

**MUNICIPALITY OF ANCHORAGE
PLANNING DEPARTMENT
MEMORANDUM**

DATE: February 1, 2016

TO: Planning and Zoning Commission

THRU: *cw for HHH* Hal H. Hart, AICP, Planning Department Director

FROM: *oo* Shawn Odell, Senior Planner

SUBJECT: 2016-0015 - An Ordinance Amending AMC Title 21 For Telecommunications facilities, including cell towers, repealing and re-enacting AMC Subsection 21.050.040K

PROPOSED REQUEST:

Assembly member's Demboski, Evans, Hall, Johnston, and Peterson through the Assembly's Community and Economic Development Committee, Cell Tower Working Group, have prepared this amendment to the Anchorage Municipal Code Title 21 *Land Use Planning* to amend provisions regarding telecommunications facilities, including cell towers. The Planning and Zoning Commission is being asked to make a recommendation on the proposed ordinance to the Anchorage Assembly.

BACKGROUND AND DISCUSSION:

The Community and Economic Development Committee Cell Tower work Group held meetings to draft an ordinance to amend Title 21 code provisions regarding telecommunications facilities.

The draft ordinance was routed to reviewing agencies and all community councils. Reviewing agencies and community councils provided comments and objections to the proposed ordinance.

The Community and Economic Development Committee Cell Tower Working Group, has provided a comparison chart, to show the main differences between Title 21 and the provisions of this ordinance. Also included as Exhibit A- is a use category table showing where different types of towers may locate within the different zoning districts.

RECOMMENDATION:

The Department recommends approval of the ordinance as written.

Attachments: Draft Ordinance
Comparison of Changes
Exhibit A - Use Category
Memo- Timeline re Cell Towers Ordinance

Meeting Notes CEDC Oct. 21, 2015
Agency and Public Comments

Submitted by: Community and Economic Development
Committee (Assembly members Demboski,
Evans, Hall, Johnston, Peterson)
Prepared by: Cell Tower Working Group
For reading: _____

ANCHORAGE, ALASKA
AO No. 2015-_____

**AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 (NEW CODE)
TO AMEND PROVISIONS REGARDING TELECOMMUNICATIONS FACILITIES,
INCLUDING CELL TOWERS.**

(Pzc 2016-0015)

WHEREAS, ;

WHEREAS,; and

WHEREAS,; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code subsection 21.05.010E, Table of Allowed Uses, is hereby amended in accordance with the attached Exhibit A.

Section 2. Anchorage Municipal Code subsection 21.05.040K is hereby repealed and reenacted to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.05.040 Community Uses: Definitions and Use-Specific Standards

*** *** ***

K. Telecommunication facilities

This subsection provides the land use standards for the location and design of what are commonly referred to as cell towers, but also includes or excludes other types of telecommunication facilities. Telecommunication facilities are allowed as a principal use as provided in table 21.05-1. Telecommunications facilities are allowed as an accessory use as provided in subsection K.2.f.

1. Exemptions. Except for the provisions governing abandonment and interference, the following are exempt from this section:

- a.** Amateur radio station towers and noncommercial receive-only antennas, provided:
 - i.** The antenna and tower structure are part of a federally-licensed amateur radio station; and
 - ii.** In residential zoning districts there is no use of the tower structure by a third party commercial antenna operator.

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- b. Personal antenna for use by a dwelling unit occupant for personal, home occupation.
- c. Localized utility antenna used for utility telemetry purposes, or by an electric or gas utility on an existing utility pole or cabinet to monitor or control equipment thereon.
- d. A DAS, small cell, or wireless mesh networking facility installation on a utility pole, if the installation meets the following:
 - i. The applicant shall provide proof that the owner of the utility pole authorizes the installation of the facilities.
 - ii. The applicant shall provide proof that the property owner, if different from applicant, authorizes the installation of the facilities.
 - iii. Pole size, diameter and height shall be no larger than the municipality, state or utility would use for its intended purpose without the installation, as determined by said entities;
 - iv. Antennas shall be limited to snug-mount, canister-mount or concealed antennas;
 - v. Antennas shall not increase the pole height by more than three feet per installation and shall not exceed 18 inches in diameter;
 - vi. Antennas and mounting hardware shall be covered or painted to match the color and texture of the pole on which it is mounted. All cables shall be located inside the installation or within an encasement colored to match the pole and oriented to a side with the least visual impact;
 - vii. There shall be no more than two separate installations on each pole;
 - viii. Installations on a single pole shall not exceed a noise level of 65 dB(A);
 - ix. Any ancillary equipment located in a right-of-way:
 - (A) Shall be attached to a utility pole and be the same color as the utility pole; and
 - (B) Shall not exceed three feet in height, two feet in width, and one foot in depth.

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- x. Any ancillary equipment not located in a right-of-way must meet the following criteria:
1. Antennas shall not be located on poles planned for removal by the municipality, state or a utility within 5 years of the date of application;
 2. The equipment may be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
 3. The equipment shall be included in lot coverage and non-open space calculations for the site, including the pad;
 4. The equipment shall be located on a concrete pad, unless required to be elevated due to FEMA requirements;
 5. The equipment shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter;
 6. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded); and
 7. All equipment, including power generators, service panels and service connections shall be housed in one of the following: within a building, within a wireless equipment compound, within a wireless equipment cabinet, or completely underground. The wireless equipment cabinet shall not exceed four feet in height and 80 cubic feet.
- xi. The top of any installation on the utility pole shall not exceed 50 feet in height from the base of the pole, or 6 feet above the top of the pole, whichever is less.
- xii. The building, wireless equipment compound or wireless equipment cabinet shall be architecturally compatible with the surrounding area in terms of scale, form, texture,

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materials and color.

- e. Owners of antennas exempt under subsection K.1.d. shall make the annual inventory report required by subsection K.5.n.
- f. Any antenna or tower structure exempt under this subsection shall not exceed the height limits set forth in subsection 21.06.020, nor interfere with Federal Aviation Administration Regulations on airport approaches.

2. Definitions

- a. **Telecommunication facility**
A facility which transmits signals between or among points using electromagnetic waves. The facilities may include towers, antennas, buildings, transformers, transmitters, receivers, equipment cabinets, and parking lots.
- b. **Type 1 tower**
A freestanding vertical support structure of cylindrical, conical, or rectangular cross section constructed of composite, wood, concrete, or metal employed primarily for the purpose of supporting an antenna array and commonly called a monopole. A utility pole with one or more telecommunications facilities is a type 1 tower unless it meets the requirements of 1.d. of this section.
- c. **Type 2 tower**
A freestanding vertical support structure of open frame skeletal design employed primarily for the purpose of supporting an antenna array and commonly called a lattice tower. This tower type includes lateral arrays.
- d. **Type 3 tower**
A guyed vertical support structure of open frame, skeletal design, or solid pole design employed primarily for the purpose of supporting an antenna array and commonly called a guyed tower.
- e. **Type 4 tower**
A concealed telecommunications facility and its support structure.
- f. Telecommunications facilities are allowed or prohibited as an accessory use in residential and PLI zones, in accordance with the following:

	All R1-R3	R4-R10	RO	PLI
Type 1	Not Permitted	Accessory to R	Permitted	Permitted

		use, if ≥ 6 dwelling units; Accessory to NR uses	under Admin Site Plan (K.3.b.)	under Admin Site Plan (K.3.b.)
Type 2	Not Permitted	Condition Use Permit, if accessory to NR uses	Condition Use Permit	Not Permitted
Type 3	Not Permitted	Condition Use Permit, if accessory to NR uses	Condition Use Permit	Not Permitted
Type 4	Accessory only to NR uses	Accessory to R use, if ≥ 6 dwelling units; Accessory to NR uses under Admin Site Plan (K.3.b.)	Permitted under Admin Site Plan (K.3.b.)	Permitted under Admin Site Plan (K.3.b.)
Antenna only (except small cell, DAS, WMN)	Accessory only to NR uses	Accessory only to NR uses	Accessory only to NR uses	Permitted
Amateur Radio; noncommercial receive only; small cell, DAS, WMN; utility specific	Permitted	Permitted	Permitted	Permitted

* In the AF district, three towers per lot are permitted by right. The installation of more than three towers per lot requires a conditional use permit.

- g. Telecommunications facilities are allowed as an accessory use in all other zoning districts in which they are allowed as a permitted use, but subject to the same approval process as if a permitted use.

3. Applications

a. For antennas or towers permitted "by right"

- i. Installation and use of a telecommunication facility that does not require an approval under this Code may still be required to comply with other laws, including approval of a building or land use permit under Title 23 of this Code. Building or land use permits shall be reviewed for compliance or eligibility for exemption from this title. Prior to issuance of a building or land use permit for type 1, 2, or 3 towers, or amateur radio station towers, the applicant shall notify property owners in accordance with 21.03.020H.
- ii. A tower as a permitted principal use shall be subject to the common standards in subsection 5.
- iii. The effective date of the building or land use permit shall be no earlier than 30 days after the date of mailing of the notification required by 21.03.020H.

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b. **For antennas or towers requiring administrative site plan approval under table 21.05-1, Table 21.09.050-1, or Table 21.10-4.** A site plan review and approval is required of towers in certain districts because they have aesthetic and visual impacts on their neighbors. The public interest is best served by allowing these neighbors and the public at large a chance to comment on and provide input concerning the location and design of these towers. An administrative approval for the site plan shall be obtained from the director.

i. **Submittal information.** Applicants for an administrative site plan review and approval for a tower structure shall submit the information required by subsection 21.03.180C, any corresponding regulations, and:

- (A) The proposed tower height and type,
- (B) A description of the design of the tower, and types, sizes and locations of antennas on the tower, including a rendition, drawing, or photographic representation of what the tower will look like if constructed,
- (C) The legal description of the site, its zoning and its street address, if any, and
- (D) A list of who was notified, with what information, and when.

ii. **Certified information.** Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

iii. **Notice and public process.** Notwithstanding Table 21.03-1, at least 35 days before acting on a tower site plan application the director shall publish, provide to affected community councils, and mail notice of the application in accordance with subsection 12.03.020H.

- (A) The notice shall state the name of the applicant, a clear and concise description of the project, the street address, if any, and the legal description of the land subject to the application. The applicant shall reimburse the municipality for the expense of publishing and mailing such notice. The applicant shall also post the property with notice pursuant to subsection 21.03.020H.5.

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(B) Interested persons and the affected community councils have 35 days from the date of the notice to respond. In order to be considered, responses must be in writing.

iii. **Approval, with or without conditions.** In addition to the general standards for site plan approval under subsection 21.03.180F., the director shall also consider the factors for conditional uses for tower structures in subsection c., below. In approving a site plan, the director may impose conditions to the extent the director concludes conditions are necessary to minimize any adverse effect of the proposed tower structure, including all associated structures and landscaping, on adjoining properties.

iv. **Time period for approval.** The director shall take action on the site plan within the timeframe provided in 21.03.180C. Within 10 days of issuance, the applicant shall mail a copy of the written action of the director to all addresses on the original notice list.

c. **For antennas or towers requiring a conditional use.** Applications for conditional use approval under this section shall be subject to the conditional use procedures and approval criteria in section 21.03.080 in this title, except as modified in this section.

i. **Submittal information.** Applicants for conditional use for a tower structure shall submit the information required in section 21.03.080, any corresponding regulations, and the following:

(A) Evidence to demonstrate that no existing tower, structure, or alternative technology can accommodate the applicant's proposed antenna. Such evidence shall consist of information demonstrating the following:

1. No existing tower or structure is located within the geographic area needed to meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

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4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are commercially unreasonable. Costs exceeding new tower structure development are presumed to be unreasonable.
6. There are other limiting factors that render existing tower or structures unsuitable.
7. An alternative technology that does not require the use of a tower or structure, such as a cable microcell network using multiple low-powered transmitters or receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower structure or antenna development shall not be presumed to render the technology unsuitable.

ii. **Certified information.** Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

iii. **Notice.** Notice of the application shall be provided to property owners, residents, and community councils in accordance with 21.03.020H.

iv. **Factors considered in granting a conditional use for antennas and tower structures.** In addition to the general standards for a conditional use in subsection 21.03.080D., the planning and zoning commission shall consider the following factors in determining whether to issue a conditional use:

- (A) Height of the proposed tower structure;

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- (B) Proximity of the tower structure to residential structures and residential district boundaries;
- (C) Nature of uses on adjacent and nearby properties;
- (D) Surrounding topography;
- (E) Surrounding tree coverage and foliage;
- (F) Design of the tower structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (G) Proposed ingress and egress; and
- (H) Availability of suitable existing towers, structures, or alternative technologies not requiring the use of towers or structures. No new tower structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning and zoning commission:
 - 1. No existing tower or structure can accommodate or replace the applicant's proposed antenna; and
 - 2. No alternative technology that does not require the use of tower structures can accommodate or replace the applicant's proposed antenna.

v. **Approval, with or without conditions.** The commission may waive or reduce the burden on the applicant of one or more of the conditional use criteria in this section if the commission finds the goals of this Title are better served thereby. In granting a conditional use, the planning and zoning commission may impose conditions to the extent the commission finds such conditions are necessary to minimize any adverse effect of the proposed tower structure or antenna on adjoining properties.

5. Common standards

a. Applicability

These common standards apply to all towers not exempted in subsection 1, unless waived or reduced through the administrative site plan or conditional use process.

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b. Minimum separation distance from protected land uses

- i. The minimum separation distance between the base of the tower and any principal structure on PLI or residentially-zoned land, or any school or licensed child care center, shall be 150% of the allowable tower height.
- ii. After giving due consideration to the comments of the applicant, the property owner, and the local community council, the approving authority may reduce the minimum separation distance set forth in the paragraph b.i. above to no less than 110% of the allowable tower height. The planning and zoning commission may not further reduce this separation distance.

c. Tower structure height

- i. Height for a tower structure directly fixed to the ground shall be determined by measurement from grade to the highest point on the tower structure, including any installed antennas and lighting and associated structures. Maximum height shall be as set forth below:
 - (A) Residential districts—65 feet.
 - (B) Commercial districts—130 feet.
 - (C) Industrial districts—150 feet.
 - (D) AF district—200 feet.
 - (E) All other districts—100 feet.
- ii. Height for a tower structure not directly affixed to the ground shall be determined by measurement from the grade of the building to the highest point on the tower structure, including any installed antennas and lighting and supporting structures. At no time shall the height of a tower installed on a building as measured from grade to the highest point on the tower structure as set forth above exceed the height of the building multiplied by two or the base height, whichever is greater. Tower structures not directly affixed to the ground shall not exceed the height limits set forth in section 21.06.020. of this title nor interfere with Federal Aviation Administration Regulations on airport approaches.

d. Parking

1 Off-street parking is not required, however if it is provided,
2 parking spaces may be shared with other principal uses on the
3 site. The parking spaces shall be paved in class A districts and,
4 in class B districts, shall be covered with a layer of crushed rock
5 of no more than one inch in diameter to a minimum depth of
6 three inches. Parking space illumination shall be provided only to
7 extent that the area is illuminated when the parking space is in
8 use. The illumination shall be the lowest possible intensity level
9 to provide parking space lighting for safe working conditions.

