

ORDINANCE NO. 2003-03

AN ORDINANCE OF THE TOWN OF GREENWOOD, FLORIDA ESTABLISHING REGULATIONS FOR WIRELESS TELECOMMUNICATIONS FACILITIES; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE TOWN OF GREENWOOD.

**Section 1. Purpose and Legislative Intent.**

The Telecommunications Act of 1996 affirmed the Town of Greenwood's (the Town) authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Town Council (the Commission) of the Town of Greenwood finds that Wireless Telecommunications Facilities may pose a unique hazard to the health, safety, public welfare and environment of the Town of Greenwood and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Town's land development code, the Town is adopting a comprehensive Wireless Telecommunications Facilities application and process for all properties not located in the Town right of way and roads. The intent of this Local Law is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review of environment impacts of such facilities, and protect the health, safety and welfare of the Town of Greenwood.

**Section 2. Title.**

This Law may be known and cited as the Wireless Telecommunications Facilities Siting Law for the Town of Greenwood.

**Section 3. Severability.**

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this law or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all

applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

- B) Any Special Use Permit issued under this Law shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town Council.

#### **Section 4. Definitions.**

For purposes of this Law, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Applicant"** means any Person submitting an Application to the Town of Greenwood for a Special Use Permit for Wireless Telecommunications Facilities.
3. **"Application"** means the form approved by the Commission, together with all necessary and appropriate documentation that an Application submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.
4. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), and microwave Telecommunications.
5. **"Town"** means the Town of Greenwood, Florida.
6. **"Council"** or **"Commission"** means the Town Council of the Town of Greenwood.

7. **“Collocation”** means the use of the same Telecommunications Tower or structure to carry two or more Antennae for the provision of wireless services by two or more persons entities.
8. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce. The inability to achieve a satisfactory financial return investment or profit, standing alone, shall not be considered “commercial impracticability” and shall not render an act or the terms of an agreement “commercially impracticable”.
9. **“Complete Application”** means an Application that contains all information and/or data necessary to enable the Commission to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of Wireless Telecommunications Facilities on the Town in the context of the permitted land use for the particular location requested.
10. **“Direct-to home satellite services”** or **“Direct Broadcast Service”** or **“DBS”** means only programming transmitted or broadcast by satellite directly to subscribers’ premises without the use of ground receiving equipment, except at the subscribers’ premises or in the uplink process to the satellite.
11. **“EAF”** means Environmental Assessment Form.
12. **“EPA”** means State and/or Federal Environmental Protection Agency or its duly assigned successor agency.
13. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
14. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
15. **“Free standing Tower”** means a Tower that is not supported by guide wires and ground anchors or other means of attached or external support.
16. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
17. **“NIER’** means Non-Ionizing Electromagnetic Radiation.

18. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
19. **"Personal Wireless Facility"** See definition for "Wireless Telecommunication Facilities."
20. **"Personal Wireless Services"** and **"PWS"** or **"Personal Telecommunications Service"** or **"PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
21. **"PDRB"** means the Town of Greenwood Planning Development and Review Board.
22. **"Telecommunications Site"** See definition for Wireless Telecommunications Facilities.
23. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
24. **"State"** means the State of Florida.
25. **"Telecommunications"** means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
26. **"Telecommunications Structure"** means a structure used in the provision of services describe in the definition of "Wireless Telecommunications Facilities".
27. **"Temporary"** means in relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.
28. **"Wireless Telecommunications Facilities"** or **"Telecommunications Tower"** or **"Telecommunications Site"** or **"Personal Wireless Facility"** means a structure, facility or location designed, or intended to be used as, or used to support, Antennas. It includes without limit, free standing Towers, guyed Towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal

Telecommunications services, commercial satellite services, or microwave Telecommunications, but excluding those used exclusively for the Town's fire, police, and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications.

## **Section 5. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Town's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this Law, the Town Council hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Establishing reasonable time frames for granting or not granting a Special Use Permit for Wireless Telecommunications Facilities, or recertifying or not recertifying, or revoking the Special Use Permit granted under the law.
- 4) Promoting and encouraging, wherever possible, the sharing and/or collocation of Wireless Telecommunications Facilities among service providers;
- 5) Promoting and encouraging, wherever possible, the placement, height and quantity of impacts to the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities.

## **Section 6. Special Use Permit Application and Other Requirements.**

- A) In determining a Special Use Permit for Wireless Telecommunications Facilities, the PDRB and the Commission shall follow the requirements set for in this section as well as the established criteria prescribed in existing land use ordinances.
- B) An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the

Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application. At the discretion of the Town, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.

