

CHAPTER 154: TELECOMMUNICATIONS TOWERS

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§ 154.01 TITLE.

This chapter shall be known and may be cited as the *Telecommunications Tower Ordinance of Macon County, North Carolina*, codified as Chapter 154 of The Macon County Code.
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.02 AUTHORITY AND JURISDICTION.

(A) This chapter is established by the Macon County Board of Commissioners pursuant to the

authority conferred in G.S. § 153A-121(a). The Board of Commissioners hereby ordains and enacts into law the following articles and sections.

(B) The provisions of this chapter shall apply to all unincorporated areas of Macon County, but shall not be applicable to and shall not be enforced within the corporate limits or the extraterritorial jurisdiction of any municipality in the county. The following types of installations are excluded from the scope of this chapter:

(1) Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height;

(2) AM radio and FM radio broadcast transmitting antennas and towers;

(3) Residential antennas for receiving television, AM radio or FM radio broadcast signals;

(4) Customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than 12 feet in height.
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.03 PURPOSE.

(A) The Board of Commissioners finds the following facts and circumstances justify and warrant the exercise of those powers with respect to wireless telecommunications facilities in order to protect the health, safety and welfare of its citizens;

(1) Macon County is blessed with a distinctive mountain topography and natural beauty that defines its cultural identity and provides a special sense of place; and

(2) The protection of the mountains of Western North Carolina was officially recognized as an important public policy by Executive Order 74 signed on March 27, 1995 by the Governor of the State of North Carolina creating the Year of the

Mountains Commission; and

(3) The Chairperson of the Year of the Mountains Commission challenged local governments in Western North Carolina to protect and improve the beauty, charm and advantages of the mountains and to guide the region's long-term growth, development and destiny through sound planning; and

(4) On February 8, 1996 the President of the United States signed the *Telecommunications Act of 1996* into law and Section 704 of that Act (42 USC 332(c)(7)), with limited exceptions, expressly preserves the authority of state and local governments and instrumentalities thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities, and

(5) The Presidential Memorandum signed by the President of the United States on August 10, 1995 and the General Services Administration Guidelines implementing Section 704(c) of the *Telecommunications Act of 1996* published on March 29, 1996 specifically mandate that antenna siting on federal properties shall comply with all state and local laws and regulations.

(B) In order to accommodate the wireless communication needs of residents, businesses and visitors while protecting the health, safety and welfare of its citizens, the Macon County Board of Commissioners finds that enactment of this chapter is necessary and advisable in order to:

(1) Facilitate the provision of wireless telecommunications services to residents, businesses and visitors in Macon County;

(2) Regulate in an orderly manner the placement, construction, modification, maintenance and removal of wireless telecommunications facilities;

(3) Provide a uniform and comprehensive framework for evaluating proposals for wireless telecommunication facilities;

(4) Preserve the scenic and visual character of Macon County by encouraging the location, design and architectural treatment of wireless telecommunication facilities to minimize their visibility from public places, to avoid intrusion into public vistas, to avoid disruption of the natural and built environment;

(5) Encourage the use of existing and approved structures to accommodate wireless telecommunications infrastructure prior to approving additional structures; and

(6) Avoid potential injury to persons and properties from tower failure through structural standards and setback requirements.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.04 APPLICABILITY.

A telecommunications tower as herein defined may be placed, erected and/or maintained in the jurisdiction of Macon County only in conformance with the standards, procedures and other requirements of this chapter.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

§ 154.05 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language.

ALTERNATIVE STRUCTURE. A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures, include, but are not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

ANTENNA. Any exterior transmitting or receiving device which radiates or captures electromagnetic waves (excluding radar signals).

ANTENNA, CONCEALED. An antenna that is designed and erected on or in a building in such a way that it blends in with the existing facade and/or is located such that it is not readily visible to an individual at adjacent road level.

CO-LOCATION. The placement of additional antennas or antenna arrays on an existing or approved telecommunications tower (or alternative structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC-licensed providers of personal wireless services. **CO-LOCATION** includes antennas, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other support equipment or improvements located on the tower site.

COMMERCIAL WIRELESS SERVICE PROVIDER. Persons who operate radio systems requiring an FCC license and who employ those facilities to provide fixed wireless (including microwave) or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and competitive local exchange carriers (CLEC) utilizing point-to-multipoint microwave.