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11 **e. Landscaping and fencing**

12 For any tower or related base station, screening landscaping
13 shall be provided in accordance with 21.07.080G.4.

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15 **f. Security**

16 The tower structure and support structures shall be secured to
17 prevent unauthorized access.

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19 **g. Separation distance**

20 If any tower on a site exceeds 200 feet in height, the tower site
21 shall be separated from any other tower site with tower(s)
22 exceeding 200 feet in height by at least 5,280 feet (one mile).

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24 **h. Installation**

25 All transmitting antennas shall be installed in a manner as set
26 forth by the manufacturer and by the Federal Communications
27 Commission (FCC) as meeting the current American National
28 Standards Institute (ANSI) standard for nonionizing
29 electromagnetic radiation (NIER).

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31 **i. Tower lighting**

32 Tower structures shall not be lighted unless the Federal Aviation
33 Administration requires or recommends that obstruction lighting
34 be installed. To prevent direct light reflection on other property,
35 tower structure lighting shall be shielded to the extent permitted
36 by the Federal Aviation Administration.

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38 **j. Tower color**

39 Except for qualifying Type 4 concealed towers where the color
40 used enhances the concealment, the tower structure and any
41 other structure(s) directly related to the operation of any antenna
42 mounted on the tower structure shall be neutral in color and, to
43 the extent possible, shall be compatible with the appearance and
44 character of the neighborhood or location unless obstruction
45 marking is required by the Federal Aviation Administration.

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47 **k. Identification placard**

48 An identification placard shall be attached to the tower structure
49 or the security fencing in a location clearly visible at eye level.
50 The placard shall provide the following information:

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- i. The name and address of the tower structure owner;
- ii. The name and address of the tower structure manager, if different from the owner;
- iii. The date of erection of the tower structure; and
- iv. The owner's name and address of each antenna on the tower structure.

I. Co-location

Any additional height allowed by co-location under this title is concurrent with, and not in addition to, height modifications made pursuant to 47 U.S.C. 1455.

- i. All towers shall, for reasonable compensation, be made available for use by as many licensed carriers as can be technically co-located thereon when the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. All licensed carriers shall cooperate with each other in co-locating additional facilities upon such towers. All licensed carriers shall exercise good faith in co-locating with other licensed carriers and in the sharing of towers, including the sharing of technical information to evaluate the feasibility of co-location.
- ii. Colocation is prohibited if the installation will violate the standards of the original approval (except as to height allowed by this subsection), including violation of standards applicable to concealment.
- iii. All new type 1, 2 and 3 towers in residential or PLI zones, or within 200 yards of the property line of such properties shall be engineered and constructed to accommodate a total of 3 separate antenna array without the need to re-engineer.

m. Time period for construction

Construction of a tower shall commence within one year from the later date of the building or land use permit, site plan, or conditional use approval, with opportunity for a six-month extension. If not used within one year, or within the extension period, the permit or approval, or both, shall become null and void.

n. Interference

1 Within 90 days of activation of an antenna, the operator shall
2 provide written notice to property owners and residents in
3 accordance with 21.03 notice. The notice shall include:

- 4
- 5 i. The date of activation;
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 - 7 ii. The operator's contact information, including phone
8 number, and
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 - 10 iii. Normal business hours or, if none, hours the operator can
11 be reached by phone.

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13 **o. Annual inventory**

14 By January 31 of each year, the owner of each antenna or tower
15 regulated by this section shall provide the municipality with an
16 inventory of all additions and deletions of the owner's existing
17 antennas, towers or approved sites for such facilities that are
18 within the municipality or within one mile of the border thereof as
19 of December 31 of the previous year.

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- 21 i. The first inventory from each provider shall be a
22 comprehensive current list of their existing antennas,
23 towers and approved sites.
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 - 25 ii. The inventory shall be provided in an electronic format,
26 preferably in a spreadsheet, emailed to (address) and
27 shall contain a separate entry for each tower or, if no
28 tower, each site and antenna. Each entry shall contain:
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 - 30 (A) Municipal or borough parcel ID. In the absence of
31 a parcel Id, a legal description or official street
32 address,
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 - 34 (B) Actual height of the antenna or tower or, in the
35 absence of a constructed antenna or tower, the
36 approved tower height,
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 - 38 (C) Number of actual or planned antenna,
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 - 40 (D) Name of each antenna owner for co-located
41 antenna,
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 - 43 (E) Number of inactive antenna or, if applicable,
44 indicate the entire tower or site is inactive, and
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 - 46 (F) Unutilized number of antenna co-locations
47 available on the tower, by counting designed or
48 existing and known engineered capacity in 15 foot
49 increments.

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iii. Failure to comply with this section is a violation enforceable under 21.13.040.

6. Specific Standards for types of telecommunications facilities

a. Type 1.

i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the setbacks of the underlying zoning district.

b. Type 2.

i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from grade to the first taper transition.

c. Type 3.

i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from the tower structure axis to the outermost guy wire anchor. The guy wire levels and anchor radius must match manufacturer's criteria for the proposed application. That portion of guy wire anchor structure that is above grade shall be set back from any property line in accordance with the following:

(A) Guy wire with a nominal diameter of 0.25 inches or less—25 feet, provided the setback may be reduced to 0 feet if the anchor structure is enclosed within a sight obscuring fence.

(B) Guy wire with a nominal diameter greater than 0.25 inches but less than 0.625 inches—25 feet, provided the setback may be reduced to five feet if the anchor structure is enclosed within a sight obscuring fence.

(C) Guy wire with a nominal diameter equal to or greater than 0.625 inches—25 feet.

d. Type 4.

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- i. **Setbacks.** No setback is required under this section. However, general setback requirements and building code requirements still apply.
- ii. **Qualification of Type 4 tower structure and antenna concealment designs for installation and use in residential, commercial and PLI zoning districts.**
 - (A) Each type 4 tower structure and antenna proposed for installation and use in a residential, commercial or PLI zoning district based on its qualification as a concealed telecommunications facility shall be qualified as meeting the concealment standards in this section by the planning and zoning commission.
 - (B) An applicant for a building or land use permit for a type 4 tower structure and antenna design under this subsection shall provide the commission with evidence in the form of construction drawings, photographs, renderings, or other data sufficient for the commission to find the concealment standards are satisfied.
 - (C) At completion of the construction of the first tower structure and antenna under a newly qualified design, it shall be reviewed by the director to confirm the installation complies with the design standards.
 - (D) If the installation complies, future installations using the same design do not require design approval by the municipality. If the installation fails to comply, subsequent tower structure and antenna design and installation shall be amended or redesigned as directed by the commission.

7. Modifications and Amendments

- a. Standards for modifications to telecommunications facilities are as follows:
 - i. Repairs and maintenance to a tower structure may be performed consistent with subsection 21.12.010F.
 - ii. The replacement or repair of antennas, or addition of antennas to a tower that does not increase the maximum height or width of the tower, shall not be considered an amendment of final approval under subsection b. and

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shall be considered a use contemplated within the original approval where the replacement, repair, or addition:

- (A) Will serve the same user or successor entity under the original approval;
- (B) Will serve the same general purpose as was served under the original approval; and
- (C) Is consistent with the conditions and standards applicable to the original approval.

- iii. Antenna owners who replace or add an antenna shall comply with the notification of activation requirement in subsection K.5.n.
- iv. An application under this title for modification approval is not required. A review for eligibility and compliance with this subsection shall occur during the building or land use permit review.

b. Amendments to final approval

Applications for amendments to a conditional use shall be subject to the requirements of 21.03.080E. Applications for amendments to an administrative site plan approval shall be subject to the requirements of 21.03.180H.

- i. Utilization of the criteria provided in (FCC 6409) (“Rule”), as it may be amended from time to time, shall be treated as a minor amendment under this title if:
 - (A) The application clearly requests treatment of the modification as an insubstantial change under the Rule;
 - (B) The application is complete in accordance with this title and the Rule; and
 - (C) The director determines the application meets all the requirements of the Rule and applicable provisions of this title not preempted by the Rule. The director may use the maximum time allowed by the Rule to determine whether the application is complete and eligible under the Rule.

8. Building or land use permit, administrative site plan, or conditional use revocation

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- a. Unless cured, a building or land use permit or approval of a site plan or conditional use shall be revoked after notice and the opportunity to cure, for any of the following:
 - i. Construction, maintenance, and/or operation of a tower at an unauthorized location;
 - ii. Construction or operation of a tower in violation of any of the terms and conditions of this title or the conditions attached to the permit or approval;
 - iii. Material misrepresentation by or on behalf of an applicant or permittee in any application or written statement upon which the approving authority substantially relies in making the decision to grant, review, or amend any permit or approval pursuant to this section and which materially changes the application of the standards of approval of the permit or issuance of the approval;
 - iv. Abandonment of a tower as set forth in this section; or
 - v. Failure to relocate or remove facilities as required in this section.
- b. After having a permit or approval revoked, no tower shall be re-permitted or subsequently approved for that property or by that tower owner on any property within the municipality for a period of one year except through a conditional use approval.

9. Abandonment

Any antenna or tower structure that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower structure shall remove the same within 180 days of receipt of notice from the director notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower structure within said 180 days shall be grounds for the municipality to remove the tower structure or antenna at the owner's expense. If there are two or more users of a single tower structure, then this provision shall not become effective until all users cease using the tower structure.

10. Appeals

- a. Notwithstanding 21.03.050, a decision to
 - i. deny or issue a building or land use permit based on requirements of this section where an approval of an

1 administrative site plan or conditional use is not required,
2 or

- 3
4 ii. deny or approve an administrative site plan under the
5 authority set forth in this section,
6

7 is final unless appealed to the planning and zoning commission
8 within 30-days of the denial or effective date of the permit or
9 approval. An appeal may be filed by the applicant or by a petition
10 of at least one-third of the owners (excluding owners of rights-of-
11 way) of the privately owned land within 500 feet of the outer
12 boundary of the site. The appeal shall be heard by the
13 commission in accordance with the procedures in 21.03.050A.
14

- 15 b. An appeal from an original or appellate decision of the planning
16 and zoning commission may be brought in Superior Court.
17

18 (AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)
19

20 **Section 3.** Anchorage Municipal Code section 21.14.040, definitions, is hereby amended
21 to add new definitions to read as follows (*the remainder of the section is not affected and*
22 *therefore not set out*):
23

24 **21.14.040 Definitions.**
25

26 *Accessory equipment* means any equipment serving or being used in
27 conjunction with a Telecommunications Facility or Support Structure. This
28 equipment includes utility or transmission equipment, power supplies,
29 generators, batteries, cables, equipment buildings, cabinets and storage sheds,
30 shelters or other structures.
31

32 *Concealed Telecommunications Facility* means any Telecommunications Facility
33 as defined in section 21.05.040, and its support structure, that:
34

- 35 1. Is integrated as an architectural feature of an existing structure
36 and is designed and built so that the purpose of the facility for
37 providing wireless services is not readily apparent to a casual
38 observer. Common concealments include integration into building
39 facades, street light poles, flagpoles, free standing signs, steeples
40 and spires at places of worship, and water towers. The antennas
41 of the facility are mounted on the structure so that they are located
42 and designed to minimize or eliminate visual and aesthetic impacts
43 to surrounding land uses and structures and shall, to the greatest
44 extent practical, blend into the existing environment. This definition
45 shall include any antenna or antenna array complying with the
46 objective of this definition whether it is mounted on a support
47 structure or not. By itself, paint schemes on the support structure
48 or telecommunication facility are presumptively not sufficient to
49 classify a facility as concealed under this definition; or
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- 2. Has the appearance of a natural feature, consistent with its surroundings, that is not commonly recognized as a man-made structure. Common types include trees, large rocks, and cliff faces.

DAS or distributed antenna system means a system that distributes RF signals from transceivers at a central hub to a specific service area with otherwise poor coverage or inadequate capacity. As typically configured, a DAS network consists of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the antennas. Whereas *small cells* are usually operator-managed and support only a single wireless service provider, DAS networks can often accommodate multiple providers using different frequencies and/or wireless air interfaces.

Small cell means a low-powered wireless base station that function like cells in a mobile network but provide significantly smaller coverage area than traditional macrocells. Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. It includes femtocells, picocells, metrocells, and microcells.

Utility Pole means one of a series of poles usually located at the side of a street or road, or within a utility easement, and used to support wires and other equipment used by utilities, generally transmitting or distributing electricity or serving primarily as a light pole. A structure used solely or primarily for antennas or their associated facilities is not a utility pole.

WMN or Wireless mesh networking facility means low-powered telecommunication devices including nodes, wireless access points (WAPs) and repeaters which are part of a decentralized internet backbone system or wireless local area network (LAN) intended to deliver telecommunications and internet services to small areas within a larger network coverage area. These facilities operate on the 802.11 family of protocols and range in frequencies from 2.4 GHz to five GHz.

Section 4. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2015.

Chair of the Assembly

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ATTEST:

Municipal Clerk

DRAFT

COMPARISON OF CHANGES

Proposed (11-18 Draft)	Current	Location
No Type 1, 2 or 3 in R1-R3.	Type 1 and Type 3 by admin review.	Table
Type 1 by Admin review in RO.	Type 1 by right in RO.	Table
Type 2 by CUP in B3.	Type 2 by right in B3.	Table
Type 3 by CUP in RO.	Type 3 by right in RO.	Table
Type 4 excludes utility pole).	Type 4 includes utility pole.	Table
Type 4 by admin review in all R district.	Type 4 by right in all R districts.	Table
Type 4 by admin review in PLI.	Type 4 by right in PLI.	Table
Revised allowance as accessory to a NR use in an R district (more restrictive).	Less restrictive.	K.1.f.
Small cell defined and allowed by right, under conditions, including on utility poles. Does not have to be stealth.	Small cell not directly addressed, but may have been stealth in some situations.	K.1.d
Notice of applications harmonized with general 21.03 notice provisions. Typical is 500 feet to owners and residents, community council, posting, and muni web posting.	Confusing to people. Some notice limited only to B3 and Watershed districts; some had 35 days instead of 30, but did not include affected residents.	various
Separation distance (maximum) 150% of tower height.	Separation distance (maximum) 200% of tower height.	K.5.b.i.
Separation can be reduced to 110%.	Separation requirement could be entirely waived.	K.5.b.ii.
Added landscaping and fencing to common standards.	Unclear.	K.5.e.
No additional height for co-location, but includes specific reference to federal rule.	Up to 30 feet additional height for co-location under Code and the greater of another 10% or 20 feet under the federal rule.	K.5.l.
All new Type 1, 2, and 3 towers in R and PLI districts shall be engineered to handled up to 3 arrays.	No engineering requirement.	K.5.l.iii.
Delete requirement that antenna owners have to resolve interference issues within 90 days of activation.	Required owners to resolve, but no clear method of MOA enforcement of this provision.	K.5.n.
Specifics on annual inventory and tie to AHO Title 14 enforcement.	No specifics on what was to be filed and unclear enforcement path.	K.5.o.
Allows Director to confirm a new installation's compliance with stealth requirements.	Required PZC to review and approve compliance.	K.6.d.ii.(C)
Clean up modification provisions to make it easier to repair, replace, maintain. Process for owner to make amendments to approval clarified.	Read as if limited to towers approved as conditional uses - confusing. Unclear path for amendments.	K.7.