- C) The Applicant shall include a statement in writing:
  - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Commission in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State, and Federal Laws, rules, and regulations;
  - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible including, but not limited to the fact that the Applicant is authorized to do business in Florida.
- D) No Wireless Telecommunications Facilities shall be installed or constructed until the site plan designed by a Florida licensed engineer and is reviewed and approved by the PDRB and the Commission, and a Development Order has been issued by the Building and Planning Department.
- E) All applications for the construction or installation of new Wireless Telecommunications Facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the State. Where this section calls for certification, such certification shall be by a qualified Florida State licensed Professional Engineer acceptable to the Town, unless otherwise noted. The Application shall include, in addition to the other requirements for the Special Use Permit, the following information:
  - 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily within the Town;
  - 2) Name, address, and phone number of the person preparing the report;

- 3) Name, address, and phone number of the property owner, operator, and Applicant, to include the legal form of the Applicant;
- 4) Postal address and tax map parcel number of the property;
- 5) Zoning District or designation in which the property is situated;
- 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- 7) Location of nearest residential structure;
- 8) Location of nearest habitable structure;
- 9) Location, size and height of all structures on the property which is the subject of the Application;
- 10) Location, size and height of all proposed and existing antennae and all appurtenant structures;
- 11) Type, locations, and dimensions of all proposed and existing landscaping, and fencing;
- 12) The number, type, and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity accommodate multiple users;
- 13) The make, model and manufacturer of the Tower and Antenna(s);
- 14) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 15) The frequency, modulation, and class of service of radio or other transmitting equipment;
- 16) Transmission and maximum effective radiated power of the Antenna(s);

- 17) Direction of maximum lobes and associated radiation of the Antenna(s);
  - 18) Certification that NIER levels at the proposed site are within the threshold levels adopted by FCC;
  - 19) Certification that the proposed Antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Town;
  - 20) A copy of the FCC license applicable for the use of Wireless Telecommunications Facilities;
  - 21) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facility on the proposed site, though the certifying engineer need not be approved by the Town;
  - 22) Propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
  - 23) Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
- F) In the case of a new Telecommunication Tower, the Applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing Telecommunications Tower(s) or use of existing buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town.
- G) The Applicant shall furnish written certification that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, County, State, and Federal structural requirements for loads, including wind loads.
- H) The Applicant shall furnish written certification that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.



- I) The Applicant shall submit a completed long form EAF and a completed Visual EAF addendum. Based on the results of the Visual EAF addendum, the Commission may require submission of a more detailed visual analysis. The scope of the required Environmental and visual assessment will be reviewed at the pre-application meeting.
- J) The Applicant shall furnish a Visual Impact Assessment which shall include:
  - 1) A "Zone of Visibility Map" which shall be provided in order to determine locations where the Tower may be seen.
  - 2) Pictorial representation of "before and after" views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
  - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- K) The Applicant shall, in a manner approved by the Commission and reviewed by the PDRB, determine and provide in writing and/or by drawing how it shall effectively screen from view its proposed Wireless Telecommunications Facilities base and all related facilities and structures.
- L) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, and all local codes where appropriate. The Commission may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Commission, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic-characteristics of the area.
- M) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to have the least

adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facilities sites.

- N) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize use of building materials, colors, and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as required by the Town.
- O) At a Telecommunications Site, an access road, turn around space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- P) A person who holds a Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- Q) A holder of a Special Use Permit granted under this Law shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- R) With respect to this application process, the Town intends to be the lead agency, pursuant to Florida Department of Environmental Protection. The Commission shall conduct an environment review of the proposed project in combination with its review of the Application under this Law.

- S) An Applicant shall submit to the Greenwood Building and Planning Department the number of completed Applications determined by the Town at the pre-application meeting. The Applicant shall provide written notification of an Application to effected adjacent local governments.
- T) The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Commission. The Telecommunications Tower shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
- 1) The foreseeable number of FCC licenses available for the area;
  - 2) The kind of Wireless Telecommunication Facilities site and structure proposed;
  - 3) The number of existing and potential licenses without Wireless Telecommunication Facilities spaces/sites;
  - 4) Available space on existing and approved Telecommunications Towers.
- U) The applicant shall submit to the Town a letter of intent committing the owner of the proposed new Tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed Tower by other Telecommunications providers in the future. This letter shall be filed with the Commission. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the Special Use Permit. The letter shall commit the new Tower owner and their successors in interest to:
- 1) Respond within 60 days to a request for information from a potential shared –use Applicant;
  - 2) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
  - 3) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to expedite the review and permitting

process. A pre-application meeting may also include a site visit if required. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