CREST. The uppermost line of a mountain or a chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

DISCERNIBLE. Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

ELECTRIC DISTRIBUTION TOWERS. Metal or wooden towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.

ELECTRIC TRANSMISSION TOWERS. Metal or wooden towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

EQUIPMENT ENCLOSURE. A building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories at a wireless telecommunication facility.

FALL ZONE. An area around the base of a telecommunications tower required to be kept clear of buildings, other than equipment enclosures associated with the wireless telecommunications facility, to contain debris in the event of a tower structural failure.

GOVERNMENTAL USER. Federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

MAXIMUM CREDIBLE EARTHQUAKE. The maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.

ORDINANCE ADMINISTRATOR. The Macon County employee assigned by the Board of Commissioners to enforce this chapter.

PRIVATE BUSINESS USER. Persons who operate radio facilities (including microwave) requiring the FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services to third parties for compensation.

PROTECTED MOUNTAIN RIDGE. A ridge at or above 3,000 feet with an elevation of

500 feet or more above the elevation of an adjacent valley floor.

REPLACEMENT TOWER. A telecommunications tower intended to replace an existing approved tower where such replacement tower is at or within 50 feet of the existing tower base, and no higher than the existing tower.

RIDGE. The elongated crest or series of crests at the apex or uppermost point of the intersection between two opposite slopes or sides of a mountain, including all land within 100 feet below the elevation of any portion of such line or surface along the crest.

SUBSTANTIAL INCREASE IN HEIGHT OF AN ALTERNATIVE STRUCTURE. The increase in height of an alternative structure greater than 30% or 25 feet.

TELECOMMUNICATIONS. The transmittal or reception of signals over the airways as a commercial or public service, including, without limitation, telephonic, television, radio, cable television or microwave signals.

TELECOMMUNICATIONS TOWER. Any tower, pole or similar structure exceeding 20 feet in height erected for the purpose of supporting one or more antennas designed to transmit or receive signals, including but not limited to telephonic, television, radio, digital, microwave, cellular or similar forms of electronic communication.

TOWER HEIGHT. The vertical distance measured from the ground to the uppermost point of the telecommunications tower and any antenna affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

TOWER SITE. The real property which an applicant is required to have ownership of, leasehold interest in, or easement over, pursuant to § 154.08(B) of this chapter.

VEGETATIVE CANOPY. Trees which create a roof-like layer of spreading branches.

WIRELESS TELECOMMUNICATION FACILITY. Equipment at a single location used by a private business user, governmental user or commercial wireless service provider to transmit, receive or relay electromagnetic signals (including microwave). Such facility includes antennas or antenna arrays, telecommunications towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters or other electronic equipment; together with all associated cabling, wiring, equipment enclosures and other improvements. (Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.06 PERMIT REQUIRED.

It shall be unlawful for any person, corporation, partnership or other entity to erect within the jurisdiction of this chapter any telecommunications tower without first obtaining a permit from the Ordinance Administrator. However, a permit shall not be required for the erection of a replacement tower of no greater height, located at the same site and within 50 feet of the tower being replaced, provided the replacement tower shall not be closer to existing residences or property lines within a radius equal to the height of the tower. The tower being replaced shall be removed within 90 days of activation of replacement tower and falls under the

requirements of § 154.16.
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)
Penalty, see § 154.99

§ 154.07 APPLICATION SUBMISSION AND REVIEW PROCESS.

(A) *Application requirements.* Anyone desiring to construct or install a telecommunications tower shall submit an application for a permit and shall pay a fee. The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application:

(1) *Site development plan.* A site development plan shall be prepared by a North Carolina registered land surveyor, registered landscape architect or registered professional engineer, and shall contain the following:

(a) The name of the telecommunications tower owner and/or property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site, and latitude/longitude coordinates;

(b) The name, address, signature and seal of the professional preparing the plan;

(c) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities;

(d) Surveyed boundary lines of the parcel containing the proposed telecommunications tower construction area and its fall area;

(e) All existing towers on the property or any towers whose fall area encroaches onto the property;

(f) Descriptions of adjacent land uses and all property owners names, tax parcel numbers, and mailing addresses;

(g) The ground elevation of the proposed tower's base, all proposed support structures, property corners and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1927.

