

**AMENDED**

**ORDINANCE NO. 94-1**

**ORDINANCE AMENDING THE “ZONING CODE OF NEWTON COUNTY, INDIANA,  
ORDINANCE 94-1 AS AMENDED”**

WHEREAS, the Telecommunications Act of 1996 (“the Act”) provides that local governments may not unreasonable discriminate among providers of wireless communication services and may not establish regulations which prohibit or have the effect of prohibiting the provision of wireless communication services; and

WHEREAS, the Act preserves local zoning authority over decisions regarding the placement, construction, and modification of Personal Wireless Service Facilities (PWS Facilities); and

WHEREAS, recent changes in telecommunications technology has caused PWS Facilities to become a rapidly growing segment of the telecommunications industry; and

WHEREAS, the County finds that the unregulated and under regulated development of PWS Facilities within the County could create significant visual, land use, noise, and other impacts within the County; and

WHEREAS, the County finds that PWS Facilities located in or near residential, commercial, and business zone should be regulated to assure that reasonable mitigating measures have been employed to protect the public health (as limited herein), safety, and welfare, and to protect property values;

WHEREAS, PWS Facilities are a commercial use, the siting of which is more appropriately encouraged in non-residential zoning districts of the County; and

WHEREAS, the County’s comprehensive planning process and associated regulations are designed to ensure that property is developed in a planned and thoughtful manner which protects the beauty of, and promotes the absence of visual clutter within, the County, preserves property values, and protects welfare of the residents of the County; and

WHEREAS, maintenance of property values is vital to preserving the County’s tax base and revenues; and

WHEREAS, the unregulated siting of PWS Facilities may compromise the beauty and aesthetic character of the community, block views, create excessive noise and reduce property values; and

WHEREAS, the County finds that PWS Facilities should be reasonably regulated to minimize potential adverse impacts to the County, to preserve the character of the County, and to promote the goals and policies of the Newton County Comprehensive Plan and the Newton County Zoning code; and

WHEREAS, the County finds that adoption of clear performance standards regulating the visual and noise impacts of PWS Facilities will minimize the impacts PWS Facilities have on the beauty and aesthetic character of the community and will protect property values; and

WHEREAS, the County finds reducing or limiting the number of structures within the County which exceed the height limit of the underlying zoning district or preserve the character of the community, will preserve the views available within the community, and will encourage development on a scale compatible and proportionate to the scale of the existing development; and

WHEREAS, the County desires to provide guidance to wireless telecommunication service providers and to balance the implementation of wireless telecommunication services with the preservation of the character, views, aesthetics, and minimal noise levels within the County; and

WHEREAS, the County finds that adoption of special exception requirements which provide clear and reasonable development standards, coupled with administrative review of PWS Facility special exception applications, will result in a fast and predicable process for obtaining land use special exceptions for PWS Facilities within the County; and

WHEREAS, the County finds that co-location of new PWS Facilities upon existing monopole and lattice towers is appropriate, subject to appropriate setbacks from residential structures for the purpose of noise and visual impact reduction; and

WHEREAS, the County has undertaken a deliberative public process to establish policy, standards and procedures related to the siting of PWS Facilities; and

WHEREAS, the County has experienced an unexpected increase in requests to locate PWS Facilities due to the rapid deployment of such technologies, thus creating a need for new provisions in the zoning code to address the siting of PWS Facilities; and

WHEREAS, the County's desire to update existing special exception requirements applicable to wireless transmission facilities to provide clearer and more comprehensive guidance to the owners of modern PWS Facilities within the County;

NOW, THEREFORE, BE IT ORDINAED BY THE BOARD OF COUNTY COMMISSIONERS OF NEWTON COUNTY, INDIANA:

The following changes and additions are hereby made to the Zoning Ordinance for Newton County, 94-1, as amended.