- V) Unless waived by the Commission, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues, which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit if required. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- W) The holder of a Special Use Permit shall notify that Town of any intended modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.
- X) In order to better inform the public, in the case of the new Telecommunication Tower, the applicant shall prior to the public hearing on the application, hold a "balloon test" as follows: Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised, by the Applicant, at seven (7) and fourteen (14) days in advance of the first test date in the newspaper with a general circulation in Town and agreed to by the Commission. The Applicant shall inform the Commission, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least eight consecutive hours sometime between 7:00 am and 4:00 pm of the dates chosen. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a weekday.

## **Section 7. Location of Wireless Telecommunications Facilities.**

- A) Applicants for Wireless Telecommunications Facilities, on properties other than Town right of way and roads, shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.
  - 1) On existing Telecommunications Towers or other tall structures;
  - 2) On Town-owned properties;

- 3) Manufacturing District (M-1);
- 4) Heavy Commercial and Light Manufacturing (C-2);
- 5) On other property in the Town;

- B) If the property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site presented is the only site lease or selected. An Application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the Commission may approve any site located within an area in the above list of priorities, provided that the Commission finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) The Applicant is requested, in writing, to identify and disclose the number and locations of any additional sites that the Applicant has been, is, or will be considering, reviewing or planning for Wireless Telecommunications Facilities in the Town, and all municipalities adjoining the Town, for a two year period following the date of the Application.
- G) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Commission may disapprove an Application for any of the following reasons:
  - 1) Conflict with safety and safety-related codes and requirements;
  - 2) Conflict with traffic needs or traffic laws, or definitive planes for changes in traffic flow or traffic laws;

- 3) Conflict with the historic nature of a neighborhood or historical district;
- 4) Conflict with the central business district;
- 5) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- 6) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
- 7) Conflicts with the provisions of this Law.

### **Section 8. Shared use of Wireless Telecommunications Facilities and other structures.**

- A) Shared use of existing Wireless Telecommunication Facilities shall be preferred by the Town, as opposed to the proposed construction of a new Telecommunications Tower. Where such shared use is unavailable, location of Antennas or other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing Towers and other appropriate structures within four (4) miles of any proposed new Tower Site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B) An Applicant intending to share use of an existing Telecommunications Tower or other structure shall be required to document the intent of the existing owner to share use. In the event of an Application to share the use of an existing Telecommunications Tower does not increase the height of the Telecommunications Tower, the Commission shall waive such requirements of the Application required by this Local Law as may be for good cause shown.
- C) Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the Town, and a five mile surrounding area, to the extent practicable, unless good cause is shown.

### **Section 9. Height of Telecommunications Tower(s).**

- A) The Applicant shall submit documentation justifying to the Town the total height of any Telecommunications Tower, Facility and/or Antenna and the basis therefor. Such justification shall be to provide service

within the Town, and a five mile surrounding area, to the extent practicable, unless good cause is shown.

- B) Telecommunications Towers shall be no higher than the minimum height necessary. Unless waived by the Commission upon good cause shown, the maximum height shall be one hundred forty (140) feet, based on six (6) collocated antenna arrays and ambient tree height of eighty (80) feet.
- C) The maximum height of any Telecommunications Tower and attached Antenna constructed after the effective date of this Law shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with municipal, County, State, and/or Federal statute, law, local law, Town ordinances, code, rule or regulation.

### **Section 10. Visibility of Wireless Telecommunications Facilities.**

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
- B) Telecommunications Towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Commission, and shall be maintained in accordance with the requirements of this Law.
- C) If lighting is required. Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive as effect as is permissible under State and Federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the Wireless telecommunications Facilities are located.

### **Section 11. Security of Wireless Telecommunications Facilities.**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized. Specifically as follows:

- 1) All Antennas, Towers, and other supporting structures, including guy wires, shall be made inaccessible to individuals or shielded in such a manner that they cannot be climbed or run into; and
- 2) Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them

## **Section 12. Signage.**

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or shed of the Applicant and be visible from the access point of the site and must identify the equipment shelter of the applicant. The sign shall not be lighted unless the Commission shall have allowed such lighting or unless such lighting is required by applicable provisions of law. No other signage, including advertising, shall be permitted on any facilities, Antennas, Antenna supporting structures or Antenna Towers, unless required by Law.