Add revocation process.	Not addressed.	K.8.
Clarified appeal process.	Not adequately addressed. Some appeals to PZC, some to B of A.	K.10.
No UDC review of a major modification; no B of A appeal.	UDC review, which created confusion and meant 4 different approval authorities for tower applications.	K.10.
Definitions for concealed telecomm facility, small cell, and utility pole.	None.	21.14.040

EXHIBIT A

Use Category
Telecommunication Facilities

Use Type	RESIDENTIAL										R-10			
	R-1	R-1A	R-2A	R-2D	R-2M	R-3	R-4	R-4A	R-5	R-6		R-7	R-8	R-9
Type 1 tower	[S]	[S]	[S]	[S]	[S]	[S]	S	S	S	S	S	S	S	S
Type 2 tower	[S]	[S]	[S]	[S]	[S]	[S]	S	S	S	S	S	S	S	S
Type 3 tower	[S]	[S]	[S]	[S]	[S]	[S]	S	S	S	S	S	S	S	S
Type 4 tower	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]	[S[P]]

C=Conditional Use
P=Permitted by Right
S = Admin Site Plan

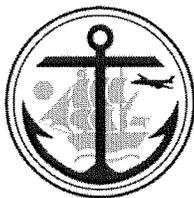
Use Type	COMMERCIAL			INDUST.			OTHER				Definitions and Use-Specific Standards			
	B-1A	B-1B	B-3	RO	MC	I-1	I-2I	MI	AF	DR		PR	PLI	W
Type 1 tower	P	P	P	S[P]	P	P	P	P	P	P	S	S	S[P]	21.05.040K.
Type 2 tower	C	C	C[P]	C	P	P	P	P	S	C	S	S	S	21.05.040K.
Type 3 tower	P	P	P	C[P]	P	P	P	P	P	P	S	S	S[P]	21.05.040K.
Type 4 tower	P	P	P	P	P	P	P	P	P	P	P	S[P]	P	21.05.040K.

Memo Re: Cell Tower AO Timeline

To: Barbara Jones, Municipal Clerk

From: Amy Demboski,
Assembly Community & Economic Development Committee, Chair

- The Assembly Community & Economic Development Committee has prepared a draft cell tower ordinance for consideration.
- The draft ordinance has been referred to the Planning & Zoning Commission, the Federation of Community Councils, as well as the Chamber of Commerce for review and comment.
- The Committee's expectation is that P&Z will have this item on their agenda in late January or early February. The item will be **introduced to the Assembly December 22, 2015; however, I have requested public testimony on this item be held February 23, 2016**, in an effort to allow additional time for community councils, and other interested members of the public, time to review and prepare comments.
- Once introduced, as with all ordinances, this AO will be subject to amendments offered by the Assembly in light of comments from the Planning & Zoning Commission and the public.
- We are circulating the document prior to Assembly introduction to allow the public additional time to review and prepare comments.
- I have asked the Municipal Clerk to share the draft document with each Assembly Member. This draft may be found on the Committee web page.



MEETING NOTES

MUNICIPALITY OF ANCHORAGE

Community and Economic Development Committee Meeting

<http://www.muni.org/Departments/Assembly/Pages/CommunityEconomicDevelopmentCommittee.aspx>

Assembly Members:

Amy Demboski, Chair
Bill Evans
Ernie Hall
Jennifer Johnston
Pete Petersen

Ex-Officio Members:

Tony Cange
Tyler Robinson
Brandan Spoerhase, P&Z Alternate

October 21, 2015

10:00 a.m. – 11:30 a.m.

Permit & Development Center
Conference Room #170
4700 Elmore Rd., Anchorage, AK 99507

• **CALL TO ORDER –**

Committee Members Present:

Johnston, Evans, Hall, Demboski, Petersen, Robinson

Administration: Schutte, McConnel, Wong, Walsh

• **DRAFT CELL TOWER AO PRESENTED – Dennis Wheeler**

- Working draft presented
- Dennis presented a number of questions that need to be answered before he can complete the draft AO
- Dennis will draft questions (in an easy to understand template and the Chair will circulate to members for discussion at 11/4 meeting)
- Dennis will also draft a comparison document, so it is easy to track the current Title 21 language and process for cell towers against the proposed changes
- It is the intent of the committee to have the cell tower ordinance go through the entire public process (including P&Z)
- Members of the public provided comments on improving public process, improving public notice postings on sites, increasing public notice to 1000' from 500', possible conditional use requirements in all residential areas, consider criteria based on zoning, incentivizing small cell technology, and articulate who is evaluating federal criteria and how that is being done

Mission Statement: Evaluate and make recommendations on Municipal Code and process to encourage efficient government, responsible development, and economic growth.

- **OLD BUSINESS**
 - **SIGN ORDINANCE**
 - i. A question has risen regarding the height of signs/features. The dept will draft a proposed solution, present it to the committee and potentially incorporate it into the existing AO.
 - ii. Staff will attempt to address this issue and get the AO on the path to introduction soon

 - **DRAFT MARIJUANA ORDINANCE**
 - i. Staff will present draft marijuana ordinance to the committee on November 4th – the committee urged this project to be moved along as we need to get the item introduced to the public, through P&Z and the Assembly very soon, so that we can have this taken care before the new industry begins its operations.

- **TENTATIVE FUTURE MEETING DATES**
 - **November 4 – Marijuana Draft AO Presentation – Erika McConnell**
 - **November 18 – Land Use Plan Map Presentation – Tom Davis**

- **ADJOURNMENT**

AGENCY AND PUBLIC COMMENTS



MUNICIPAL LIGHT & POWER
ENGINEERING DIVISION

MEMORANDUM

RECEIVED

DEC 21 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

DATE: December 21, 2015

TO: MOA Planning Division, Planning Section

THRU: Victor Willis, Acting Line Design Supervisor, ML&P *VW*

FROM: Jake Moe, P.E., Line Design Engineer, ML&P *JM*

SUBJECT: Title 21 Ordinance regarding telecommunication facilities, including cell towers, repealing and reenacting AMC Subsection 21.050.040K, Case No. 2016-015
ML&P Project Review **15-33**

Municipal Light and Power (ML&P) has received and reviewed your rough draft ordinance for amending Title 21 regarding telecommunications facilities, including cell towers, repealing and reenacting AMC Subsection 21.050.050K.

Please see the comments listed below in order that they appear on the proposed ordinance:

- 21.05.040K1.d.iii
 - *This conflicts with Federal Communication Commission (FCC) statute 47 U.S.C §§ 224(f) for nondiscriminatory access to utility poles. This statute requires a utility to allow communications providers to just and reasonable access to poles, including for the pole attachment preparation process (i.e. "make-ready" work). When an existing pole does not meet current strength or clearance requirements, the proposed telecommunications carrier can pay for the "make-ready" work required to bring the pole into compliance. Denying the attachment based solely on not allowing the pole to be modified as "make-ready" because this modification may increase the pole size, diameter, or height, would violate statutory requirements.*
 - *The National Electrical Safety Code (NESC) allows for existing poles to be grandfathered in for compliance to older editions of the NESC; however, once a new attachment is applied to an existing pole, this pole must meet the current NESC. ML&P has many grandfathered poles where a new attachment installation would require the grandfathered pole to be replaced with a larger pole size, diameter, and height.*
- 21.05.040K1.d.vi
 - *As per the NESC, encasements holding cables installed on utility poles need to be installed with the allowance for adequate lineman climbing space.*

Therefore, prioritizing attachments on what provides the least visual impact over safety is not allowed.

- 21.05.040K1.d.ix(A)
 - *What is ancillary equipment? Utility owners will most likely reject this type of equipment attachments to poles because they will likely interfere with adequate climbing space as defined by the NESC.*
- 21.05.040K1.d.x
 - *Does this section include Utility Easements or T&E Easements, or is this subject covered in 21.05.040K1.d.ix?*
- 21.05.040K1.d.x.7
 - *This section does not meet ML&P's Service Requirements. Specifically, service equipment for powering facilities is not allowed inside a building or underground, and the meter must be at height between 60 and 72 inches.*
- 21.05.040K1.d.xi
 - *Typically the base of utility poles is set at ground depths between 5 and 10 feet. Should not the 50 feet height limit be measured from ground level to the top of pole, or is the intent of the new ordinance to reference the total length of the pole including the underground portion?*
 - *Does not the 6 feet limit above the top of the pole conflict with the limit of 3 feet in the section covered in 21.05.040K1.d.v?*
- 21.05.040K.2.a
 - *As per the proposed ordinance's definition of a "Telecommunications Facility", a facility which transmits signals using electromagnetic waves expands beyond just communication antennas. Specifically, the telecommunications facility definition would also include fiber optic cables that both communication utilities and electric utilities currently use. This definition would also include ML&P's metering infrastructure because two-way communication mediums already exist, using electromagnetic waves.*
 - *If the intention of the new ordinance is to only include wireless facilities, then the proposed definition needs to be reworked.*
- 21.05.040K2.b
 - *Past applications for antenna attachments to ML&P owned poles were based on the premise that said attachments were not the primary purpose of the existing pole. Would the new ordinance mean the existing poles **are not** defined as a Type 1 Tower?*
 - *ML&P currently owns thousands of poles with one or more telecommunication facilities attached to them. Therefore, ML&P strongly objects to reclassifying these poles as a Type 1 Tower because many of these existing poles would violate the rules defined by this proposed ordinance and would greatly restrict new construction.*
 - *A significant number of ML&P owned poles are not freestanding but are supported with guying and anchors. Consequently, it appears that there may be a definition conflict within the proposed ordinance, or would the existing pole with guying and anchors now be defined as a Type 3 Tower?*
- 21.05.040K2.f
 - *Telecommunication facilities have the right to be located in T&E easements no matter what type of zoning the easement is located in.*
 - *ML&P strongly objects to the notion that new fiber optic projects will now require an Admin Site Plan because fiber optic cables are a*

telecommunications facility type, that when attached to ML&P poles, will be redefined as a Type 1 Tower with stipulations for an Admin Site Plan.

- 21.05.040K5
 - *ML&P strongly objects to reclassifying ML&P owned poles as a Type 1 Tower and being regulated under this section. Many existing poles would violate the rules defined by this section of the proposed ordinance and would greatly restrict new construction.*
- 21.05.040K6
 - *ML&P strongly objects to reclassifying ML&P owned poles as a Type 1 Tower and being regulated under this section. Many existing poles would violate the rules defined by this section of the proposed ordinance and would greatly restrict new construction.*

Should you have any questions, I may be contacted at **263-5407**.

cc: Steve McElroy, ML&P Line Extension Coordinator
Mio Johnson, ML&P Engineering
Mark Johnston, ML&P General Manager

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MUNICIPALITY OF ANCHORAGE



Community Development Department
Development Services Division

Private Development Section

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JAN 08 2016

Mayor Ethan Berkowitz

MEMORANDUM

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

Comments to Planning and Zoning Commission Applications/Petitions

DATE: January 8, 2016
TO: Erika McConnell, Current Planning Section Supervisor
FROM: Brandon Telford, Plan Review Engineer
SUBJECT: Comments for Planning and Zoning Commission
Public Hearing date: February 1, 2016

Case 2016-0009 – Conditional Use for an animal control shelter for the Bird Treatment and Learning Center (Bird TLC) Flight Center and Clinic.

Drainage:

The petitioner is alerted to the pending requirement to provide project specific full drainage analysis and calculations to Private Development under land use and/or building permit processes. An analysis will be required to address storm runoff as a result of the proposed changes to infrastructure and to permeable / impermeable surface treatments. Final plans with appropriate details will be required prior to approval of building plans. The analysis and plans shall present and illustrate respectively how drainage from this facility is being managed in relation to peripheral properties and right of way; demonstrate that post development drainage will not adversely impact adjacent properties or rights of way; and, measures to be taken in the event that excavation associated with the build-out of the property exposes subsurface flows. Drainage analysis and design shall conform to the Municipality of Anchorage Design Criteria Manual (DCM) and the Drainage Design Guidelines (DDG).

Department Recommendations:

The Private Development Section has no objection to the Conditional Use.

Case 2016-0015 – An ordinance amending Title 21 regarding telecommunications facilities, including cell towers, repealing and reenacting AMC Subsection 21.050.040K.

Department Recommendations:

The Private Development Section has no comment on the ordinance.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and
Public Facilities

CENTRAL REGION
Planning & Administrative Services

4111 Aviation Avenue
P.O. Box 196900
Anchorage, Alaska 99519-6900
Main Phone: (907)269-0520
Fax: (907)269-0521
Web site: dot.state.ak.us

December 23, 2015

Erika McConnell, Planning Section Manager
MOA, Community Development Department
Planning Division
P.O. Box 196650
Anchorage, Alaska 99519-6650

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DEC 23 2015

**MUNICIPALITY OF ANCHORAGE
ZONING DIVISION**

RE: MOA Zoning Review

Dear Ms. McConnell:

The Alaska Department of Transportation and Public Facilities (DOT&PF), Central Region
Platting Review Board has no comments on the following zoning application:

- **2016-0015: Amendment for Title 21 re: telecommunications facilities, including cell towers, repealing and reenacting AMC Subsection**

The DOT&PF Central Region Platting Review Board has comments on the following zoning application:

- **2016-009: 15510 Old Seward Highway**
 - Plans clearly indicate future development of learning center and clinic, which will generate increased traffic not planned for here. Parking is inadequate for potential bus traffic. A bus circulation plan will be necessary.
 - Need to apply for a driveway permit. All parking of cars and busses must be planned for off the DOT right of way.

Sincerely,

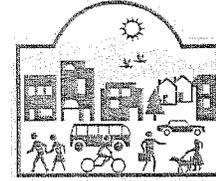
James Starzec
Anchorage Area Planner

Cc: Tucker Hurn, Right of Way Agent, Right of Way, DOT&PF
Morris Beckwith, Right of Way Agent II, Right of Way, DOT&PF
Scott Thomas, P.E., Regional Traffic Engineer, Traffic Safety and Utilities, DOT&PF
Jim Amundsen, P.E., Highway Design Group Chief, DOT&PF

"Keep Alaska moving through service and infrastructure."



Municipality of Anchorage
 Community Development Department
 Planning Division



MEMORANDUM

Date: December 18, 2015
To: Erika McConnell, Manager, Current Planning Section
Thru: Carol Wong, Manager, Long-Range Planning Section
From: Jon Cecil, Senior Planner, Long-Range Planning Section
Subject: Case 2016-0015, Ordinance Amending Title 21 regarding telecommunication facilities, including cell towers, repealing and reenacting AMC Subsection 21.05.040K.

RECEIVED
 DEC 18 2015
 MUNICIPALITY OF ANCHORAGE
 ZONING DIVISION

The proposed amendment to new Title 21 seeks to modify land use regulations regarding telecommunication facilities, including cell towers. The intent of the ordinance amends AMC Subsection 21.05.010E (Table of Allowed Uses) and repeals and reenacts AMC Subsection 21.05.040K.

The applicable policy from *Anchorage 2020 Comprehensive Plan* is policy 80 which states:

“Utilities shall be located and designed with balanced regard for the environment, energy conservation, reliability, visual impacts, natural hazard survivability, and cost.”