A new Section 5.40 is hereby added to the Zoning of Newton County, Indiana, to read as follows:

## **SECTION 5.40 PERSONAL WIRELESS SERVICE FACILITIES**

### **I. PURPOSE AND OBJECTIVE**

- A. **Provision of Opportunities for Wireless Providers.** This section of the Zoning Code is designed to provide opportunities for PWS Facilities as defined herein, consistent with the statutory rights of both wireless communication service providers and the County to provide for orderly development and to protect the health, safety, and general welfare of the County's residents and property owners.
- B. **Preservation of Character of the County.** A primary objective of this Section of the Zoning Code is to preserve the existing visual and aesthetic character of the County and its neighborhoods, as well as minimizing the noise impacts generated by PWS Facilities. Preserving the visual and aesthetic character of the County includes the protection of property values and a tax base sufficient to support the County's operations and limiting the intrusion of noise, visual, and aesthetic impacts associated with commercial and other uses into residential neighborhoods.

### **II. DEFINITIONS**

For purposes of Section 5.40 of the Zoning Code and special exemptions issued pursuant to this Section only, the following definitions shall apply:

- A. **Act**—the Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include future amendments to the Communications Act of 1934.
- B. **Alternative Tower Structure**—Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also Stealth Facility)
- C. **Antenna**—A specific device, the surface of which is used to transmit and/or receive radio-frequency signals, microwave signals, or other signals transmitted to or from other antennas for commercial purposes.
- D. **Antenna Array**—Two or more devices used for transmission or reception of radio frequency signals, microwave or other signals for commercial communications purposes.
- E. **Antenna Support Structure**—Any pole, telescoping mast, tower, tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.
- F. **Applicant**—Any person, firm, or entity seeking to place a PWS Facility within the boundaries of the County.
- G. **Camouflaged**—The use of shape, color, and texture to cause an object to appear to become a part of something else, usually a structure such as a building, wall or roof. Camouflage does not mean invisible, but rather appearing as part or exactly like the structure used as a mount.
- H. **Cell Site**—A tract or parcel of land that contains one or more cellular communication antennae, its support structure(s), accessory building(s), and parking, and may include other uses necessarily associated with or ancillary to cellular communications transmission.

- I. Cellular Service—A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to public switched network or to other mobile cellular phones.
- J. Co-Location—Locating wireless communications equipment from more than one provider on a single antenna support structure.
- K. County—Newton County, Indiana
- L. Concealment—Concealment means fully hidden from view. For example, a PWS Facility is concealed when it is completely hidden or contained within a structure, such as a building, wall, or roof.
- M. Disguised—Disguised means that a PWS Facility is changed to appear to be something other than what it really is. For example, PWS Facilities are sometimes disguised to appear as trees or flagpoles.
- N. Equipment Enclosure—A structure, shelter, cabinet, box, or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless communication signals and data, including any provisions for mechanical cooling equipment, air conditioning, ventilation, or auxiliary electric generators.
- O. FAA—The Federal Aviation Administration
- P. FCC—The Federal Communications Commission
- Q. Height—The vertical distance measured from pre-existing ground level to the highest point on the PWS Facility, including, but not limited to, the antenna or antenna array, but excluding any lightning rod. If a PWS Facility support structure is on a sloped grade, then the average between the highest and the lowest grades shall be used in calculating the antenna height.
- R. Licensed Carrier—Any person, firm or entity licensed by the FCC to provide Personal Wireless Services and which is in the business of providing the same.
- S. Monopole Tower or Monopole—A vertical structure, consisting of a single vertical metal, concrete or wood pole, typically round or square, and then driven into the ground or attached to a foundation.
- T. Mount—Any mounting device or bracket which is used to attach an antenna array to a street pole, building, structure or monopole.
- U. Panel Antenna—A directional antenna designed to transmit and/or receive signals in a directional pattern which is less than 360 degrees.
- V. Personal Wireless Services (PWS)—Any of the technologies as defined by Section 704(a)(7)(c)(i) of the Federal Telecommunications Act of 1996, including, Cellular, PCS, Enhanced Specialized Mobile Radio (ESMR), Specialized Mobile Radio (SMR), and Paging.
- W. Personal Wireless Service Facilities (PWS Facility)—Any unstaffed facility for the transmission and/or reception of PWS.
- X. Roof Towers—Roof top antenna support structure including antenna and equipment shelters.
- Y. Site—See Cell Site
- Z. Stealth Facility—Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally

screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, and antenna structures designed to look like light poles. (See also Alternative Tower Structure).