(2) *Preliminary tower design plan.* A preliminary tower design plan prepared by a North Carolina registered professional engineer containing the following:

(a) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number;

(b) The name, address, signature and seal of the engineer preparing the preliminary tower design plan;

(c) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings, and any other proposed improvements, including access roads and utility connections within and to the proposed site;

(d) A tower elevation drawing showing the proposed lighting, height of the tower and all proposed antennas;

(e) The proposed tower design loads.

(3) *Search Area.* A propagation study or similar documentation showing the search areas for the proposed tower's antenna(s).

(4) *Proof of regulatory compliance.* Written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency, or evidence that the proposed tower is exempt from those regulations.

(5) *Co-location alternatives.* Identification of all other possible alternatives considered within the service area for the proposed tower's antennas and an explanation why the proposed tower is necessary and why existing towers and structures (such as electric transmission towers, outdoor advertising signs) cannot accommodate the proposed antenna(s). No permit shall be issued for a new telecommunication tower unless the applicant proves that there is no feasible alternative in order to meet the applicant's minimal service level as required by the FCC.

(6) *Variances.* Identification of any variances to the chapter, the reasons for seeking the variances, and any measures that are proposed to mitigate possible adverse effects of the proposed variances.

(B) *Approval and recordation.* The Ordinance Administrator shall either approve or disapprove the permit based upon the criteria set forth in § 154.08, Criteria for Issuance of Permit. The owner or his or her agent shall record the site development plan in the Macon County Register of Deeds' office following issuance of a permit for the subject tower.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

§ 154.08 CRITERIA FOR ISSUANCE OF PERMIT.

Applications for telecommunications towers, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter), shall be submitted in writing to the Ordinance Administrator and shall contain all information required by this chapter as well as any additional information the Ordinance Administrator deems necessary and appropriate, including the following:

(A) The applicant shall be required to provide documentation, satisfactory to the ordinance administrator, of compliance with all applicable federal and state regulations.

(B) The applicant must present to the Ordinance Administrator proof of fee simple ownership, a recorded leasehold interest or an easement from the record owner of all property within a radius of one time the height of the tower. The required area may include Department of Transportation right-of-way if the applicant provides written consent to that effect by the Division Engineer.

(C) Co-location encouraged. It is the policy of Macon County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which do not require the placement or construction of a telecommunications tower, an increase in tower height, or an increase in the height of alternative structures, and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process.

(D) Towers shall be light gray or another earth tone (such as environmental green). Unpainted towers are encouraged.

(E) The applicant shall identify all other possible alternatives considered within the service area for the proposed towers' antennas and explain why the proposed tower is necessary and why existing towers and structures cannot accommodate the proposed antennas. If the antenna to be attached to the proposed tower cannot be accommodated on an existing tower, the applicant shall assess, as to each existing tower, whether such tower could be structurally strengthened or whether the antennas, transmitters and related equipment could be protected from electromagnetic interference. No permit shall be issued for a telecommunications tower unless the applicant proves that there is no feasible alternative in order to meet the applicant's minimal service level as required by the Federal Communications Commission.

(F) Tower permit approval is conditional upon the owner providing written authorization that the tower may be shared by other telecommunication facilities at customary and usual charges. The owner shall record in the Macon County Register of Deeds office a letter of intent prior to the issuance of a permit. The letter of intent shall bind all subsequent owners of the approved telecommunications tower.

(G) The proposed tower shall be designed and constructed to permit the capability for co-location of at least two other equal telecommunication uses, unless the tower is located on a protected ridge in which case one co-location provision is required.

(H) The applicant shall allow public entities use of a telecommunications tower at fair market value on a non-interfering basis if a request is made for such use within 30 days of the filing of the permit application. If it is determined that the proposed tower is situated in a location that will benefit the telecommunication system of the county, a municipality within the county, a volunteer fire department serving the county, or other public entity, the tower shall be engineered and constructed to accommodate the additional telecommunication equipment beneficial to the public system.

(I) The owner of a telecommunications tower shall provide the county with a certificate of insurance showing evidence that it has general liability coverage of at least \$1,000,000, and the certificate shall contain a requirement that the insurance company notify the county 30 days prior to cancellation, modification or failure to renew the insurance coverage required.

(J) If the tower, or the equipment on the site, is of a type that will emit a continuous or frequent noise, the applicant must prove to the satisfaction of the Ordinance Administrator that sufficient actions are being taken to prevent such noise from being audible to surrounding residents and businesses. The tower shall be designed in such a manner that it is not reasonably likely that wind noise associated with the tower would be audible on adjoining properties.