The proposed amendments will:

1. Clarify the definitions for telecommunication facilities including cell towers in future land use reviews;
2. Clarify the use-specific and dimensional standards for telecommunication facilities, including cell towers; and
3. Makes clearer the development approval and appeal procedures.

The following are observations and concerns about the amendment:

- AMC 21.0.040K.1.d.x.1. (page 3 of 20) -- References “Antennas” but the text contained within this subsection references ancillary equipment. Perhaps this needs further clarification on it’s applicability.
- The text found under AMC 21.05.040K.10.a.ii (page 18 of 20) includes an extra line and the text should be indented to the right to follow the text above.

Based on the policy direction provided by Comprehensive Plan policy 80, and review of the intent of the proposed amendment, the Long-Range Planning section has no objection to the proposed amendment. Thank you for the opportunity to comment.

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DEC 18 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION



December 18, 2015

To: Ethan Berkowitz, Mayor
Dick Traini, Chair
Anchorage Municipal Assembly
3600 Denali Street, Room 108
Anchorage, AK 99503

Cc: Dennis Wheeler, Counsel to the Assembly, Community and Economic Development Committee
Bill Falsey, Municipal Attorney
Julia Tucker, Assembly Counsel
Chris Schutte, Director of Economic and Community Development

Re: Introduction of Cell Tower Ordinance

Dear Mayor Berkowitz, Chairman Traini, and Members of the Assembly,

On behalf of GCI, please accept this letter of concurrence with and support for the comments submitted by our colleagues at the Busch Law Firm on behalf of AT&T regarding the draft cell tower ordinance slated to be introduced at the Assembly's December 22 meeting. As set forth in AT&T's comments, there are several significant legal issues with the draft ordinance. We urge the Assembly to address the inconsistencies between the draft ordinance and governing federal law prior to introduction.

Thank you for your consideration of this issue. If you have any questions, please contact me at the information below.

Sincerely,

A handwritten signature in black ink, appearing to read 'Becky Windt Pearson'.

Becky Windt Pearson
Corporate & Land Use Counsel

GCI - Legal/Regulatory Department
Phone 907-868-5629
Email: rwindtpearson@gci.com



BUSCHLAWFIRM PLLC
ATTORNEYS AT LAW

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DEC 18 2015

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING DIVISION

December 18, 2015

Ethan Berkowitz, Mayor
Dick Traini, Chair
Anchorage Municipal Assembly
3600 Denali Street, Room 108
Anchorage, AK 99503

VIA EMAIL: wwmas@muni.org

RE: Introduction of Cell Tower Ordinance at December 22, 2015 Meeting
November 18, 2015 Draft

Dear Mayor Berkowitz, Chairman Traini, and Assembly Members:

We understand that the Municipality's proposed new cell tower ordinance will be introduced at your December 22, 2015, meeting prior to referral to the Planning and Zoning Commission. We submit the following comments on behalf of AT&T.

These comments focus on draft provisions that we believe are not consistent with federal law. We ask that you consider these legal issues before directing the Planning and Zoning Commission and staff to proceed. As the legislative process continues, AT&T intends to provide other comments related to policy, incentives, and practical solutions for providing quality wireless services to the Anchorage community.

Alternative technology

In Subsections (3)(c)(i)(A)(7) and (3)(c)(iv)(H), the draft ordinance requires that applicants demonstrate that "alternative technologies" are not suitable. These preferences are clearly preempted by federal law. *New York SMSA Limited Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-07 (2nd Cir. 2010). In the *Town of Clarkstown* case, the town's ordinance established preferences for DAS and microcell systems, which the court evaluated as follows:

[P]rovisions setting forth a preference for "alternate technologies" are also preempted because they interfere with the federal government's regulation of technical and operational aspects of wireless telecommunications technology, a field that is occupied by federal law. The federal government has long regulated telecommunications, and in passing the Telecommunications Act, Congress took further steps "to facilitate nationally the growth of wireless telephone service." *Omnipoint*

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Commc'ns, Inc., 430 F.3d at 531. The FCC has issued regulations setting technical standards for wireless technology, including, in particular, antennas. *See Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000) (The FCC is “responsible for determining the number, placement and operation of the cellular towers and other infrastructure.”).

Chapter 251 explicitly establishes a “preference” for certain wireless technology—DAS and microcell systems. By doing so, Chapter 251 relegates other technology—including technology that would meet the FCC's standards—to an inferior and decidedly disadvantaged status. As a consequence, Chapter 251 interferes with Congress's goal of facilitating the spread of new technologies and the growth of wireless telephone service. **To take advantage of Chapter 251's preference, carriers would have to utilize technology that would require many more (albeit smaller) antennas and substantially different supporting equipment and services. Federal law has preempted the field of the technical and operational aspects of wireless telephone service, and there is “no room” for the provisions of Chapter 251 that give a preference to “alternate technologies.”** *Id.* at 986.

612 F.3d at 105-06 (emphasis added).

In reaching the same conclusion earlier in the *Town of Clarkstown* case, the District Court relied on a 9th Circuit case, which more generally described the federal preemption in wireless communications as, “[e]ssentially, the [Telecommunications Act] represents a congressional judgment that local zoning decisions harmless to the FCC's greater regulatory scheme – and only those proven to be harmless – should be allowed to stand.” *New York SMSA Ltd. Partnership v. Town of Clarkstown*, 603 F.Supp.2d 715, 726 (S.D.N.Y. 2009), quoting *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 736 (9th Cir. 2005).

The *Town of Clarkstown* case is not meaningfully distinguished on its facts in a way that suggests that proposed Subsections (3)(c)(i)(A)(7) and (3)(c)(iv)(H) would withstand a legal challenge. If anything, Clarkstown's ordinance was *less problematic* than the language in the November 18th draft. In Clarkstown, the code assigned points based on its preferences (with DAS and microcells having preferred status), and then used the site's total point values to assign the applicable review process. 612 F.3d at 102. The least preferred category was “Category D,” for which applicants must meet the criteria described as follows:

Category D applicants are required to “demonstrat[e] in detail the technological reason to justify why alternate technologies cannot be utilized.... The [applicant] seeking ... an exception [to the use of preferred technology is required to] satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed technology.” *Id.* § 251–19(G)(9). Applicants that do not meet these requirements risk rejection by the Planning Board. *See id.* § 251–19(C).

612 F.3d at 102.

The regulatory approach reflected in Anchorage's draft Subsections (3)(c)(i)(A)(7) and (3)(c)(iv)(H) is certainly no less objectionable. The applicant's conditional use permit submittal must address why "[a]n alternative technology that does not require the use of a tower or structure, such as a cable microcell network using multiple low-powered transmitters or receivers attached to a wireline system, is unsuitable," and according to Subsection (3)(c)(iv)(H), in considering the factors relevant to granting a permit, the planning and zoning commission must consider the availability of alternative technologies, and:

No new tower structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning and zoning commission:

1. No existing tower or structure can accommodate or replace the applicant's proposed antenna;
- and**
2. **No alternative technology that does not require the use of tower structures can accommodate or replace the applicant's proposed antenna.**

Instead of requiring the applicant to "satisfactorily demonstrate the reason or reasons why" its permit should be granted for technology that is not preferred, at risk of being denied (in *Town of Clarkstown*), this proposed ordinance expressly **requires denial** of a proposed new tower unless the applicant shows that use of alternative technology is not possible because "[n]o alternative technology [. . .] can accommodate or replace the applicant's proposed antenna." Such a strongly worded limitation on the planning and zoning commission's discretion goes beyond the *Town of Clarkstown* preference and is clearly preempted by federal law.

Finally, while *Town of Clarkstown* is a Second Circuit case and not mandatory authority in the Ninth Circuit, it appears to be the only case on point. As noted above, the District Court in *Town of Clarkstown* found persuasive the Ninth Circuit's fairly sweeping statement about the preemptive effect of the federal regulatory scheme. We find no indications that the Ninth Circuit would depart from the analysis in *Town of Clarkstown*, and in the absence of any authority to the contrary, *Town of Clarkstown* is the best available authority.

Preferences for collocations can withstand judicial review, but preferences for microcells, DAS, and other "alternative technologies" have not. AT&T therefore suggests deleting all requirements and preferences related to use of alternative technologies.

Separation Standard

Subsection (5)(b) of the draft ordinance requires a separation of 150% of the allowable tower height from "protected land uses." The relief available from this standard is strictly limited to a reduction to 110% of the allowable tower height. To date, we have heard no meaningful description of the purpose of this standard. While 110% of tower height is arguably based on a "fall zone," no rationale has been provided for the 150% of allowable tower height. Further, assuming 110% is based on a fall zone, it should be subject to reasonable variations when a facility is constructed with break-point technology to limit the area of the fall zone or when the "protected land use" waives the separation standard.

As no rationale for the 150% separation has been provided, it raises significant concerns that the code is attempting to regulate wireless uses based on the perceived health effects of radiofrequency (RF) emissions, which is prohibited by federal law. Local zoning authorities are expressly preempted from imposing additional requirements with regard to RF emissions if a proposed facility complies with Federal Communication Commission ("FCC") regulations governing emissions. 47 U.S.C. Section 332(c)(7)(B)(iv). Zoning decisions may not be based directly **or indirectly** on the environmental effects of RF emissions. *AT&T Wireless Servs. of Cal., LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1159 (S.D.Cal. 2003).

As we noted in prior comments submitted to the Community & Economic Development Committee, there are also relevant practical considerations. The separation from schools and licensed child care centers as well as principal structures on any PLI or residentially-zoned parcel will preclude locations that are otherwise the best solution for providing coverage, especially in the residential areas where demand is skyrocketing. In many instances, the preferred location from the perspective of various parties in the vicinity is a school property or park. Many schools choose to lease sites to wireless carriers, and schools, day care centers, and homes all need the wireless service that is provided by a new facility. The code should make such locations possible.

AT&T supports removing the 150% separation standard. AT&T further suggests that reasonable exceptions be allowed for any setbacks or separation standards. First, any setback or separation standard should not apply to any structures on the owner/landlord's property. The location of the facility on the landlord's property should be up to the discretion and control of the landlord, to be determined on a case-by-case basis through negotiation between the relevant parties. AT&T also suggests exceptions from separation standards and setbacks when the standard is waived by the affected property owner and when the tower is designed with breakpoint technology to limit a potential fall zone. Another reasonable exception can be made for utility pole facilities located in the right-of-way.

Restrictions on Submittal after Revocation

Section (8) appears to limit submittal of land use applications after a permit is revoked contrary to the federal "shot clock" for review and approval of wireless facilities. The FCC's shot clock requires that a local jurisdiction issue a decision on a wireless facility within 60, 90, or 150 days, depending on the type of facility proposed. Recently, the FCC clarified that the shot clock runs regardless of any moratorium. *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 80 Fed. Reg. 1238, 1260 (Jan. 8, 2015).

Furthermore, the code's restrictions on the submittal of new applications after revocation of a building or land use permit, which apply to any new potential site in the Municipality for one year after the revocation, appear to unreasonably discriminate among providers contrary to 47 U.S.C. Section 332(c)(7)(B)(i)(I). Section (K)(8) causes even greater concern when it is read together with the proposed new, and much more detailed, requirements to submit an annual inventory of sites within the Municipality. See Subsection (5)(o). It is simply unreasonable to restrict future land use submittals for a year after what may be a mere oversight with regard to inventory requirements. We certainly question the policy

December 17, 2015

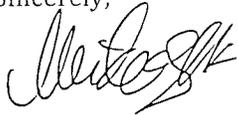
Page 5

behind the strict inventory requirements, and these requirements are even more problematic when failure to comply can lead to the result in Subsection (8).

AT&T suggests no restriction on submittal of applications after a revocation of a permit on any site in the Municipality. AT&T also questions whether the new ordinance needs any section regarding revocation at all, given that the Municipality may rely on its code enforcement ordinance (Ch. 21.13) as it does for any other land use.

Thank you for your consideration of these comments prior to directing the Planning and Zoning Commission and staff to proceed. AT&T will submit additional comments related to policy and practical considerations as the draft proceeds through public review. We look forward to working with the Municipality to develop a new wireless code that better serves the citizens of Anchorage and the wireless industry.

Sincerely,



Meridee E. Pabst

cc: Dennis Wheeler, Attorney
Bill Falsey, Municipal Attorney
Julia Tucker, Assembly Counsel
Chris Schutte, Director of Economic and Community Development



MUNICIPALITY OF ANCHORAGE

Traffic Engineering Department



MEMORANDUM

DATE: December 14, 2015

TO: Erika B. McConnell, Current Planning Section Supervisor,
Zoning and Platting Division

FROM: Kristen A. Langley, Traffic Safety Section Supervisor,
Traffic Engineering Department

SUBJECT: Traffic Engineering Comments

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DEC 14 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

2016-0015 An ordinance Amending Title 21 regarding telecommunications facilities, including cell towers, repealing and reenacting AMC Subsection 21.050.050K

Traffic Engineering has no comments on the proposed Amendment

Kimmel, Corliss A.

From: Wilson, Karleen K.
Sent: Wednesday, December 16, 2015 2:47 PM
To: Blake, Lori A.; Johnson, Sandra L; Kimmel, Corliss A.; Whitfield, David R.
Subject: Case No. 2016-0015

No comments.

Karleen Wilson
Addressing Official
Municipality of Anchorage
Address Data Management, GIS
907.343.8168 (my desk)
907.343.8222 (option #3)

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DEC 16 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

McLaughlin, Francis D.

From: Richard Goldstein [phantomcart@gmail.com]
Sent: Thursday, December 17, 2015 11:08 AM
To: McConnell, Erika B.; Hart, Hal H; Blake, Lori A.; Johnson, Sandra L; Ferguson, Sharon D.; Kimmel, Corliss A.; O'Brien, Margaret R.; McLaughlin, Francis D.; Wong, Carol C.; Moeller, Laura Jo; Tobish, Thede G.; Seitz, Jody L; Perry, Susan; Davis, Tom G.; Cecil, Jonathan P.; Bunnell Kristine; Gray, Robert L.; Calhoun, Sonnet L.; Whitfield, David R.; Stewart, Gloria I.; Pierce, Eileen A
Subject: GCI cell towers

Dear Folks in Planning and Zoning:

This is a letter of *intense* support for the alternate cell tower plan put together and ratified overwhelmingly by the Rogers Park Community Council. Our plan proposes *small* microwave cell technology over the installation of tall towers

Understandably, GCI would prefer to build tall towers. They are less expensive. I get it. GCI is a for-profit business and wants to insure the bottom line is as robust as it can make it.

GCI, however, has taken scant notice that the 80 foot tower it wants to build in Rogers Park will be a daily affront to the residents, and a daily reminder of the company's indifference to us, the business' customers.

There exists alternate, small cell, less intrusive, almost invisible technology. Granted, it's more expensive. But you'll have a hard time proving to me that GCI, who pretty much monopolizes usage in my neighborhood, can't afford it.

And if GCI wants to pass on to the customer the extra money it spends installing small cell microwaves, I'll be happy to absorb the extra costs. Anything, just so I don't have to see an 80 foot monstrosity, two blocks from me, every time I'm in my yard.

And what will that tall tower do to my property values? Do you think they

will go up or down? I'm saying, 'down.'