- AA. Street Pole—Telephone, electric, or cable television poles located in a developed street.
- BB. Temporary PWS Facility—A non-permanent PWS Facility installed on a short-term basis, for the purpose of evaluating the technical feasibility of a particular site for placement of a PWS Facility or for providing emergency communications during a natural disaster or other emergencies which may threaten the public health, safety, and welfare. Examples of temporary PWS include, but are not limited to, placement of an antenna upon a fully extended bucket truck, crane, or other device capable of reaching the height necessary to evaluate the site for placement of a PWS Facility.
- CC. Tower—A ground pole, spire, structure, or combination thereof including supporting lines, cables, wires, braces, and masts intended primarily for the purpose of mounting an antenna or other similar apparatus above ground for use as a PWS Facility or otherwise transmitting and/or receiving electromagnetic waves.
- DD. View Corridor—Scenic views of natural and built-up areas and features, including, but not limited to: tree-covered hillsides; views of the build environment which contain significant architectural or historical features; natural features such as lakes, rivers, streams or hills; an area of landscaping of local or regional significant; or a public art work.
- EE. Whip Antenna—An omni-directional antenna designed to transmit and/or receive signals in a 360 degree pattern.

### **III. GENERAL PROVISIONS**

- A. The construction, placement, or modification of any PWS Facility at any location within the zoning jurisdiction of the County is subject to the provisions of this Section.
- B. PWS Facilities shall not be permitted on any building or structure within an area of the County zoned residential, except as specified below.
- C. Lattice and guyed towers and monopoles shall be permitted only as specified herein.
- D. No PWS Facility may be constructed without a special exception issued pursuant to this Section.
- E. Amateur radio antennas that conform to the requirements of this Section are permitted in any zone without a special exception.

### **IV. ZONE SPECIFIC PWS FACILITY STANDARDS**

#### **A. PWS Facility Siting**

- 1. PWS Facilities are allowed only as a special exception in all zones except Residential zones, subject to the Height and Setback Standards set forth in Table A and any applicable tower design criteria and co-location standards herein, except that no tower for use as a PWS Facility shall be allowed, with or without a special exception, within two miles of existing runways or planned future runways as shown on the airport development or layout plan, at any airport.
- 2. Commercial PWS Facilities are not allowed in residential areas.

3. Amateur radio antennas are subject to the Non-Commercial Wireless Facilities Standards herein.

**B. Non-Commercial Wireless Facility (Amateur Radio Antenna) Standards**

1. Towers supporting amateur radio antennas shall be allowed only in the rear yard of residentially zoned parcels.
2. In accordance with the FCC's preemptive ruling PRB1, towers erected for the primary purpose of supporting amateur radio antennas may exceed 30 feet in height provided that a determination is made by the Board of Zoning Appeals (BZA) that the proposed tower height is technically necessary to successfully engage in amateur radio communications.