(K) The base of the telecommunications tower shall be enclosed by a commercial-grade chain link fence (or some other fence of equal or greater quality) a minimum of eight feet in height, which can include no more than two feet of barbed wire.

(L) No tower shall exceed 175 feet in height. No tower located on any protected mountain ridge shall have at its highest point an elevation greater than 40 feet higher than the vegetative canopy immediately surrounding the base of the tower. If no vegetative canopy exists at the protected ridge, then the maximum tower height allowed shall be 100 feet.

(M) A single sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing. Equipment hazard warning and informational signs are permitted. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.

(N) The application must be accompanied by payment of a nonrefundable processing fee in the amount of \$2,500. The county may elect to retain outside consultants or professional services to review the application and make determinations and recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of co-location and other alternatives, and compliance with state and federal rules and regulations. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(O) The applicant shall identify any variances to the ordinance, the reasons for seeking the variances and any measures that are proposed to mitigate possible adverse effects of the proposed variance(s).

(P) Applicants shall first be encouraged to consider properties owned by Macon County, instrumentalities thereof, and municipalities before considering private properties as locations for wireless telecommunication facilities. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties.

(Q) If construction is not begun within 12 months after the tower permit is issued, the tower permit shall expire. Prior to the expiration of the 12-month period, the applicant may request an extension of the permit for an additional 12 months from the Ordinance Administrator. The extension shall be granted upon proof that the delay was caused primarily by reasons beyond the applicant's control. There shall be no limit to the number of extensions granted so long as the request is submitted in a timely manner and supported by adequate proof that the delay was not caused by the applicant.

(R) All antennas placed on structures other than towers shall be concealed antennas, with the exception of those placed on electric transmission or distribution towers. Antennas located

on top of buildings or other structures shall not exceed 30% of the building height. Unless a permit is issued for a new telecommunications facility, an antenna shall not extend beyond the structure in any direction greater than 25 feet.

(S) No antenna shall be constructed on the property on which a National Register or other locally designated historic landmark is located.

(T) An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility within the jurisdiction of this chapter. The holder of the permit for a telecommunications tower shall file an annual permit report, on forms provided by the planning department, which shall demonstrate continuing compliance with the requirements of this article. Payment of a \$150 fee for each site shall be required before an annual permit shall be issued for calendar years, and shall not be pro-rated. The Ordinance Administrator shall make an on-site inspection of each site as part of the permit renewal to certify that the required signs are installed, fences are in good repair, no unauthorized towers are present, and the like. Failure to obtain an annual permit for a wireless telecommunication facility within 60 days after the commencement of the annual permit period shall result in the wireless telecommunication facility being deemed abandoned and subject to removal as specified in § 154.16.

(U) Fall zones and setbacks. Towers shall conform with each of the following minimum setback requirements:

(1) A fall zone clear of any buildings on the parcel containing the tower site (other than equipment enclosures associated with the wireless telecommunications facility) equal to one-half the height of the tower shall be required. The fall zone shall have a minimum 25-foot setback from all lot lines. If buildings (other than equipment enclosures associated with the wireless telecommunication facility) are located on an abutting property within a distance equal to the tower height, a combined fall zone and setback equal to the tower height shall be required.

(2) A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board of Commissioners, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, electric transmission tower, or similar structure.

(V) Property located within the tower's fall zone shall not be subdivided as long as the tower is standing.

(W) The applicant shall certify that all equipment to be installed will be installed and maintained to conform with the applicable standards of the FCC regarding radio frequency/electromagnetic emissions.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.09 PUBLIC HEARING REQUIRED.

Applications for new telecommunications towers, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter) shall require a quasi-

judicial public hearing to be held before the Macon County Board of Commissioners before any decision is made to grant or deny an application.

(A) *Public notice required.* Notice of an application for a proposed telecommunication tower shall comply with the provisions of G.S. §§ 153A-323 and 153A-343 as amended and, at a minimum, shall comply with the following:

(1) *Newspaper notice.* The Ordinance Administrator shall cause a notice of any public hearing to be published as a legal advertisement in a newspaper of general circulation in Macon County once a week for two consecutive weeks, the first publication of which shall not appear less than ten days or more than 25 days prior to the date set for public hearing. The notice shall include the date, time, and place of the hearing as well as information about the proposed telecommunication tower including its type, height, location and any other information the Ordinance Administrator shall deem necessary or appropriate.