And what of the proven negative health effects of microwaves? The FCC may not recognize them, but after investigating the subject, I sure as hell do.

So, finally. Help out the residents of Rogers Park. Do the right thing by us. Don't be swayed by the purely economic arguments offered by industry, and please, please adopt Rogers Park's alternate cell tower plan.

Thanks for your time and consideration.

Richard Goldstein

1801 E. 27th Ave (heart of Rogers Park)

907-272-0327

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JAN 11 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

Hey Folks,

These are my comments in regards to the rework of MOA T21 in regards to cellphone towers(Case 20016-0015)...boy, we all sure love our cellphones and the initial reaction is to accept the idea that in order to have our cellphones we are going to have to put up with large,tall,steel towers everywherebut not so fast... in residential areas(and other areas that we value the present viewshed) we can require the cellphone industry to provide infrastructure that would not require the installation of obtrusive and ugly tall towers...the technology exists to provide hardly noticeable cellphone service to residential areas...things like stealth towers (concealed towers that blend in with the existing vegetation) , DAS (digital antenna service) technology , the placement of cellphone antennas on existing buildings and competing cellphone companies sharing where possible the same antenna structures.etc.....this concealment of cellphone antennas is nothing new..for years,cities and countries all over the USA and the world have required this antenna concealment because they value and appreciate the appearance of where they play and work...sure this concealment costs extra so the cellphone industry would rather not do it but the industry is so lucrative and competitive that concealment can happen if it is required by local law of the affected communities...as you deliberate the requirements of cellphone companies doing business in Anchorage please keep these previously mentioned items in mind , and most importantly, realize that what you decide will affect the appearance of Anchorage for years to come..thanks for your time and efforts.

Lance Powell

JAN 08 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

AIRPORT HEIGHTS COMMUNITY COUNCIL
Resolution 2015-10

2016-0015

RESOLUTION SUPPORTING THE CITIZEN’S SUGGESTED CHANGES TO
THE (TITLE 21) *WORKING DRAFT 11-18-15 CELL TOWER DRAFT ORDINANCE*
SUBMITTED TO THE PLANNING & ZONING COMMISSION FOR THEIR
RECOMMENDATIONS

WHEREAS, the Anchorage Municipal Charter Art, VIII, Sec 8.01 establishes Community Councils as representatives for neighborhoods in planning and development;

WHEREAS, direction was given to finalize a *Working Draft 11-18-15 Cell Tower Draft Ordinance* (“Draft Ordinance”) at a Community and Economic Development Committee Meeting on November 18, 2015;

WHEREAS, the Draft Ordinance will first go to the Planning and Zoning Commission for its review and recommendations to the Assembly;

WHEREAS, a group of citizens have reviewed and revised the Draft Ordinance and have sent their recommendations to the Planning and Zoning Commission, including some of the following key points:

- Distributed Antenna Systems (DAS), small cell (non-tower) and a telecommunication facility affixed to an existing pole, an existing building or an existing structure are the preferred installation for neighborhoods.
- A Type 4 Tower – A stealth (camouflaged) new construction in residential areas and being approved by the MOA Conditional Use Permit (CUP) process.
- A Type 5 Non-Tower – Utilizing Small Cell and Distributed Antenna Systems (DAS) and concealed telecommunication facilities in residential areas being approved by the MOA under the Administrative Site Plan Approval (ASPA) process.
- A Type 6 Existing Building – Affixing a telecommunication facility to an existing building being approved by the MOA under the Administrative Site Plan Approval process.
- Certified Information – Information provided by the applicant for either a CUP or a ASPA also be supported with a signal analysis, data analysis, and cost analysis and be certified by an independent third-party engineering review by a consultant that is an Alaska licensed professional engineer directly under contract with the MOA.
- Minimum Separation Distance for Types 1, 2, 3 and 4 (Towers) - 200% of the allowable height; to no less than 150% of the allowable height.

- Minimum Separation Distance for Type 5 and Type 6 - no additional separation distance required other than the current distance of the pole or building.
- Co-location for Type 5 and Type 6 – made available to as many licensed carriers as can be co-located that would not result in injury and detriment to the service of the customers; cooperation, sharing of technical information, and exercising good faith between the licensed carriers for evaluation of the feasibility of the co-location.
- Co-location prohibited if violates the standards originally approved or in violation of concealment.

NOW THEREFORE, BE IT RESOLVED THAT THE Airport Heights Community Council approves the attached modifications to the *Working Draft 11-18-15 Cell Tower Draft Ordinance* going before the Planning & Zoning Commission for their recommendations to the Assembly.

THIS RESOLUTION WAS APPROVED by the Airport Heights Community Council on December 17, 2015 by a vote of: FOR 14, AGAINST 0, ABSTAIN 2.



Barbara Karl
President

JAN 08 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

2016-0015

Suggested Modifications (red - line) by Anchorage citizens
working group on December 10th 2015

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WORKING DRAFT *** WORKING DRAFT *** WORKING DRAFT 11-18-2015

Submitted by: Community and Economic Development Committee (Assembly members Demboski, Evans, Hall, Johnston, Peterson)

Prepared by: Cell Tower Working Group
For reading: _____

ANCHORAGE, ALASKA
AO No. 2015-_____

**AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 (NEW CODE)
TO AMEND PROVISIONS REGARDING TELECOMMUNICATIONS FACILITIES,
INCLUDING CELL TOWERS.**

WHEREAS, ;

WHEREAS,; and

WHEREAS,; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code subsection 21.05.010E, Table of Allowed Uses, is hereby amended in accordance with the attached Exhibit A.

Section 2. Anchorage Municipal Code subsection 21.05.040K is hereby repealed and reenacted to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.05.040 Community Uses: Definitions and Use-Specific Standards

*** *** ***

K. Telecommunication facilities

This subsection provides the land use standards for the location and design of what are commonly referred to as cell towers, but also includes or excludes other types of telecommunication facilities. Telecommunication facilities are not allowed as a principal use in any area zoned R1-R3, R4-R10, RO or PLI. All telecommunication facilities in any area zoned R1-R3, R4-R10, RO or PLI must go through the Municipality of Anchorage's Conditional Use Process unless the proposed telecommunication facility for this service area consists solely of Small Cell and DAS "Distributed Antenna Systems" technology as defined in Section 21.14.040. Telecommunication facilities are allowed as a principal use as provided in table 21.05-1. Telecommunications facilities are allowed as an accessory use as provided in subsection K.2.f.

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1. **Exemptions.** Except for the provisions governing abandonment and interference, the following are exempt from this section:

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- a. Amateur radio station towers and noncommercial receive-only antennas, provided:
 - i. The antenna and tower structure are part of a federally-licensed amateur radio station; and
 - ii. In residential zoning districts there is no use of the tower structure by a third party commercial antenna operator.

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the following:

- b. Personal antenna for use by a dwelling unit occupant for personal, home occupation.
- c. Localized utility antenna used for utility telemetry purposes, or by an electric or gas utility on an existing utility pole or cabinet to monitor or control equipment thereon.
- d. A DAS, small cell, or wireless mesh networking facility installation on a utility pole, or light pole if the installation meets
 - i. The applicant shall provide proof that the owner of the utility pole authorizes the installation of the facilities.
 - ii. The applicant shall provide proof that the property owner, if different from applicant, authorizes the installation of the facilities.
 - iii. Pole size, diameter and height shall be no larger than the municipality, state or utility would use for its intended purpose without the installation, as determined by said ~~entities~~Entities; Note: the pole size, diameter and height shall be no larger than the pole currently being used in the existing utility line.
 - iv. Antennas shall be limited to snug-mount, canister-mount or concealed antennas;
 - v. Antennas shall not increase the pole height by more than three feet per installation and shall not exceed 18 inches in diameter;
 - vi. Antennas and mounting hardware shall be covered or painted to match the color and texture of the pole on which it is mounted. All cables shall be located inside the installation or within an encasement colored to match the pole and oriented to a side with the least visual impact;
 - vii. There shall be no more than two separate installations on each pole;
 - viii. Installations on a single pole shall not exceed a noise level of 65 dB(A);
 - ix. Any accessory ~~ancillary~~ equipment located in a right-of-way:
 - (A) Shall be attached to a utility pole and be the same color as the utility pole; and

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(B) Shall not exceed two ~~three~~ feet in height, one ~~two~~ feet in width, and one foot in depth.

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(C) The equipment shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts.

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Screening shall be at least equal to the height of the accessory equipment on all sides and

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shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter; Note: Landscaping must be at least 5 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.

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x. Any ~~accessory~~ancillary equipment not located in a right-of-way

must meet the following criteria:

1. Antennas shall not be located on poles planned for removal by the municipality, state or a utility within 5-years of the date of application;
2. The equipment may be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
3. The equipment shall be included in lot coverage and non-open space calculations for the site, including the pad;
4. The equipment shall be located on a concrete pad, at the same elevation of the initial grade, unless required to be elevated due to FEMA requirements, and the height of the concrete elevated pad if required by FEMA shall be included as part of the total allowed height limit (ie. the sum of both the pad height and the pole/tower height must be at or below the allowed height);
5. The equipment shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter; Note: Landscaping must be at least 5 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.
6. Shall be set back from any existing residential dwelling at least ~~one foot~~two foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded); except for Small Cell technology as defined in Section 21.14.040 that is placed on existing poles and structures for which this setback shall be waived. and

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7. All equipment, including power generators, service panels and service connections shall be housed in one of the following: within a building, within a wireless equipment compound, within a wireless equipment cabinet, or completely underground. The wireless equipment cabinet shall not exceed four feet in height and 80 cubic feet.

Undergrounding of wireless equipment cabinets is preferable and unless proven not to be feasible they shall be located underground.

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xi. The top of any installation on the utility pole shall not exceed 50 feet in height from the base of the pole, or 6 feet above the top of the pole, whichever is less.

xii. The building, wireless equipment compound or wireless equipment cabinet shall be architecturally compatible with

the surrounding area in terms of scale, form, texture, materials and color.

- e. Owners of antennas exempt under subsection K.1.d. shall make the annual inventory report required by subsection K.5.n.
- f. Any antenna or tower structure exempt under this subsection shall not exceed the height limits set forth in subsection 21.06.020, nor interfere with Federal Aviation Administration Regulations on airport approaches.

2. Definitions

a. Telecommunication facility

A facility which transmits signals between or among points using electromagnetic waves. The facilities may include towers, support structures, antennas, buildings, transformers, transmitters, receivers, equipment cabinets, and parking lots.

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b. Type 1 tower

A freestanding vertical support structure of cylindrical, conical, or rectangular cross section constructed of composite, wood, concrete, or metal employed primarily for the purpose of supporting an antenna array and commonly called a monopole. A utility pole with one or more telecommunications facilities is a type 1 tower unless it meets the requirements of 1.d. of this section.

c. Type 2 tower

A freestanding vertical support structure of open frame skeletal design employed primarily for the purpose of supporting an antenna array and commonly called a lattice tower. This tower type includes lateral arrays.

d. Type 3 tower

A guyed vertical support structure of open frame, skeletal design, or solid pole design employed primarily for the purpose of supporting an antenna array and commonly called a guyed tower.

e. Type 4 tower

A Stealth/camouflaged new construction tower concealed telecommunications facility and its support equipment structure. This type of telecommunications facility as defined in Section 21.05.040 below shall only be allowed in residential zoned areas after the proposed telecommunications facility has gone through and approved by the MOA Conditional Use permit Process.

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AO regarding telecommunication facilities

46 ~~f. Telecommunications facilities are allowed or prohibited as an~~
47 ~~accessory use in residential and PLI zones, in accordance with~~
~~the following:~~

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f. Type 5 –Non Tower

Small Cell technology and DAS on existing poles or structures and

Concealed telecommunications facilities within existing buildings and structures. This type of telecommunications facility as defined in Section 21.05.040 below shall only be allowed in residential zoned areas after the proposed telecommunications facility has gone through MOA Administrative Site Plan approval process and public notice has properly been provided as outlined in the applicable Notice and Public Process sections written in this portion of 21.050.040.

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g. Type 6 – Existing Building

An Existing Building Telecommunication Facility is a telecommunications facility that is affixed to an existing building. This type of telecommunications facility as defined in Section 21.05.040 below shall be allowed after the proposed telecommunications facility has gone through MOA Administrative Site Plan approval process and has been properly noticed to the public as outlined in the applicable Notice and Public Process sections written in this portion of 21.050.040.

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	All R1-R3	R4-R10	RO	PLI
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Type 1	Not Permitted	Not Permitted Accessory to R use, if > 6 dwelling units; Accessory to NR uses	Not Permitted Accessory to R use, if > 6 dwelling units; Accessory to NR uses	Not Permitted Accessory to R use, if > 6 dwelling units; Accessory to NR uses	Not Permitted Accessory to R use, if > 6 dwelling units; Accessory to NR uses
Type 2	Not Permitted	Condition Use Permit, if necessary to NR uses	Condition Use Permit, if necessary to NR uses	Condition Use Permit, if necessary to NR uses	Not Permitted
Type 3	Not Permitted	Condition Use Permit, if necessary to NR uses	Condition Use Permit, if necessary to NR uses	Condition Use Permit, if necessary to NR uses	Not Permitted
Type 4	Accessory only to NR uses Conditional Use Permit	Accessory to R use, if > 6 dwelling units Conditional Use Permit, Accessory to NR uses	Accessory to R use, if > 6 dwelling units Conditional Use Permit	Accessory to R use, if > 6 dwelling units Conditional Use Permit	Accessory to R use, if > 6 dwelling units Conditional Use Permit
Type 5	Accessory only to NR uses	Accessory to NR uses	Accessory to NR uses	Accessory to NR uses	Accessory to NR uses
Type 6	Accessory only to NR uses	Accessory to NR uses	Accessory to NR uses	Accessory to NR uses	Accessory to NR uses
Antenna only (except small cell, DAS, WMN) utility specific	Admin Site Plan approval with required public	Admin Site Plan approval with required public	Admin Site Plan approval with required public	Admin Site Plan approval with required public	Admin Site Plan approval with required public
Amateur Radio; noncommercial receive only; small cell, DAS, WMN; utility specific	Permitted	Permitted	Permitted	Permitted	Permitted

* In the AF district, three towers per lot are permitted by right. The installation of more than three towers per lot requires a conditional use permit.

hg- Telecommunications facilities are allowed as an accessory use in all other zoning districts in which they are allowed as a permitted use, but subject to the same approval process as if a permitted use.

3. Applications

a. For antennas or towers permitted "by right"

- i. Installation and use of a telecommunication facility that does not require an approval under this Code may still be required to comply with other laws, including approval of a building or land use permit under Title 23 of this Code. Building or land use permits shall be reviewed for compliance or eligibility for exemption from this title. Prior to issuance of a building or land use permit for type 1, 2, or 3 towers, or amateur radio station towers, the applicant

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shall notify property owners in accordance with 21.03.020H.

- ii. A tower as a permitted principal use shall be subject to the common standards in subsection 5.
- iii. The effective date of the building or land use permit shall be no earlier than 30 days after the date of mailing of the notification required by 21.03.020H.