### C. PWS Facility Siting, Height and Setback Standards

<b><u>Type of Antenna Support Structure</u></b>	<b><u>Residential Zones</u></b>	<b><u>Other Zones</u></b>	<b><u>Standards</u></b>
Cellular Antenna to be affixed to a new proposed ground tower	Not allowed	Special Exception Required	Maximum Tower Height: See Section VII, C. Setback: Tower Height +10 feet from streets rights-of-way, and 1,000 feet from residential structures
Cellular antenna to be affixed to an existing building without a roof tower	Not allowed	Special Exemption Required	1. Antenna may be placed on the façade or roof of conforming building or structure without regard to height or setback of the building.  2. Antenna support structures will be considered to be Roof Towers if the height of the structure exceeds 15 feet above the permitted height of building.
Cellular antenna to be added to an existing approved ground tower	Not allowed	Permitted per Section IX	Allowed if following conditions are met: 1. The tower height is not increased. 2. No ancillary features are added to the tower other than an antenna, required safety hardware and ancillary equipment buildings. 3. All conditions of the previous tower approval have been satisfied.
Existing Nonconforming Tower	Subject to zoning requirements concerning nonconforming uses	Subject to zoning requirements concerning nonconforming uses	Subject to zoning requirements concerning nonconforming uses
Accessory Structures (Equipment Buildings, etc.)	Subject to zoning requirements concerning nonconforming uses if accessory to existing towers; otherwise not allowed	May be included in Special Exception	Subject to all requirements and standards of appropriate zone (i.e., bulk, setback, signs, etc.)

**V. CONTENTS OF PWS FACILITY SPECIAL EXCEPTION APPLICATION**

- A. This Section applies to applications to construct new PWS Facility towers or antenna support structures in the County. The contents of an application to co-locate a PWS Facility on an existing tower or antenna support structure are subject to Section IX below.
- B. An application for a PWS Facility special exception is complete for the purposes of this Section when it has been determined by the Building Commissioner to contain the information described below. The required information may be submitted in any form, so long as information necessary to evaluate the application in accordance with this subsection is clearly identified.
1. A complete application form, fee, and attachments signed and dated by the facility owner/agent
  2. The name, address, phone number, and signature of the applicant or authorized representative;
  3. A complete legal description of the subject property;
  4. Locational maps, including:
    - a. A map showing the location of the proposed PWS Facility and the location of any existing and known or planned future PWS Facilities of the applicant carrier within the County;
    - b. A map depicting the area immediately around the proposed site, showing the zoning designation of the subject property and of all adjacent properties.
  5. Site plans, drawn to scale, depicting the proposed and existing improvements of the property. The site plans shall include drawings which include a plan view and elevations, and contain the following information:
    - a. Dimensions and shape of the lot, and street names;
    - b. Location and dimensions of existing and proposed buildings and structures, including setbacks;
    - c. Adjacent street improvements, curb cut locations for ingress and egress, and parking layout;
    - d. Existing and proposed landscaping, in accordance with this Section, including the location of significant trees with a caliper diameter exceeding eight inches as measured four feet above grade;
    - e. Existing watercourses, critical areas, utility lines, easements, deed restrictions, rookeries, and other built or natural features restricting use of the subject property;
    - f. Preliminary grading plan depicting proposed and existing grades at two-foot contours if grading is proposed in conjunction with the proposed PWS Facility;
    - g. Storm drainage, sidewalks, and exterior lighting;
    - h. Elevations for all proposed improvements on the site showing all facades, indicating exterior materials and color of any tower(s) on the proposed site;



- i. Location and approximate size and height of all buildings and structures within 500 feet of the proposed PWS Facility;
  - j. All improvements including landscaping and screening
6. A report from a licensed professional engineer which:
  - a. Describes the tower height and design including a cross section and elevation;
  - b. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
  - c. Describes the tower's capacity, including the number and type of antennas that it can accommodate;
  - d. Documents the steps the applicant will take to avoid interference with established public safety telecommunications;
  - e. Includes an engineer's stamp and registration number and signature;
  - f. Demonstrates the tower's compliance with applicable electrical standards; and
  - g. Includes any other information necessary to evaluate the request
7. Color photographs of the existing site, including at least one color photograph depicting the site from the North, South, East, and West with appropriate labeling.
8. A description of the support structure or building upon which the PWS Facility is proposed to be located, and the technical reasons for the design and configuration of the PWS Facility.
9. A statement of whether excess space will be incorporated into the design and configuration of the structure of building, whether excess space will remain after installation of the proposed PWS Facility, and whether such excess space shall be leased.
10. Information necessary to determine the intended service area of the PWS Facility.
11. Design information (e.g., equipment brochures, color and material boards, and dimensional information).
12. Information necessary to demonstrate the applicant's compliance with FCC rules, regulations and requirements and information necessary to demonstrate compliance with FAA regulations regarding erection of structures near airports and flight paths.
13. Necessary information for review of significant environmental impacts, including, but not limited to, impacts on streams, rivers, or County drains.
14. A letter of intent stating that applicant intends to lease excess space on the tower to other potential users at reasonable rental rates and on reasonable terms. The letter shall commit the tower owner and successors in interest to do the following:
  - a. Respond in a timely, comprehensive manner to a request for information from another potential user of the tower.