(2) *Notice to affected property owners.* The applicant shall mail notice to affected property owners in accordance with the following provisions, and shall provide the Ordinance Administrator with a signed certification of compliance listing the names, addresses, and means of notification before any public hearing shall be conducted:

(a) Adjacent or abutting property owners. Notice of any public hearing shall be sent by certified mail (return receipt requested) to the owners of all parcels of land adjacent to or abutting the site of the proposed telecommunication tower at the last address listed for such owners in the county property tax records.

(b) Notice to other affected property owners. Notice to all other owners of properties within a ¼-mile radius shall be sent by first-class mail with proper postage affixed at the last address listed for such owners in the county property tax records.

(c) Timeliness of notice. Any notices required under the above subsections shall be mailed at least 10 but not more than 25 days prior to the date of the public hearing.

(3) *Posted notice.* A sign advertising the application for a proposed telecommunication tower, and any scheduled public hearing, shall be posted by the Ordinance Administrator in a prominent location on or near the parcel containing the proposed telecommunication tower, or on a nearby public road. Such signs shall be posted at least ten days prior to any public hearings.

(4) Additional notice regarding material changes. In the event the applicant shall seek to increase the height of a proposed telecommunication tower, or move its location more than 50 feet laterally, from that stated in the original notices required above, additional notice shall be required to be given in accordance with the above provisions and all required time periods shall run from the date of supplemental notification.

(B) *Presumption favoring existing structures.* A proposal for a new or additional telecommunication towers shall not be approved unless the Board of Commissioners finds that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than 30 feet in height (after first considering electric transmission towers) within a ¼-mile search radius (1,320 feet) of the proposed

telecommunication tower site due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure 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 tower, building or other structure as documented by a qualified and licensed North Carolina engineer and the interference cannot be prevented at a reasonable cost.

(3) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structure.

(C) *Special conditions.* During the public hearing, the Board of Commissioners shall have the authority to require special conditions in order to make the tower more compatible with surrounding properties, including one or more of the following but not limited to:

(1) The portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage;

(2) Appropriate landscaping or other means shall be used to screen the facility as much as possible from neighboring properties;

(3) Eliminating the provision of co-location in order to reduce the height of the tower.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.10 CO-LOCATION ENCOURAGED.

In order to encourage co-location and to avoid delays in the tower permitting process, the following will apply:

(A) On or before November 15 of each year, or the following Monday should November 15 fall on a weekend, every person, corporation, partnership or other entity who intends to erect telecommunications towers within the jurisdiction of this chapter shall submit to the Ordinance Administrator a preliminary plan which shall contain information as to the height, size, type, purpose, general location and reason for erection of every telecommunications tower anticipated to be erected during the following calendar year.

(B) Also, there shall be provided the name, address and telephone number of an individual designated as the point of contact with the Ordinance Administrator for discussion and resolution of telecommunications towers issues.

(C) Upon receipt of such plans, the Ordinance Administrator shall promptly review them and proceed to communicate with the designated points of contact in an effort to maximize co-location and avoidance of possible tower placements in highly objectionable areas.

(D) If the Ordinance Administrator determines it to be appropriate, he or she is empowered by this chapter to convene a mandatory meeting conference to which all parties who have submitted plans will be required to send a representative, subject to the requirement that a minimum of five working days notice be given as the specific time and place of such conference.

(E) The purpose of such conference will be to discuss co-location of towers and any other issues pertaining to telecommunications towers which the Ordinance Administrator determines to be pertinent.

(F) The conference shall be open to the public. However, the Ordinance Administrator shall have the authority to limit public comment as he or she deems necessary to assure an orderly consideration of the agenda.

(G) In considering applications for individual telecommunications tower permits, the Ordinance Administrator shall require any applicant who has failed to include a proposed tower in its preliminary plan or has failed to have a representative present at a mandatory conference to submit in writing a satisfactory explanation for such failure prior to issuance of a permit. The Ordinance Administrator shall render a written decision which sets forth, with particularity, such findings of fact as necessary to show whether the applicant's explanation is or is not satisfactory.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.11 ELECTRIC TRANSMISSION TOWERS.