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b. For antennas or towers requiring administrative site plan approval under table 21.05-1, Table 21.09.050-1, or Table 21.10-4. A site plan review and approval is required of towers in certain districts because they have aesthetic and visual impacts on their neighbors. The public interest is best served by allowing these neighbors and the public at large a chance to comment on and provide input concerning the location and design of these towers. An administrative approval for the site plan shall be obtained from the director.

i. **Submittal information.** Applicants for an administrative site plan review and approval for a tower structure shall submit the information required by subsection 21.03.180C, any corresponding regulations, and:

- (A) The proposed tower height and type,
- (B) A description of the design of the tower, and types, sizes and locations of antennas on the tower, including a rendition, drawing, or photographic representation of what the tower will look like if constructed,
- (C) The legal description of the site, its zoning and its street address, if any, and
- (D) A list of who was notified, with what information, and when.

ii. **Certified information.** Any information of an engineering nature that the applicant submits, which shall be fully supported by a signal analysis, data analysis, and cost analysis whether civil, mechanical, or electrical, shall be certified by an independent, third party, Alaska licensed professional engineer, directly under contract with the MOA. This is to be complied with for both an Administrative Site Plan Approval and a Conditional Use Permit. The cost of this review shall be covered by the application fee.

iii. **Notice and public process.** Notwithstanding Table 21.03-1, at least ~~45~~³⁵ days before acting on a tower site plan application the director shall publish, provide to affected property owners, residents, and community councils, including the Federation of Community Councils and mail notice of the application in accordance with subsection

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21.03.020H.

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- (A) The notice shall state the name of the applicant, a clear and concise description of the project, the street address, if any, and the legal description of the land subject to the application. The applicant shall reimburse the municipality for the expense of publishing and mailing such notice. The applicant shall also post the property with notice pursuant to subsection 21.03.020H.5.

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(B) Interested persons and the affected community councils have ~~45~~ days from the date of the notice to respond. In order to be considered, responses must be in writing, email, phone or in person.

iii. **Approval, with or without conditions.** In addition to the general standards for site plan approval under subsection 21.03.180F., the director shall also consider the factors for conditional uses for tower structures in subsection c., below. In approving a site plan, the director may impose conditions to the extent the director concludes conditions are necessary to minimize any adverse effect of the proposed tower structure, including all associated structures and landscaping, on adjoining properties.

iv. **Time period for approval.** The director shall take action on the site plan within the timeframe provided in 21.03.180C. Within 10 days of issuance, the applicant shall mail a copy of the written action of the director to all addresses on the original notice list.

c. **For antennas or towers requiring a conditional use permit.**

Applications for conditional use approval under this section shall be subject to the conditional use procedures and approval criteria in section 21.03.080 in this title, except as modified in this section.

i. **Submittal information.** Applicants for conditional use for a tower structure shall submit the information required in section 21.03.080, any corresponding regulations, and the following:

(A) Evidence to demonstrate that no existing tower, structure, or feasible alternative technology can

accommodate the applicant's proposed antenna. Such evidence shall consist of information demonstrating the following:

1. No existing tower or structure is located within the geographic area needed to meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support

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applicant's proposed antenna and related equipment.

4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or co-locate on a structure for sharing are commercially unreasonable. Costs exceeding new tower structure development are presumed to be unreasonable. This does not apply to alternative technology as referenced in section 7 below.

6. There are other limiting factors that render existing tower or structures unsuitable.

7. An alternative technology that does not require the use of a tower or structure, such as a cable microcell network using multiple low-powered transmitters or receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower structure or antenna development shall not be presumed to render the technology unsuitable.

~~ii.~~ **Certified information.** Any information of an engineering nature that the applicant submits, which shall be fully supported by a signal analysis, data analysis, and cost analysis whether civil, mechanical, or electrical, shall be certified by an independent, third party engineering review by a consultant that is an, Alaska licensed professional engineer directly under contract with the MOA. This is to be complied with for both an Administrative Site Plan Approval and a Conditional Use Permit. The cost of this review shall be covered by the application fee.

~~iii.~~ **Notice.** Notice of the application shall be provided to property owners, residents, and community councils in

accordance with 21.03.020H.

39	iii.	<u>Notice and public process.</u> Notwithstanding Table
40		<u>21.03-1, at least 45 days before acting on a tower site</u>
		<u>plan application the director shall publish, provide to</u>
41		<u>affected property owners, residents, and community</u>
		<u>councils, including the Federation of Community</u>
		<u>Councils and mail notice of the</u>
42		<u>application in accordance with subsection 21.03.020H.</u>
40		
48	(A)	The notice shall state the name of the applicant, a
49		clear and concise description of the project, the
50		street address, if any, and the legal description of
51		the land subject to the application. The applicant
52		shall reimburse the municipality for the expense of
53		publishing and mailing such notice. The applicant
54		shall also post the property with notice pursuant to
48		subsection 21.03.020H.5.
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1 (B) Interested persons and the affected community
2 councils have 60 days from the date of the notice
3 to respond. In order to be considered, responses
4 must be in writing, email, phone and in person.

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iv. **Factors considered in granting a conditional use for antennas and tower structures.** In addition to the general standards for a conditional use in subsection 21.03.080D., the planning and zoning commission shall consider the following factors in determining whether to issue a conditional use:

(A) Height of the proposed tower structure;

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- (B) Proximity of the tower structure to residential structures and residential district boundaries;
- (C) Nature of uses on adjacent and nearby properties;
- (D) Surrounding topography;
- (E) Surrounding tree coverage and foliage;
- (F) Design of the tower structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (G) Proposed ingress and egress; and
- (H) Availability of suitable existing towers, structures, or alternative technologies not requiring the use of towers or structures. No new tower structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning and zoning commission:
 1. No existing tower or structure can accommodate or replace the applicant's proposed antenna; and
 2. No alternative technology that does not require the use of tower structures can accommodate or replace the applicant's proposed antenna.

v. **Approval, with or without conditions.** The commission may waive or reduce the burden on the applicant of one or more of the conditional use criteria in this section if the commission finds the goals of this Title are better served thereby. Planning And Zoning shall hold a public hearing for each conditional use application with regard to proposed telecommunication facilities that require a conditional use permit. In granting a conditional use, the planning and zoning commission may impose conditions to the extent the commission finds such conditions are necessary to minimize any adverse effect of the proposed tower structure or antenna on adjoining properties.

- 5. **Common standards**
 - a. **Applicability**

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b. Minimum separation distance from protected land uses

i. The minimum separation distance between the base of a Type 1, 2, or 3

the Tower given that is sited on commercially zoned land, (or Type 4 Stealth/concealed Tower located in a residential zoned area) from and any principal structure on PLI or residentially-zoned land, or any school or licensed child care center, shall be 200~~150~~% of the allowable tower height.

ii. After giving due consideration to the comments of the applicant, the property owner, the residents and the local community council, the approving authority may reduce the minimum separation distance set forth in the paragraph b.i. above to no less than 150~~140~~% of the allowable tower height. The planning and zoning commission may not further reduce this separation distance.

iii. For Type 5- Non Tower and Type 6 -Existing Building

Telecommunication Facilities there shall be no additional separation distance required other than the current distance of the pole or building that the equipment shall be attached.

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c. Tower structure height

i. Height for a tower structure directly fixed to the ground shall be determined by measurement from grade to the highest point on the tower structure, including any installed antennas and lighting and associated structures. Maximum height shall be as set forth below:

- (A) Residential Zoned areas~~districts~~—65 feet.
- (B) Commercial Zoned Areas~~districts~~—130 feet.
- (C) Industrial Zoned Areas~~districts~~—150 feet.
- (D) AF Zoned areas~~district~~—200 feet.
- (E) All other Zoned areas~~districts~~—100 feet.

ii. Height for a tower structure not directly affixed to the ground shall be determined by measurement from the grade of the building to the highest point on the tower structure, including any installed antennas and lighting and supporting structures. At no time shall the height of a tower installed on a building as measured from grade to

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the highest point on the tower structure as set forth above exceed the height of the building multiplied by two or the base height, whichever is greater. Tower structures not directly affixed to the ground shall not exceed the height limits set forth in section 21.06.020. of this title nor interfere with Federal Aviation Administration Regulations on airport approaches.

d. Parking

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Off-street parking is not required, however if it is provided, parking spaces may be shared with other principal uses on the site. The parking spaces shall be paved in class A districts and, in class B districts, shall be covered with a layer of crushed rock of no more than one inch in diameter to a minimum depth of three inches. Parking space illumination shall be provided only to extent that the area is illuminated when the parking space is in use. The illumination shall be the lowest possible intensity level to provide parking space lighting for safe working conditions.

e. Landscaping and fencing

For any tower or related base station, screening landscaping shall be provided in accordance with 21.07.080G.4. Note: Landscaping must be at least 10 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.

f. Security

The tower structure and support structures shall be secured to prevent unauthorized access.

g. Separation distance

If any tower on a site exceeds 200 feet in height, the tower site shall be separated from any other tower site with tower(s) exceeding 200 feet in height by at least 5,280 feet (one mile).

h. Installation

All transmitting antennas shall be installed in a manner as set forth by the manufacturer and by the Federal Communications Commission (FCC) as meeting the current American National Standards Institute (ANSI) standard for nonionizing electromagnetic radiation (NIER).

i. Tower lighting

Tower structures shall not be lighted unless the Federal Aviation Administration requires or recommends that obstruction lighting be installed. To prevent direct light reflection on other property, tower structure lighting shall be shielded to the extent permitted by the Federal Aviation Administration.

j. Tower color

Except for qualifying Type 4 concealed towers where the color used enhances the concealment, the tower structure and any other structure(s) directly related to the operation of any antenna mounted on the tower structure shall be neutral in color and, to the extent possible, panted to shall be compatible with the appearance and character of the neighborhood or location unless obstruction

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marking is required by the Federal Aviation Administration.

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k. Identification placard

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An identification placard shall be attached to the tower structure or the security fencing in a location clearly visible at eye level. The placard shall provide the following information:

- i. The name and address and phone number for 8:00am to 5:00pm and emergency number of the tower structure owner;
- ii. The name and address and phone number for 8:00am to 5:00pm and emergency number of the tower structure manager, if different from the owner;
- iii. The date of erection of the tower structure; and
- iv. The owner's name and address of each antenna on the tower structure.

v. Last inspection date of telecommunication facility and date of next inspection.

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i. Co-location

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1. Co-location for Type 1, 2, and 3. towers.

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Any additional height allowed by co-location under this title is concurrent with, and not in addition to, height modifications made pursuant to 47 U.S.C. 1455.

i. All towers shall, for reasonable compensation, be made available for use by as many licensed carriers as can be technically co-located thereon when the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. All licensed carriers shall cooperate with each other in co-locating additional facilities upon such towers. All licensed carriers shall exercise good faith in co-locating with other licensed carriers and in the sharing of towers, including the sharing of technical information to evaluate the feasibility of co-location.

ii. Colocation is prohibited if the installation will violate the standards of the original approval (except as to height allowed by this subsection), including violation of standards applicable to concealment.

iii. All new type 1, 2 and 3 towers in allowed residential or PLI zones, or within 200 yards of the property line of such properties shall be engineered and constructed to accommodate a total of 3 separate antenna array without the need to re-engineer.

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2. Co-location for new Type 5 and 6, non-towers.

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i. All Type 5 and 6 facilities shall, for reasonable

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compensation, be made

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available for use by as many licensed carriers as can be

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technically co-located thereon when the use will not result

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in substantial injury to the owner, or in substantial

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detriment to the service to the customers of the owners.

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All licensed carriers shall cooperate with each other in co-

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locating additional facilities at such locations. All

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licensed carriers shall exercise good faith in co-locating

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with other licensed carriers and in the sharing of

locations,

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including the sharing of technical information to evaluate

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the feasibility of co-location.

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ii. Colocation is prohibited if the installation will violate the

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standards of the original approval including violation of

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standards applicable to concealment.

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m. Time period for construction

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Construction of a tower shall commence within one year from

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the later date of the building or land use permit, site plan, or

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conditional use approval, with opportunity for a six-month

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extension. If not used within one year, or within the extension

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period, the permit or approval, or both, shall become null and

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void.

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n. Interference

Within ~~3000~~ days of activation of an antenna, the operator shall provide written notice to property owners and residents in accordance with 21.03 notice. The notice shall include:

- i. The date of activation;
- ii. The operator's contact information, including phone number, and
- iii. Normal business hours or, if none, hours the operator can be reached by phone.

o. Annual inventory

Within 30 days from the end of each calendar quarter~~By January 31 of each year,~~ the owner of each antenna or tower regulated by this section shall provide the municipality Planning Department with an inventory of all additions and deletions of the owner's existing antennas, towers or approved sites for such facilities that are within the municipality or within one mile of the border thereof ~~as of December 31 of the previous year.~~ This inventory shall also be posted on the MOA Planning Department Website at the end of each quarter for public review.

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- i. The first inventory from each provider shall be a comprehensive current list of their existing antennas, towers and approved sites.
- ii. The inventory shall be provided in an electronic format, preferably in a spreadsheet, emailed to (address) and shall contain a separate entry for each tower or, if no tower, each site and antenna. Each entry shall contain:
 - (A) Municipal or borough parcel ID. In the absence of a parcel Id, a legal description or official street address,
 - (B) Actual height of the antenna or tower or, in the absence of a constructed antenna or tower, the approved tower height,
 - (C) Number of actual or planned antenna,
 - (D) Name of each antenna owner for co-located antenna,
 - (E) number of inactive antenna or, if applicable, indicate the entire tower or site is inactive, and

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(F)

Unutilized number of antenna co-locations available on the tower, by counting designed or

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emissions for actual and planned antenna.

(G) Calculation of cumulative EMF and Radio

existing and known engineered capacity in 15 foot increments.

iii. Failure to comply with this section is a violation enforceable under 21.13.040.

6. Specific Standards for types of telecommunications facilities_

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a. Type 1.

i. Setbacks. The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the setbacks of the underlying zoning district.

b. Type 2.

i. Setbacks. The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from grade to the first taper transition.

c. Type 3.

i. Setbacks. The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from the tower structure axis to the outermost guy wire anchor. The guy wire levels and anchor radius must match manufacturer's criteria for the proposed application. That portion of guy wire anchor structure that is above grade shall be set back from any property line in accordance with the following:

(A) Guy wire with a nominal diameter of 0.25 inches or less—25 feet, provided the setback may be reduced to 0 feet if the anchor structure is enclosed within a sight obscuring fence.

(B) Guy wire with a nominal diameter greater than 0.25 inches but less than 0.625 inches—25 feet, provided the setback may be reduced to five feet if the anchor structure is enclosed within a sight obscuring fence.

(C) Guy wire with a nominal diameter equal to or greater than 0.625 inches—25 feet.

d. Type 4.

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i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the setbacks of the underlying zoning district.

No setback is required under this section. However, general setback requirements and building code requirements still apply.

ii. **Qualification of Type 4 tower structure and antenna concealment designs for installation and use in residential, commercial and PLI zoning districts.**

(A) Each type 4 tower structure and antenna proposed for installation and use in a residential, commercial or PLI zoning district based on its qualification as a concealed telecommunications facility shall be qualified as meeting the concealment standards in this section by the planning and zoning commission.