- b. Negotiate in good faith for shared use by others
- c. Allow share use if an applicant agrees in writing to pay reasonable rental charges or other consideration and to pay all costs of adapting the tower or existing users equipment to accommodate a shared user without causing uneconomically correctable electromagnetic interference, and otherwise agree on reasonable business terms and conditions for shared use of the tower.

15. Information necessary to evaluate compliance with Part VIII of this Section regarding co-location.

16. Non-refundable special exception application fee of \$1,000.00.

C. Option to Submit Application in two Phases. An applicant may submit the application in two phases. An applicant may first submit the information requested in paragraphs B.1 through B. 4 above to determine whether the proposed location for the PWS Facility will be approved. If the County approves the location of the proposed PWS Facility as depicted by the applicant in the first phase of the application, the applicant then will be required to submit the remainder of the information requested in Section B above. The non-refundable application fee for the first phase will be \$150.00. If an applicant proceeds to the second phase, they will then be required to pay the remainder of the application fee (\$850.00).

## **VI. STANDARD CONDITIONS OF PWS FACILITY SPECIAL EXCEPTION**

- A. Standard conditions of PWS Facility special exception will be granted if the following is complied with:
- 1. The location of the proposed tower is compatible with the **County's Comprehensive Plan** and Zoning Code is including, but not limited to, PWS Facility Standards and Design Requirements herein.
  - 2. All efforts to locate on an existing tower have not been successful or legally/physically possible, or other existing facilities/towers cannot reasonably serve the needs of the owner of the proposed facility/tower.
  - 3. The submitted site plan complies with the performance criteria set in these regulations.
  - 4. The proposed facility/tower will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
  - 5. The height and mass of the facility/tower does not exceed that which is essential for its intended use while consistent with public safety.
  - 6. The owner of the PWS Facility/tower has agreed to permit other persons/cellular providers to attach cellular antenna or other communications apparatus which do not interfere with the primary purpose of the facility.
  - 7. The proposed facility/tower is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.
  - 8. The tower will have a security fence of a minimum 10' in height around the tower base or the lot where the tower is located.
  - 9. The facility/owner is in compliance with any other applicable local, state, or federal regulations.

## **VII. PWS FACILITY DESIGN REQUIREMENTS**

- A. **General Design Requirements.** Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatments, except in instances where the color is specifically dictated by federal or state authorities such as the Federal Aviation Administration.
- B. **Monopole Design Preferred.** Commercial wireless telecommunication service towers shall be a monopole design unless the Board of Zoning Appeals determined that an alternative design would better blend into the surrounding environment, or would better serve the needs of PWS customers.
- C. **Tower Height.** The maximum tower height is 250 feet above surface grade.
- D. **Accessory Utility Buildings.** All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the County's Zoning Code. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
- E. **Tower Light.** Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by FAA or other Federal or State authority for a particular tower.
- F. **Antennas Mounted on Structures, Roofs, Walls, and Existing Towers.** The placement of antennas on roofs, walls, and existing towers may be approved by the County, provided the antennas meet the requirements of these regulations, after submittal of:
  - a. **A PWS Facility Application as specified by this Section; and**
  - b. **A report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachments shall be indicated.**
- G. **Temporary Wireless Communications Facilities.** Any facility designed for temporary use, as defined herein, is subject to the following:
  - 1. Use of a temporary facility is allowed only if the owner has received a temporary use permit from the Building Commissioner.
  - 2. Temporary wireless facilities are permitted for use on no longer than 30 days for use while constructing permanent facilities, and no longer than 5 days for use during a special event.
  - 3. The maximum height of a temporary wireless facility is 50 feet from grade.
  - 4. Temporary facilities are subject to all applicable portions of these regulations.
- H. **Interference with Public Safety Telecommunications.** No new or existing PWS Facility shall interfere with a public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes

in existing service, telecommunication providers shall notify the Building Commissioner at least ten calendar days in advance of such changes and allow monitoring of interference levels during the testing process.

- I. **Signs and Advertising.** The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

### **VIII. CO-LOCATION STANDARDS**

All PWS Facility towers erected, constructed, or located within the County shall comply with the following requirements:

- A. A proposal for a new PWS Facility tower shall not be approved unless the Board of Zoning Appeals finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a five-mile radius of the proposed tower due to one or more of the following reasons:
  1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the existing tower or building, as documented by a licensed professional engineer, and the interference cannot be prevented at a reasonable cost.
  3. Existing or approved towers and buildings within the five mile radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a licensed professional engineer.
  4. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- B. Any proposed PWS Facility tower shall be designed, structurally, electrically, and in all respect, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

### **IX. CO-LOCATION APPLICATIONS**

- A. This Section applies to any application to place a PWS Facility on an already existing, approved PWS Facility antenna support structure.
- B. Co-location applications must include the following:
  1. A map depicting the location of the size and tower where co-location is proposed;
  2. A list of the wireless communication equipment to be added to the existing tower;

3. A description of the work required to install the wireless communications equipment to the existing tower;
4. A report from a licensed professional engineer which states that the addition of the wireless communications equipment to the existing tower will not affect the structural integrity of the antenna support structure;
5. Information necessary to demonstrate the applicant's compliance with FCC rules regulations and requirements
6. A letter or agreement from the tower owner stating that he or she will allow the proposed wireless communications equipment on the tower;
7. Location and site of any accessory equipment building(s) or structure(s) and;
8. Non-refundable application fee of \$150.00.

**X. MAINTENANCE OF PWS FACILITIES**

Each permittee shall maintain its PWS Facility in a good and safe condition and to preserve its original appearance and any concealments, disguise, or camouflage elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state, and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment, and maintenance of landscaping.

**XI. MODIFICATION**

Any proposed change or addition to any PWS Facility shall require the issuance of a new PWS Facility special exception, pursuant to the requirements of this chapter. In the case of the addition of a co-located PWS Facility to an existing antenna support structure, this provision shall be satisfied by the issuance of a permit to new co-located PWS Facility. This provision shall not apply to routine maintenance of a PWS Facility, nor to the replacement of any portion of the PWS Facility with identical equipment.

**XII. TESTING OF PWS FACILITIES REQUIRED—RADIO FREQUENCY RADIATION**

- A. All licensed carriers shall conduct tests necessary to demonstrate compliance with all applicable FCC regulations regarding the radio-frequency emissions of the PWS Facility. All such tests shall be performed by or under the supervision of a radio frequency engineer competent to perform such tests and interpret the data gathered.
- B. All licensed carriers shall submit initial and annual compliance reports to the Building Commissioner, certified by a radio frequency engineer, setting forth the following:
  1. Measurement of existing or ambient radio frequency radiation (RFR);
  2. Existing RFR plus proposed PWS facility: maximum estimate of RFR from the proposed PWS Facility plus existing ambient RFR;
  3. Existing RFR plus proposed PWS Facility plus cumulative: maximum estimate of RFR from the proposed PWS Facility plus the maximum

estimate or RFR from the total addition of co-located PWS Facilities, if any, plus the existing ambient RFR; and