## **Section 13. Lot Size and Setbacks.**

All proposed Wireless Telecommunications Facilities shall be set back from abutting parcels, recorded right-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the Wireless Telecommunications Facility or the existing setback requirements of the underlying zoning district, plus an additional fifty (50) feet for the effect of wind. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

## **Section 14. Retention of Expert Assistance and Reimbursement by Applicant.**

- A) The Town, pursuant to its procurement policy, may hire any consultant and/or expert necessary to assist staff, the PDRB and the Commission in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B) An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable cost of consultant and expert evaluation and consultation to the Commission in connection with the review of any Application. The initial deposit shall be \$5,000.00. These funds shall precede the pre-application meeting and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no more frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further



action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing at the conclusion of the project, the difference shall be promptly refunded to the Applicant.

- C) The total amount of the funds set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed by the Commission or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as reasonably required and requested by the Town, shall be paid by the Applicant.

### **Section 15. Exceptions from a Special Use Permit for Wireless Telecommunications Facilities.**

- A) No Person shall be permitted to site, place, build, construct or modify, or prepare any site for placement or use of, Wireless Telecommunications Facilities as of the effective date of this Law without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those exceptions noted in the definition of Wireless Telecommunications Facilities.
- B) New construction on existing Wireless Telecommunications Facilities shall comply with the requirements by Law.
- C) All Wireless Telecommunications Facilities existing on or before the effective date of this Law shall be allowed to continue as they presently exist, provided however, that any modification to existing Wireless Telecommunications Facilities must comply with this Law.

### **Section 16. Public Hearing and Notification Requirements.**

- A) Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities, public hearings shall be held by the PDRB and the Commission. Additionally, the Applicant, at least three (3) weeks prior to the date of the first public hearing, shall be required to provide names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot on which the new Wireless Telecommunications Facilities are proposed to be located, so that the Town may notify landowners.

- B) There shall be no hearing required for an application to co-locate on an existing tower or other structure, as long as such does not increase the height of the structure, including attachments.
- C) The Building and Planning Department shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete. The PDRB and Commission, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

### **Section 17. Recertification of a Special Use Permit for Wireless Telecommunications Facilities.**

- A) At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Special Use Permit and all subsequent fifth anniversary of the effective date of the original Special Use Permit for Wireless Telecommunications Facilities, the holder of a Special Use Permit for such Wireless Telecommunications Facilities shall submit a signed written request to the Town for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
  - 1) The name of the holder of the Special Use Permit for the Wireless Telecommunications Facilities;
  - 2) If applicable, the number or title of the Special Use Permit;
  - 3) The date of the original granting of the Special Use Permit;
  - 4) Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise modified since the issuance of the Special Use Permit and if so, in what manner;
  - 5) If the Wireless Telecommunications Facilities have been moved, relocated, rebuilt, or otherwise modified, then whether the Commission approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - 6) Any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Special Use Permit;
  - 7) That the Wireless Telecommunications Facilities are in compliance with the Special Use Permit and compliance with all applicable codes, Laws, rules, and regulations;
  - 8) Recertification that the Telecommunications Tower and attachments both are designed and constructed ("As Built") and continue to meet all local, County, State, and Federal structural requirements for loads, including wind loads. Such recertification shall be by a qualified Florida

licensed Professional Engineer acceptable to the Town, the cost of which shall be borne by the Applicant.

- B) If, after such review, the Town determines that the permitted Wireless Telecommunications Facilities are in compliance with the Special Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town shall issue a recertification Special Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Town determines that the permitted Wireless Telecommunications Facilities are not in compliance with the Special Use Permit and all applicable statutes, local laws, ordinances, codes, rules, and regulations, then the Town may refuse to issue a recertification Special Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant received written notice of such decision by the Town. Any such decision shall be in writing and supported by substantial evidence contained in written record.
- C) If the Applicant has submitted all of the information requested by the Town and required by this Law, and if the Town does not complete its review, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Town to complete its review.
- D) If the holder of a Special Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Special Use Permit within the timeframe noted in subsection (A) of this section, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Town that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late recertification request or Application for a new Special Use Permit

## **Section 18. Extent and Parameters of Special Use Permit For Wireless Telecommunications Facilities.**

The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

- 1) Such Special Use Permit shall be non-exclusive;
- 2) Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification of the Council.
- 3) Such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for Wireless Telecommunications Facilities, or for a material violation of this Law after prior written notice to the Applicant and the holder of the Special Use Permit.