(B) An applicant for a building or land use permit for a type 4 tower structure and antenna design under this subsection shall provide the commission with evidence in the form of construction and installation drawings, photographs, renderings, or other data sufficient for the commission to find the concealment standards are satisfied.

(C) At completion of the construction of the first tower structure and antenna under a newly qualified design, it shall be reviewed by the director to confirm the installation complies with the design standards.

(D) If the installation complies, future installations using the same design do not require design approval by the municipality. If the installation fails to comply, subsequent tower structure and antenna design and installation shall be amended or redesigned as directed by the commission.

e. Type 5 and Type 6

i. No specific setbacks required – however general setback requirements and building code requirements apply.

ii. Qualification of Type 5 and Type 6, for installation and use in residential, commercial and PLI zoning

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19 (A) Each Type 5 "Non Tower" or Type 6 "Existing

20 Building"

21 proposed installation and use in a residential,

22 commercial or PLI zoning district based on its

23 qualification as a concealed telecommunications

24 facility shall meet the standers for these Types

25 of telecommunication facilities as described in this

26 section of the code.

27 (B) An applicant for a Site Plan approval for a

28 Type 5 or 6 telecommunication facilities under

29 this subsection shall provide public notice as

30 outlined in the Notice and Public Process sections

31 written in this portion of the code.

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7. Modifications and Amendments

- a. Standards for modifications to telecommunications facilities are as follows:
 - i. Repairs and maintenance to a tower structure may be performed consistent with subsection 21.12.010F.
 - ii. The replacement or repair of antennas, or addition of antennas to a tower that does not increase the maximum height or width of the tower, shall not be considered an amendment of final approval under subsection b. and

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shall be considered a use contemplated within the original approval where the replacement, repair, or addition:

- (A) Will serve the same user or successor entity under the original approval;
- (B) Will serve the same general purpose as was served under the original approval; and
- (C) Is consistent with the conditions and standards applicable to the original approval.

- iii. Antenna owners who replace or add an antenna shall comply with the notification of activation requirement in subsection K.5.n.
- iv. An application under this title for modification approval is not required. A review for eligibility and compliance with this subsection shall occur during the building or land use permit review.

b. Amendments to final approval

Applications for amendments to a conditional use shall be subject to the requirements of 21.03.080E. Applications for amendments to an administrative site plan approval shall be subject to the requirements of 21.03.180H.

- i. Utilization of the criteria provided in (FCC 6409) ("Rule"), as it may be amended from time to time, shall be treated as a minor amendment under this title if:
 - (A) The application clearly requests treatment of the modification as an insubstantial change under the Rule;
 - (B) The application is complete in accordance with this title and the Rule; and
 - (C) The director determines the application meets all the requirements of the Rule and applicable provisions of this title not preempted by the Rule. The director may use the maximum time allowed by the Rule to determine whether the application is complete and eligible under the Rule.

8. Building or land use permit, administrative site plan, or conditional use revocation

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- a. Unless cured, a building or land use permit or approval of a site plan or conditional use shall be revoked after notice and the opportunity to cure, for any of the following:
 - i. Construction, maintenance, and/or operation of a tower at an unauthorized location;
 - ii. Construction or operation of a tower in violation of any of the terms and conditions of this title or the conditions attached to the permit or approval;
 - iii. Material misrepresentation by or on behalf of an applicant or permittee in any application or written statement upon which the approving authority substantially relies in making the decision to grant, review, or amend any permit or approval pursuant to this section and which materially changes the application of the standards of approval of the permit or issuance of the approval;
 - iv. Abandonment of a tower as set forth in this section; or
 - v. Failure to relocate or remove facilities as required in this section.
 - b. After having a permit or approval revoked, no tower shall be re-permitted or subsequently approved for that property or by that tower owner on any property within the municipality for a period of one year except through a conditional use approval.

31 **9. Abandonment**

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33 Any antenna or tower structure that is not operated for a continuous
34 period of 12 months shall be considered abandoned, and the owner of
35 such antenna or tower structure shall remove the same within 180 days
36 of receipt of notice from the director notifying the owner of such
37 abandonment. Failure to remove an abandoned antenna or tower
38 structure within said 180 days shall be grounds for the municipality to
39 remove the tower structure or antenna at the owner's expense. If there
40 are two or more users of a single tower structure, then this provision
41 shall not become effective until all users cease using the tower
42 structure.

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44 **10. Appeals**

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46 a. Notwithstanding 21.03.050, a decision to
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48 i. deny or issue a building or land use permit based on
49 requirements of this section where an approval of an

administrative site plan or conditional use is not required,
or

- ii. deny or approve an administrative site plan under the authority set forth in this section,

is final unless appealed to the planning and zoning commission within 30-days of the denial or effective date of the permit or approval. An appeal may be filed by the applicant or by a petition of at least one-third of the owners (excluding owners of rights-of-way) of the privately owned land within 500 feet of the outer boundary of the site. The appeal shall be heard by the commission in accordance with the procedures in 21.03.050A.

- b. An appeal from an original or appellate decision of the planning and zoning commission may be brought in Superior Court.

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

Section 3. Anchorage Municipal Code section 21.14.040, definitions, is hereby amended to add new definitions to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.14.040 Definitions.

Accessory equipment means any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes utility or transmission equipment, antenna, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Concealed Telecommunications Facility means any Telecommunications Facility as defined in section 21.05.040, and its support structure, that:

- 1. Is integrated as an architectural feature of an existing structure and is designed and built so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer. Common concealments include integration into building facades, street light poles, flagpoles, free standing signs, steeples and spires at places of worship, and water towers. The antennas of the facility are mounted on the structure so that they are located and designed to minimize or eliminate visual and aesthetic impacts to surrounding land uses and structures and shall, to the greatest extent practical, blend into the existing environment. This definition shall include any antenna or antenna array complying with the objective of this definition whether it is mounted on a support structure or not. By itself, paint schemes on the support structure or telecommunication facility are presumptively not sufficient to classify a facility as concealed under this definition; or

- 2. Has the appearance of a natural feature, consistent with its surroundings, that is not commonly recognized as a man-made structure. Common types include trees, large rocks, and cliff faces.

DAS or distributed antenna system means a system that distributes RF signals from transceivers at a central hub to a specific service area with otherwise poor coverage or inadequate capacity. DAS provides another alternative to macrocells mounted on tall antenna structures and its deployment is an alternative to macrocells mounted on tall antenna structures. As typically configured, a DAS network

consists of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the antennas. DAS deployment offers robust and broad coverage without creating the visual and physical impacts of multiple macrocells. Whereas *small cells* are usually operator-managed and support only a single wireless service provider, DAS networks can often accommodate multiple providers using different frequencies and/or wireless air interfaces.

Small cell means a low-powered wireless base station that function like cells in a mobile network but provide significantly smaller coverage area than traditional macrocells. Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. It includes femtocells, picocells, metrocells, and microcells. For this definition a "Small Cell" equipment installation must be no larger than 2 feet high 1 foot wide and 1 foot deep and be installed on an existing pole, tower or building.

Utility Pole means one of a series of poles usually located at the side of a street or road, or within a utility easement, and used to support wires and other equipment used by utilities, generally transmitting or distributing electricity or serving primarily as a light pole. A structure used solely or primarily for antennas or their associated facilities is not a utility pole.

WMN or Wireless mesh networking facility means low-powered telecommunication devices including nodes, wireless access points (WAPs) and repeaters which are part of a decentralized internet backbone system or wireless local area network (LAN) intended to deliver telecommunications and internet services to small areas within a larger network coverage area. These facilities operate on the 802.11 family of protocols and range in frequencies from 2.4 GHz to five GHz.

"Antenna" means -----(staff to insert definition)

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Section 4. This ordinance shall be effective immediately upon passage and approval by

AO regarding telecommunication facilities
the Assembly.

Page 32 of 20

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PASSED AND APPROVED by the Anchorage Assembly this _____ day of
_____, 2015.

Chair of the Assembly

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ATTEST:

Municipal Clerk

DEC 28 2015

2016-0015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

RESOLUTION SUPPORTING THE CITIZEN'S SUGGESTED CHANGE
THE (TITLE 21) WORKING DRAFT 11-18-15 CELL TOWER DRAFT ORDINANCE
SUBMITTED TO PLANNING & ZONING COMMISSION FOR THEIR RECOMMENDATIONS

WHEREAS, the Anchorage Municipal Charter Art. VIII, Sec 8.01 establishes Community Councils as representatives for neighborhoods in planning and development;

WHEREAS, direction was given to finalize a Working Draft 11-18-15 Cell Tower Draft Ordinance ("Draft Ordinance") at a Community and Economic Development Committee Meeting on November 18, 2015;

WHEREAS, the Draft Ordinance will first go to the Planning and Zoning Commission for its review and recommendations to the Assembly;

WHEREAS, a group of citizens have reviewed and revised the Draft Ordinance and have sent their recommendations to the Planning and Zoning Commission, including some of the following key points:

- Distributed Antenna Systems (DAS), small cell (non-tower) and a telecommunication facility affixed to an existing pole, an existing building or an existing structure are the preferred installation for neighborhoods.
- A Type 4 Tower – A stealth (camouflaged) new construction in residential areas and being approved by the MOA Conditional Use Permit (CUP) process.
- A Type 5 Non-tower – Utilizing Small Cell and Distributed Antenna Systems (DAS) and concealed telecommunication facilities in residential areas being approved by the MOA under the Administrative Site Plan Approval (ASPA) process.
- A Type 6 Existing Building – Affixing a telecommunication facility to an existing building being approved by the MOA under the Administrative Site Plan Approval process.
- Certified Information – Information provided by the applicant for either a CUP or a ASPA also be supported with a signal analysis, data analysis, and cost analysis and be certified by an independent third-party engineering review by a consultant that is an Alaska licensed professional engineer directly under contract with the MOA.
- Minimum Separation Distance for Types 1, 2, 3 and 4 (Towers) - 200% of the allowable height; to no less than 150% of the allowable height.
- Minimum Separation Distance for Type 5 and Type 6 - no additional separation distance required other than the current distance of the pole or building.
- Co-location for Type 5 and Type 6 – made available to as many licensed carriers as can be co-located that would not result in injury and detriment to the service of the

customers; cooperation; sharing of technical information; and exercising good faith between the licensed carriers for evaluation of the feasibility of the co-location.

- Co-location prohibited if violates the standards originally approved or in violation of concealment.

NOW THEREFORE, be it resolved that the Rogers Park Community Council approves the attached modifications to the Working Draft 11-18-15 Cell Tower Draft Ordinance going before the Planning & Zoning Commission for their recommendations to the Assembly.

PASSED AND APPROVED by Rogers Park Community Council this 14th day of December, 2015.

This resolution passed by a vote of 24 in favor, 0 opposed, and 2 abstentions.

Respectfully,



Clare Boersma, Vice President
Rogers Park Community Council

DEC 28 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

2016-0015

Suggested Modifications (red - line) by Anchorage citizens
working group on December 10th 2015

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WORKING DRAFT *** WORKING DRAFT *** WORKING DRAFT 11-18-2015

Submitted by: Community and Economic Development Committee (Assembly members Demboski, Evans, Hall, Johnston, Peterson)

Prepared by: Cell Tower Working Group
For reading: _____

**ANCHORAGE, ALASKA
AO No. 2015-_____**

1 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 (NEW CODE)
2 TO AMEND PROVISIONS REGARDING TELECOMMUNICATIONS FACILITIES,
3 INCLUDING CELL TOWERS.
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6 WHEREAS, ;

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8 WHEREAS,; and

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10 WHEREAS,; now, therefore,

11
12 THE ANCHORAGE ASSEMBLY ORDAINS:

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14 **Section 1.** Anchorage Municipal Code subsection 21.05.010E, Table of Allowed Uses, is
15 hereby amended in accordance with the attached Exhibit A.

16
17 **Section 2.** Anchorage Municipal Code subsection 21.05.040K is hereby repealed and
18 reenacted to read as follows (*the remainder of the section is not affected and therefore not*
19 *set out*):

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21 **21.05.040 Community Uses: Definitions and Use-Specific Standards**

22
23 *** **

24 **K. Telecommunication facilities**

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26 This subsection provides the land use standards for the location and design of
27 what are commonly referred to as cell towers, but also includes or excludes
28 other types of telecommunication facilities. Telecommunication facilities are
not allowed as a principal use in any area zoned R1-R3, R4-R10, RO or PLI.
All telecommunication facilities in any area zoned R1-R3, R4-R10, RO or PLI
must go through the Municipality of Anchorage's Conditional Use Process
unless the proposed telecommunication facility for this service area consists
solely of Small Cell and DAS "Distributed Antenna Systems" technology as
defined in Section 21.14.040. ~~Telecommunication facilities are~~
29 allowed as a principal use as provided in table 21.05-1. Telecommunications
30 facilities are allowed as an accessory use as provided in subsection K.2.f.

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32 1. **Exemptions.** Except for the provisions governing abandonment and
33 interference, the following are exempt from this section:
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- a. Amateur radio station towers and noncommercial receive-only antennas, provided:
 - i. The antenna and tower structure are part of a federally-licensed amateur radio station; and
 - ii. In residential zoning districts there is no use of the tower structure by a third party commercial antenna operator.

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the following:

- b. Personal antenna for use by a dwelling unit occupant for personal, home occupation.
- c. Localized utility antenna used for utility telemetry purposes, or by an electric or gas utility on an existing utility pole or cabinet to monitor or control equipment thereon.
- d. A DAS, small cell, or wireless mesh networking facility installation on a utility pole, or light pole if the installation meets
 - i. The applicant shall provide proof that the owner of the utility pole authorizes the installation of the facilities.
 - ii. The applicant shall provide proof that the property owner, if different from applicant, authorizes the installation of the facilities.
 - iii. Pole size, diameter and height shall be no larger than the municipality, state or utility would use for its intended purpose without the installation, as determined by said ~~entities~~Entities; Note: the pole size, diameter and height shall be no larger than the pole currently being used in the existing utility line.
 - iv. Antennas shall be limited to snug-mount, canister-mount or concealed antennas;
 - v. Antennas shall not increase the pole height by more than three feet per installation and shall not exceed 18 inches in diameter;
 - vi. Antennas and mounting hardware shall be covered or painted to match the color and texture of the pole on which it is mounted. All cables shall be located inside the installation or within an encasement colored to match the pole and oriented to a side with the least visual impact;
 - vii. There shall be no more than two separate installations on each pole;
 - viii. Installations on a single pole shall not exceed a noise level of 65 dB(A);
 - ix. Any accessory ~~ancillary~~ equipment located in a right-of-way:
 - (A) Shall be attached to a utility pole and be the same color as the utility pole; and

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(B) Shall not exceed two ~~three~~ feet in height, one ~~two~~ feet in

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width, and one foot in depth.

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(C) The equipment shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts.

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Screening shall be at least equal to the height of the accessory equipment on all sides and

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shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter; Note:

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Landscaping must be at least 5 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.