(A) It is the policy of Macon County to encourage the use of electric transmission towers to deploy wireless infrastructure. In furtherance of that policy objective:

(1) No telecommunication tower shall be approved if an electric transmission tower is located above or no less than 25 feet below the ground elevation of and within a ¼-mile radius (1,320 feet) laterally of the proposed telecommunications tower site and if road access and necessary utilities can be obtained within a ¼-mile radius (1,320 feet) of the existing electric transmission tower, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility, or that the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities.

(2) Electric transmission towers less than 100 feet in height may be replaced by pressure-treated wooden or metal electric transmission towers up to 100 feet in height. Such

replacement shall be at the discretion of the electric utility which owns or operates the electric transmission tower, taking into account safety, service disruptions, structural capacity and structure life or duty cycle. For purposes of this chapter, such replacement electric transmission towers shall be deemed to be existing structures.

(B) Antennas that are placed on electric transmission or distribution towers are not required to be concealed.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.12 INSTALLATIONS UTILIZING EXISTING STRUCTURES.

(A) *Generally.* It is the policy of Macon County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which do not require the placement or construction of a telecommunications tower, increases in tower height, or substantial increases in height of alternative structures (as defined by this chapter), and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process. For purposes of this chapter, existing telecommunication towers requiring substantial increases in the height of alternative structures (as defined in this chapter) shall be treated the same as applications for a new or additional telecommunication tower(s).

(B) *Approval process.* Applications for wireless telecommunication facilities which do not require a new or additional telecommunications tower, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter) may be approved by the Ordinance Administrator without public hearing. Applications shall be in a form and shall contain such information as required by this chapter, and, in addition, such other information as the Ordinance Administrator shall deem necessary and appropriate. An application shall not be deemed complete until the application fee and maintenance/removal bond have been received by the county.

(C) *Application fee.* Payment of a \$500 nonrefundable application fee shall be required. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(D) *Maintenance/Removal bond.* An applicant for a wireless telecommunication facility that does not include a new or additional telecommunication tower, or require an increase in tower height or heights of alternative structures, shall be required to post a \$5,000 cash bond, or other security satisfactory to the county, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider fails to do so continually, or removing such facility in the event the applicant shall fail to do so within 90 days of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as all above-ground portions of the facility (not including any part of the foundation) have been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the maintenance/removal bond.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.13 OTHER PROVISIONS.

(A) *Natural disasters.* To the greatest extent possible, wireless telecommunication facilities shall be designed to survive a natural disaster without interruption in operation. Toward this end, the following measures shall be implemented:

(1) Non-flammable exterior wall and roof covering shall be used in the construction of equipment enclosures.

(2) Openings in all equipment enclosures shall be protected against penetration by fire and windblown embers.

(3) The telecommunication tower when fully loaded with antennas and other equipment and camouflaging shall be designed to withstand the forces expected during the maximum credible earthquake. All equipment mounting racks and equipment shall be anchored in such a manner that such a quake will not tip them over, throw equipment off shelves, or otherwise act to damage equipment.

(4) Reasonable measures shall be taken to keep the facility operational in the event of a natural disaster or other catastrophe. Back-up generators are required at all wireless telecommunication facilities.

(B) *Temporary facilities.* Temporary wireless telecommunication facilities shall be permitted as follow:

(1) Temporary facilities may be placed at or near the location of an existing proposed or approved wireless telecommunication facility for periods of up to 72 hours for equipment testing purposes or where the existing facility is unavailable due to scheduled or unscheduled maintenance.

(2) In the event of a natural disaster, catastrophic event or public emergency that either renders an existing wireless telecommunication facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed for periods of up to one week.

Permits for the temporary facilities may be extended for successive one week periods for the duration of the emergency as determined by the Ordinance Administrator.

(3) Permits may be issued for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.

(4) Permits for temporary facilities shall be issued by the Ordinance Administrator upon proof of eligibility and payment of a \$50 permit fee.

(C) *Nonconforming uses.* Any wireless telecommunication facility in existence on the date of enactment of this chapter which does not comply in all respects with the provisions of this chapter shall be deemed a nonconforming use. Such pre-existing facilities may not be increased in height without complying with the provisions of this chapter. In the event such facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this chapter. Except in the case of destruction or damage in excess of 50% of the tax value of the facility's improvements, technological upgrades of electronics and antennas are permitted.