4. Certification, signed by a radio frequency engineer, stating that the RFR measurements are accurate and meet FCC guidelines.
- C. Initial field measurements shall be performed prior to placing the PWS Facility into service and the initial compliance report shall be submitted within fourteen (14) days of the PWS Facility becoming fully operational.
- D. Compliance reports shall be required on an annual basis thereafter. Annual compliance reports shall be submitted by January 1<sup>st</sup> of each calendar year. Provided, however, that a PWS Facility installed and initially tested within nine months prior to January 1 shall not be required to submit an annual compliance report until the following January 1.
- E. The Board of Zoning Appeals may retain a technical expert in the field of radio frequency engineering to verify the RFR measurements and certification and to review compliance reports. The cost of such a technical expert shall be borne by the licensed carrier or applicant.
- F. If at any time the radio-frequency emissions tests show that the PWS Facility exceeds any of the standards established by the FCC, the licensed carrier shall immediately discontinue use of the PWS Facility and notify the Board of Zoning Appeals. Use of the PWS Facility may not resume until the licensed carrier demonstrates that corrections have been completed which reduce the radio-frequency emissions to levels permitted by the FCC.

### **XIII. SECURITY**

All PWS Facilities shall be protected from unauthorized intrusion through appropriate means approved by the BZA on a case-by-case basis consistent with the purpose of protecting the public health, safety, and welfare.

### **XIV. ABANDONMENT OF PWS FACILITIES**

A. The owner or operator of all PWS Facilities shall, on an annual basis, submit a written report to the Board of Zoning Appeals, signed under the penalty of perjury, which demonstrates whether or not there has been a cessation in use of the PWS Facility for a period of 3 months during the prior year. Annual compliance reports shall be submitted by January 1 of each calendar year. Provided, however, that a PWS Facility permitted and installed within nine months prior to January 1 shall not be required to submit an annual compliance report until the following January 1.

B. Any PWS Facility that has had no antenna mounted upon it for a period of 6 months, or if the antenna mounted thereon are not operated for a period of 3 months, shall be considered abandoned, and the owner therefore shall remove the PWS Facility within 90 days after receipt of a notice from the BZA to do so.

C. In the event that more than one wireless communication service provider is using the antenna support structure, the antenna support structure shall not be

considered abandoned until all such users cease using the structure as provided in this Section.

- C. If a PWS Facility and associated equipment are not removed within 90 days after receipt of a notice from the BZA requiring said removal, the BZA may seek and obtain a Court Order directing such removal and imposing a lien upon the real property upon which such PWS Facility is situated in an amount equal to the cost of removal.

#### **XV. REVOCATION OR TERMINATION OF SPECIAL EXCEPTION**

A special exception issued pursuant to this Section may be revoked for the following reasons:

- A. Construction and/or operation of a PWS Facility at an unauthorized location;
- B. Construction or operation of a PWS Facility in violation of any of the terms and conditions of this Chapter or the conditions attached to the special exception;
- C. Misrepresentation or lack of candor by or on behalf of an applicant, permittee, or wireless communications service provider in any application or written or oral statement, upon which the BZA substantially relies in making the decision to grant, review, or amend any special exception pursuant to this Section;
- D. Abandonment of a PWS Facility as set forth in this Section;
- E. Failure to relocate or remove facilities as required in this Section; or
- F. Failure to promptly cure a violation of the terms or conditions of the special exception.

#### **XVI. NOTICE AND DUTY TO CURE**

In the event that the BZA believes that violation of the terms of a special exception or a requirement of this Section exists, the owner shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the owner a reasonable period of time not exceeding 30 calendar days to furnish evidence:

- 1. That corrective action has remedied the violation or noncompliance;
- 2. That rebuts the alleged violation or noncompliance; and/or
- 3. That it would be in the public interest to impose some penalty or sanction less than revocation.

#### **XVII. ADOPTION**

This Ordinance shall be in full force and effect upon passage. Adopted this 20<sup>th</sup> day of February, 2001.