### **Section 19. Application Fee.**

- A) At the time that a person submits and Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay a non-refundable application fee of \$5,000.00 to the Town. If the Application is for a Special Use Permit for collocating on an existing Telecommunications Tower or high structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,000.00.
- B) No Application fee is required in order recertify a Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facilities since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

### **Section 20. Performance Security.**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Commission to assure the faithful performance of the terms and conditions of this Law and conditions of any Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Wireless Telecommunications Facilities, and any necessary shall be a violation of the provisions of the Special Use Permit and shall entitle the Commission to revoke the Special Use Permit after prior

written notice to the Applicant and holder of the permit and after a hearing upon due prior notice to the Applicant and holder of the Special Use Permit.

## **Section 21. Reservation of Authority to Inspect Wireless Telecommunications Facilities.**

In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

## **Section 22. Annual NIER Certification.**

The holder of the Special Use Permit shall, annually, certify in writing to the Town that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer must be licensed to practice engineering in the State of Florida, however, need not be approved by the Town.

## **Section 23. Liability Insurance.**

- A) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below
  - 1) Commercial General Liability covering personal injuries, death and property damage:  
\$1,000,000 per occurrence/\$2,000,000 aggregate;
  - 2) Automobile Coverage: \$1,000,000.00 per occurrence/  
\$2,000,000.00 aggregate;
  - 3) Workers Compensation and Disability: Statutory amounts
- B) The Commercial General liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Town a cop of each of the policies or certificates representing the insurance in the required amounts.

#### **Section 24. Indemnification.**

- A) Any application for Wireless Telecommunication Facilities that is proposed for Town property, pursuant to this Law, shall contain a provision with respect to indemnification. Such provision shall required the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

#### **Section 25. Fines.**

- A) In the event of a violation of this Law or any Special Use Permit issued pursuant to this Law, the Commission may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the Town, fines or penalties as set forth below.
- B) the holder of a Special Use Permits failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Applicant to the code enforcement provisions and procedures as Provided in Ch. 2, Article VIII of the Town of Greenwood Code of Ordinances and Section 166.0415, Florida Statutes. In addition, violation of this Ordinance may be punishable as provided in Section 162.22, Florida Statutes, as it may be amended.

Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

- C) Notwithstanding anything in this Law, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Law or any section of this Law. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The Town may also seek injunctive relief to prevent the continued violation of this Law, without limiting other remedies available to the Town.

## **Section 26. Default and/or Revocation.**

- A) If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provision of this Law or of the Special Use Permit, then the Town shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and shall be in accordance with the procedure outlined in Chapter 162.06, Florida Statutes.

## **Section 27. Removal of Wireless Telecommunications Facilities.**

- A) Under the following circumstances, the Council may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities.
  - 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180)

days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
  - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization.
- B) If the Commission makes such a determination as noted in Subsection (A) of this section, then the Commission shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the Commission may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) the holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Commission. However, if the owner of the property up which the Wireless Telecommunications Facilities, the owner may do so with the approval of the Commission.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the Commission may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.
- E) If, the Town removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Sections to the contrary, the Commission may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which



time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the Commission, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

### Section 28. Effective Date.

This Law shall be effective immediately upon passage, pursuant to applicable legal procedural requirements.

Proposed ordinance presented to the town council of the town of Greenwood, Florida, and read in full, and discussed with an opportunity for interested persons to be heard at the October 14, 2003, regular meeting.

Proposed ordinance noticed once in a newspaper of general circulation in the town of Greenwood, Florida, at least ten days prior to its adoption.

Proposed ordinance read by title before the town council of the town of Greenwood, Florida, at the November 18<sup>th</sup>, 2003, regular meeting, interested parties who appeared before the town council being heard, and proposed ordinance passed by at least two affirmative votes of members of the town council of the town of Greenwood, Florida at said meeting.

PASSED AND ORDAINED THIS 18<sup>th</sup> day of November, 2003.



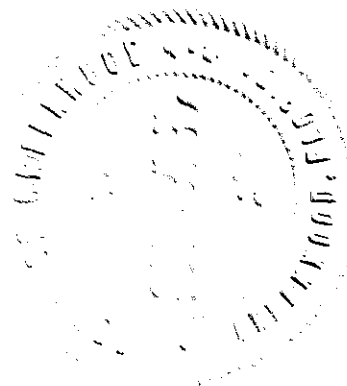
CHARLES SANDERS, Mayor

ATTEST:



SUZANNE NeSMITH, Town Clerk

[SEAL]



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