(D) *Amateur radio operator towers.* Antennas or antenna arrays employed as part of a wireless telecommunication facility operated by a private business user, governmental user or commercial wireless service provider may not be co-located on a tower or other support structure used by an amateur radio operator.

(E) *Tower lighting.*

(1) No tower shall be of a type or height, or placed in a location, that the Federal Aviation Administration would require the tower to be lighted or painted.

(2) Towers shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting unless, in a particular instance, the Board of Commissioners requires a tower to be lit. The applicant shall be required to certify that the proposed telecommunication tower is not required to be painted or illuminated by any FAA rule or regulation.

(3) When incorporated into the approved design of a tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

(4) A wireless telecommunication facility may utilize a security light controlled by a motion-detection sensor at or near the entrance to the facility.

(F) *Macon County Airport restrictions.* No new telecommunications tower shall interfere with or protrude into the glide path of any runway in any direction of the Macon County Airport.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.14 VARIANCES.

(A) *Procedure.* A request for a variance must be submitted by the applicant in writing to the Board of Adjustment within 15 days of receipt of notice of an adverse decision by the Ordinance Administrator. The Planning Board may grant such variance upon findings that the following conditions exist:

(1) Extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape, topography or requirement for a microwave link that are not applicable to other telecommunication tower sites governed by this chapter.

(2) The variance will not confer upon the applicant any special privileges that are denied to other operators of telecommunications towers governed by this chapter.

(3) A literal application of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of telecommunications towers governed by this chapter.

(4) The variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or the general welfare.

(5) The variance is necessary for the applicant to achieve operational objectives, including co-location of antennas.

(B) *Board of Adjustment findings.* The Board of Adjustment shall make written findings to support its decision either granting or denying the variance, and a copy shall be provided to the applicant. The Board of Adjustment may attach to any variance such conditions as it deems necessary and appropriate. A request for a variance under this section shall not constitute an admission by the applicant of any findings of fact made by the Ordinance Administrator or a waiver of appeal rights provided by § 154.17.

(C) *Issuance of a permit.* Should the Board of Adjustment grant the requested variance, the Ordinance Administrator shall issue a tower permit. The permit applicant shall acknowledge and agree in writing to the permit conditions, if applicable, imposed by the Board of Adjustment. If construction is not begun within a 12-month period after the tower permit is issued, the tower permit shall expire, subject to the renewal option stated in § 154.08(T). (Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.15 CONTINUED COMPLIANCE REQUIRED.

All permits for the erection of a telecommunications tower are issued in reliance upon a presumption that the tower will in fact conform to the plans which are submitted as the basis for the permit, and once erected the tower must continue to be at all times maintained in compliance with the provisions of §§ 154.08 through 154.12. (Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)
Penalty, see § 154.99

§ 154.16 MAINTENANCE/REMOVAL AGREEMENT.

(A) A permit application for a new telecommunications tower shall be accompanied by those portions of an executed copy of a lease requiring the applicant to remove all above-ground portions of wireless telecommunication facilities (not including any part of the foundation) no later than 90 days after cessation of operations. In addition, each applicant for a new telecommunications tower shall execute a standard facility maintenance/removal agreement prior to issuance of the permit. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the county for all costs incurred to perform any work required of the applicant by the agreement that the applicant fails to perform. Such costs shall include, but not be limited to, administrative and job supervision costs. It shall also specifically authorize the county and/or its agents to enter onto the property and undertake the work so long as the Ordinance Administrator has first provided the applicant the following written notices at the applicant's last known address:

(1) An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least 30 days to complete the work; and

(2) A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the county's intent to commence the required work within ten days.

(B) The permit applicant for a new telecommunications tower shall be required to post a \$10,000 cash bond, or other security satisfactory to the county, to secure the costs of removing all above-ground portions of a wireless telecommunication facility (not including any part of the foundation) in the event the applicant shall fail to do so within 90 days of cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.17 APPEALS.

The denial of a variance by the Board of Adjustment, or the imposition of any conditions precedent to the issuance of a telecommunications tower permit, may be appealed to the Superior Court of Macon County within 30 days from the date of the decision.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

§ 154.99 PENALTY.

A violation of this chapter shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. § 153A-123, specifically including injunctions and abatement orders as provided by said statute.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)