirements When Sited Near Pedestrian or Vehicle Ways of this Subdivision, upon good cause shown by the applicant, and provided a showing that the waiver is the minimum necessary to accomplish the purposes of this Section. The burden of proof for any waiver shall be wholly on the applicant.

2. Application Procedures. Applications for administrative permits shall be made on the appropriate forms to the Director consistent with the requirements of this Section. Applications requesting any information that is prohibited by federal or state law under the applicable circumstance shall be deemed inapplicable to the subject application.

a. General Application Requirements. Applicant shall submit along with its completed application form:

- i. An application fee of five hundred dollars (\$500.00) as required to partly cover the City's actual costs, but not to exceed such amounts as may be limited by law; any amount not used by the City shall be refunded to the applicant upon written request after a final decision;
- ii. A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating the exact location of the facility, all dimensions and orientations of the facility and associated equipment, in addition to all existing and proposed improvements including buildings, drives, walkway, parking areas, and other structures, right-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the Utility Pole or Existing Structure, if applicable;
- iii. Specifications, dimensions, photos, or drawings of the completed installation;
- iv. Proof of owner consent as required by Subsection D.2.
- v. Certified structural analysis as required in the General Requirements of this Section;
- vi. If the applicant is not a Wireless Services Provider, as defined by Section 67.5111 RSMo., then the applicant must submit evidence of agreements or plans, or otherwise provide attestations to the same, which conclusively demonstrate to the City that the proposed site(s) will become operational and used by such Wireless Services Provider within one (1) year of the permit's issuance date; and
- vii. All other information necessary to show compliance with the applicable requirements of this Section.

b. Fast-Track-Specific Application Requirements. In addition to the above General application requirements, applications for a Fast-Track shall include the following:

- i. An attestation that the proposed Fast-Track meets the volumetric and other requirements to meet the definition of Fast-Track provided in this Section; and
- ii. Information demonstrating that the applicant's proposed plans are in compliance with § 67.5113.3(9) RSMo. to the satisfaction of the City.

c. Review. The application shall be reviewed by the Director to determine compliance with the above standards, including specifically design, location, safety, and appearance requirements and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.

d. Additional Information May Be Required. In reviewing an application, the Director may require the applicant to provide additional information, including technical studies, to the extent permitted by applicable law. An application shall not be deemed complete until satisfaction of all application requirements and submission of all requested information as provided herein.

e. Decisions; Denials Required in Writing. The Director shall issue a decision on the permit within the time-frame permitted by applicable law. The Director may deny the application or approve the application as submitted or with such modifications or conditions as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens and property values consistent with and to affect the purposes of this Section. The Director may consider the purposes of this Section and the factors established herein for granting a conditional use permit as well as any other considerations consistent with the Section. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

I. Conditional Use Permit Required. All applications to install, build, erect, or modify Wireless Communications Facilities not permitted in Subsections **(G)** or **(H)** of this Section shall be permitted only upon the approval of a conditional use permit authorized consistent with Article XI of the Zoning Code following a duly advertised public hearing, subject to the following additional requirements, procedures, and limitations:

1. Applications. Applications for conditional use permits shall be filed on such forms required by the Director and processed subject to the requirements of and in the manner established by applicable law, herein, and for conditional use permits in the Zoning Code and, in addition to such other requirements, shall be accompanied by a deposit of one thousand five hundred dollars (\$1,500.00), to the extent permitted by applicable law to the specific Wireless Communications Facility. Any amount not used by the City shall be refunded to the applicant upon written request after a final decision. Except as otherwise

provided by law, no application for a conditional use permit under this Section shall be deemed complete until the applicant has paid all fees and deposits required under this Section, submitted certified engineering plans, and provided proof of owner consent as required by Subsection D.2. Applications requesting any information that is prohibited by federal or state law under the applicable circumstance shall be deemed inapplicable to the subject application.

2. Decision and Findings Required. A decision shall be contemporaneously accompanied by substantial evidence supporting the decision, which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others.

3. Additional Minimum Requirements. No conditional use permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of Wireless Communications Facilities pursuant to Subsection G or Subsection H of this Section is not technologically or economically feasible. The City may consider current or emerging industry standards and practices, among other information, in determining feasibility.

4. Findings Required. In addition to the determinations or limitations specified herein and by the applicable provisions of Article XI of the Zoning Code for the consideration of conditional use permits, no conditional use permit shall be approved by the Board of Aldermen unless findings in the affirmative are made that the following conditions exist:

a. That the design of the Wireless Communications Facilities, including ground layout, maximally reduces visual degradation and otherwise complies with provisions and intent of this Section;

b. That the design is visually compatible with the area, will not distract from the view of the surrounding area, is maximally concealed or blended in with the environment, and will not adversely affect property values;

c. That such conditional use shall not be inconsistent or adversely affect the regular permitted uses in the district in which the same is located; and

d. That the proposal fully complies with applicable law including the General Requirements herein; provided that an exception to the General Requirements, other than building or safety code compliance, may be approved upon evidence that compliance is not feasible or is shown to be unreasonable under the specific circumstances shown.

J. Obsolete, Non-Complying Tower Structures. Any upper portion of a Tower which is not occupied by active Antenna for a period of twelve (12) months, and any entire Tower which

is not so occupied for a period of six (6) months, shall be removed at the owner's expense. Removal of upper portions of a Tower manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the Tower or property owner's expense.

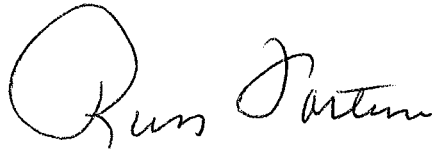
K. Commercial Operation of Unlawful Tower or Antenna. Notwithstanding any right that may exist for a governmental entity to operate or construct a Support Structure, it shall be unlawful for any person to erect or operate for any private commercial purpose of any Wireless Communications Facility in violation of any provision of this Section, regardless of whether such facility is located on land owned by a governmental entity.

L. Penalty. In addition to any penalties imposed by this Chapter, any person violating any portion of this Section shall be subject to a penalty of not more than five hundred dollars (\$500.00) fine or ninety (90) days in jail, or both. Each day the violation continues shall constitute a separate offense.

Section 2. The recitals contained in the *Whereas* clauses are expressly incorporated in and made a part of this Ordinance.

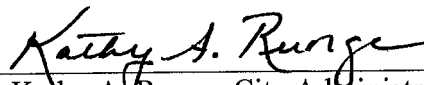
Section 3. This Ordinance shall be in full force and effect on and after its passage and approval by the Mayor.

PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 20th DAY OF MARCH 2019.



Russ Fortune, Mayor

Attest:



Kathy A. Runge, City Administrator/Clerk