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x. Any ~~accessory~~ ~~ancillary~~ equipment not located in a right-of-way must meet the following criteria:

1. Antennas shall not be located on poles planned for removal by the municipality, state or a utility within 5-years of the date of application;
2. The equipment may be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
3. The equipment shall be included in lot coverage and non-open space calculations for the site, including the pad;
4. The equipment shall be located on a concrete pad, at the same elevation of the initial grade, unless required to be elevated due to FEMA requirements, and the height of the concrete elevated pad if required by FEMA shall be included as part of the total allowed height limit (ie. the sum of both the pad height and the pole/tower height must be at or below the allowed height) ;
5. The equipment shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order. Failure to maintain fences, walls or landscaping shall constitute a violation of this chapter; Note: Landscaping must be at least 5 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.
6. Shall be set back from any existing residential dwelling at least ~~one foot~~ two foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded); except for Small Cell technology as defined in Section 21.14.040 that is placed on existing poles and structures for which this setback shall be waived, and

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7. All equipment, including power generators, service panels and service connections shall be housed in one of the following: within a building, within a wireless equipment compound, within a wireless equipment cabinet, or completely underground. The wireless equipment cabinet shall not exceed four feet in height and 80 cubic feet. Undergrounding of wireless equipment cabinets is preferable and unless proven not to be feasible they shall be located underground.
- xii. The top of any installation on the utility pole shall not exceed 50 feet in height from the base of the pole, or 6 feet above the top of the pole, whichever is less.
- xii. The building, wireless equipment compound or wireless equipment cabinet shall be architecturally compatible with

the surrounding area in terms of scale, form, texture, materials and color.

- e. Owners of antennas exempt under subsection K.1.d. shall make the annual inventory report required by subsection K.5.n.
- f. Any antenna or tower structure exempt under this subsection shall not exceed the height limits set forth in subsection 21.06.020, nor interfere with Federal Aviation Administration Regulations on airport approaches.

2. Definitions

a. Telecommunication facility

A facility which transmits signals between or among points using electromagnetic waves. The facilities may include towers, support structures, antennas, buildings, transformers, transmitters, receivers, equipment cabinets, and parking lots.

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b. Type 1 tower

A freestanding vertical support structure of cylindrical, conical, or rectangular cross section constructed of composite, wood, concrete, or metal employed primarily for the purpose of supporting an antenna array and commonly called a monopole. A utility pole with one or more telecommunications facilities is a type 1 tower unless it meets the requirements of 1.d. of this section.

c. Type 2 tower

A freestanding vertical support structure of open frame skeletal design employed primarily for the purpose of supporting an antenna array and commonly called a lattice tower. This tower type includes lateral arrays.

d. Type 3 tower

A guyed vertical support structure of open frame, skeletal design, or solid pole design employed primarily for the purpose of supporting an antenna array and commonly called a guyed tower.

e. Type 4 tower

A Steath/camouflaged new construction tower concealed telecommunications facility and its support equipment structure. This type of telecommunications facility as defined in Section 21.05.040 below shall only be allowed in residential zoned areas after the proposed telecommunications facility has gone through and approved by the MOA Conditional Use permit Process.

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AO regarding telecommunication facilities

46 f. Telecommunications facilities are allowed or prohibited as an
47 accessory use in residential and PLI zones, in accordance with
the following:

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f. Type 5 – Non Tower

Small Cell technology and DAS on existing poles or structures
and

Concealed telecommunications facilities within existing
buildings and structures. This type of telecommunications
facility as defined in Section 21.05.040 below shall only be
allowed in residential zoned areas after the proposed
telecommunications facility has gone through MOA
Administrative Site Plan approval process and public notice has
properly been provided as outlined in the
applicable Notice and Public Process sections written in this
portion of 21.050.040.

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g. Type 6 – Existing Building

An Existing Building Telecommunication Facility is a
telecommunications facility that is affixed to an existing
building. This type of telecommunications facility as defined in
Section 21.05.040 below shall be allowed after the proposed
telecommunications facility has gone through MOA
Administrative Site Plan approval process and has been
properly noticed to the public as outlined in the applicable
Notice and Public Process sections written in this portion of
21.050.040.

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	All R1-R3	R4-R10	RO	PLI
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Type 1	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Type 2	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Type 3	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Type 4	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Type 5	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Type 6	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Antenna only (except small-cell, DAS, WMN)	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Amateur noncommercial receive only: small-cell, DAS, WMN; utility specific	Permitted	Permitted	Permitted	Permitted

* In the AF district, three towers per lot are permitted by right. The installation of more than three towers per lot requires a conditional use permit.

Telecommunications facilities are allowed as an accessory use in all other zoning districts in which they are allowed as a permitted use, but subject to the same approval process as if a permitted use.

3. Applications

a. For antennas or towers permitted "by right"

- i. Installation and use of a telecommunication facility that does not require an approval under this Code may still be required to comply with other laws, including approval of a building or land use permit under Title 23 of this Code. Building or land use permits shall be reviewed for compliance or eligibility for exemption from this title. Prior to issuance of a building or land use permit for type 1, 2, or 3 towers, or amateur radio station towers, the applicant

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shall notify property owners in accordance with 21.03.020H.

- ii. A tower as a permitted principal use shall be subject to the common standards in subsection 5.
- iii. The effective date of the building or land use permit shall be no earlier than 30 days after the date of mailing of the notification required by 21.03.020H.

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b. For antennas or towers requiring administrative site plan approval under table 21.05-1, Table 21.09.050-1, or Table 21.10-4. A site plan review and approval is required of towers in certain districts because they have aesthetic and visual impacts on their neighbors. The public interest is best served by allowing these neighbors and the public at large a chance to comment on and provide input concerning the location and design of these towers. An administrative approval for the site plan shall be obtained from the director.

i. **Submittal information.** Applicants for an administrative site plan review and approval for a tower structure shall submit the information required by subsection 21.03.180C, any corresponding regulations, and:

- (A) The proposed tower height and type,
- (B) A description of the design of the tower, and types, sizes and locations of antennas on the tower, including a rendition, drawing, or photographic representation of what the tower will look like if constructed,
- (C) The legal description of the site, its zoning and its street address, if any, and
- (D) A list of who was notified, with what information, and when.

ii. **Certified information.** Any information of an engineering nature that the applicant submits, which shall be fully supported by a signal analysis, data analysis, and cost analysis whether civil, mechanical, or electrical, shall be certified by an independent, third party, Alaska licensed professional engineer, directly under contract with the MOA. This is to be complied with for both an Administrative Site Plan Approval and a Conditional Use Permit. The cost of this review shall be covered by the application fee.

iii. **Notice and public process.** Notwithstanding Table 21.03-1, at least 45 days before acting on a tower site plan application the director shall publish, provide to affected property owners, residents, and community councils, including the Federation of Community Councils and mail notice of the application in accordance with subsection

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21.03.020H.

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- (A) The notice shall state the name of the applicant, a clear and concise description of the project, the street address, if any, and the legal description of the land subject to the application. The applicant shall reimburse the municipality for the expense of publishing and mailing such notice. The applicant shall also post the property with notice pursuant to subsection 21.03.020H.5.

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(B) Interested persons and the affected community councils have 4535 days from the date of the notice to respond. In order to be considered, responses must be in writing, email, phone or in person.

iii. **Approval, with or without conditions.** In addition to the general standards for site plan approval under subsection 21.03.180F., the director shall also consider the factors for conditional uses for tower structures in subsection c., below. In approving a site plan, the director may impose conditions to the extent the director concludes conditions are necessary to minimize any adverse effect of the proposed tower structure, including all associated structures and landscaping, on adjoining properties.

iv. **Time period for approval.** The director shall take action on the site plan within the timeframe provided in 21.03.180C. Within 10 days of issuance, the applicant shall mail a copy of the written action of the director to all addresses on the original notice list.

c. **For antennas or towers requiring a conditional use permit.**

Applications for conditional use approval under this section shall be subject to the conditional use procedures and approval criteria in section 21.03.080 in this title, except as modified in this section.

i. **Submittal information.** Applicants for conditional use for a tower structure shall submit the information required in section 21.03.080, any corresponding regulations, and the following:

(A) Evidence to demonstrate that no existing tower, structure, or feasible alternative technology can accommodate the applicant's proposed antenna. Such evidence shall consist of information demonstrating the following:

1. No existing tower or structure is located within the geographic area needed to meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support

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applicant's proposed antenna and related equipment.

4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or co-locate on a structure for sharing are commercially unreasonable. Costs exceeding new tower structure development are presumed to be unreasonable. This does not apply to alternative technology as referenced in section 7 below.

6. There are other limiting factors that render existing tower or structures unsuitable.

7. An alternative technology that does not require the use of a tower or structure, such as a cable microcell network using multiple low-powered transmitters or receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower structure or antenna development shall not be presumed to render the technology unsuitable.

ii. **Certified information.** Any information of an engineering nature that the applicant submits, which shall be fully supported by a signal analysis, data analysis, and cost analysis whether civil, mechanical, or electrical, shall be certified by an independent, third party engineering review by a consultant that is an, Alaska licensed professional engineer directly under contract with the MOA. This is to be complied with for both an Administrative Site Plan Approval and a Conditional Use Permit. The cost of this review shall be covered by the application fee.

iii. **Notice.** Notice of the application shall be provided to property owners, residents, and community councils in

1 (B) Interested persons and the affected community
2 councils have 60 days from the date of the notice
3 to respond. In order to be considered, responses
4 must be in writing, email, phone and in person.

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iv. **Factors considered in granting a conditional use for antennas and tower structures.** In addition to the general standards for a conditional use in subsection 21.03.080D., the planning and zoning commission shall consider the following factors in determining whether to issue a conditional use:

(A) Height of the proposed tower structure;

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- (B) Proximity of the tower structure to residential structures and residential district boundaries;
- (C) Nature of uses on adjacent and nearby properties;
- (D) Surrounding topography;
- (E) Surrounding tree coverage and foliage;
- (F) Design of the tower structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (G) Proposed ingress and egress; and
- (H) Availability of suitable existing towers, structures, or alternative technologies not requiring the use of towers or structures. No new tower structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning and zoning commission:
 - 1. No existing tower or structure can accommodate or replace the applicant's proposed antenna; and
 - 2. No alternative technology that does not require the use of tower structures can accommodate or replace the applicant's proposed antenna.

v. **Approval, with or without conditions.** The commission may waive or reduce the burden on the applicant of one or more of the conditional use criteria in this section if the commission finds the goals of this Title are better served thereby. Planning And Zoning shall hold a public hearing for each conditional use application with regard to proposed telecommunication facilities that require a conditional use permit. In granting a conditional use, the planning and zoning commission may impose conditions to the extent the commission finds such conditions are necessary to minimize any adverse effect of the proposed tower structure or antenna on adjoining properties.

- 5. **Common standards**
 - a. **Applicability**

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b. Minimum separation distance from protected land uses

i. The minimum separation distance between the base of a Type 1, 2, or 3

the tower given that is sited on commercially zoned land, (or Type 4 Stealth/concealed Tower located in a residential zoned area) from and any principal structure on PLI or residentially-zoned land, or any school or licensed child care center, shall be ~~200~~150% of the allowable tower height.

ii. After giving due consideration to the comments of the applicant, the property owner, the residents and the local council, the approving authority may reduce the minimum separation distance set forth in the paragraph b.i. above to no less than ~~150~~40% of the allowable tower height. The planning and zoning commission may not further reduce this separation distance.

~~15~~ iii. For Type 5- Non Tower and Type 6 -Existing Building Telecommunication Facilities there shall be no additional separation distance required other than the current distance of the pole or building that the equipment shall be attached.

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c. Tower structure height

i. Height for a tower structure directly fixed to the ground shall be determined by measurement from grade to the highest point on the tower structure, including any installed antennas and lighting and associated structures. Maximum height shall be as set forth below:

- (A) Residential Zoned areas~~districts~~—65 feet.
- (B) Commercial Zoned Areas~~districts~~—130 feet.
- (C) Industrial Zoned Areas~~districts~~—150 feet.
- (D) AF Zoned areas~~district~~—200 feet.
- (E) All other Zoned areas~~districts~~—100 feet.

ii. Height for a tower structure not directly affixed to the ground shall be determined by measurement from the grade of the building to the highest point on the tower structure, including any installed antennas and lighting and supporting structures. At no time shall the height of a tower installed on a building as measured from grade to

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the highest point on the tower structure as set forth above exceed the height of the building multiplied by two or the base height, whichever is greater. Tower structures not directly affixed to the ground shall not exceed the height limits set forth in section 21.06.020. of this title nor interfere with Federal Aviation Administration Regulations on airport approaches.

d. Parking

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Off-street parking is not required, however if it is provided, parking spaces may be shared with other principal uses on the site. The parking spaces shall be paved in class A districts and, in class B districts, shall be covered with a layer of crushed rock of no more than one inch in diameter to a minimum depth of three inches. Parking space illumination shall be provided only to extent that the area is illuminated when the parking space is in use. The illumination shall be the lowest possible intensity level to provide parking space lighting for safe working conditions.

e. Landscaping and fencing

For any tower or related base station, screening landscaping shall be provided in accordance with 21.07.080G.4. Note: Landscaping must be at least 10 feet wide on three sides outside of a solid screening fence enclosure to ensure visual screening and noise reduction. The planting materials must consist of 100% evergreen trees as approved by the MOA Planning Department.

f. Security

The tower structure and support structures shall be secured to prevent unauthorized access.

g. Separation distance

If any tower on a site exceeds 200 feet in height, the tower site shall be separated from any other tower site with tower(s) exceeding 200 feet in height by at least 5,280 feet (one mile).

h. Installation

All transmitting antennas shall be installed in a manner as set forth by the manufacturer and by the Federal Communications Commission (FCC) as meeting the current American National Standards Institute (ANSI) standard for nonionizing electromagnetic radiation (NIER).

i. Tower lighting

Tower structures shall not be lighted unless the Federal Aviation Administration requires or recommends that obstruction lighting be installed. To prevent direct light reflection on other property, tower structure lighting shall be shielded to the extent permitted by the Federal Aviation Administration.

j. Tower color

Except for qualifying Type 4 concealed towers where the color used enhances the concealment, the tower structure and any other structure(s) directly related to the operation of any antenna mounted on the tower structure shall be neutral in color and, to the extent possible, panted to shall be compatible with the appearance and character of the neighborhood or location unless obstruction

AO regarding telecommunication facilities

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marking is required by the Federal Aviation Administration.

k. Identification placard

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An identification placard shall be attached to the tower structure or the security fencing in a location clearly visible at eye level. The placard shall provide the following information:

- i. The name and address and phone number for 8:00am to 5:00pm and emergency number of the tower structure owner;
- ii. The name and address and phone number for 8:00am to 5:00pm and emergency number of the tower structure manager, if different from the owner;
- iii. The date of erection of the tower structure; and
- iv. The owner's name and address of each antenna on the tower structure.
- v. Last inspection date of telecommunication facility and date of next inspection.

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I. Co-location

1. Co-location for Type 1, 2, and 3. towers.

Any additional height allowed by co-location under this title is concurrent with, and not in addition to, height modifications made pursuant to 47 U.S.C. 1455.

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- i. All towers shall, for reasonable compensation, be made available for use by as many licensed carriers as can be technically co-located thereon when the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. All licensed carriers shall cooperate with each other in co-locating additional facilities upon such towers. All licensed carriers shall exercise good faith in co-locating with other licensed carriers and in the sharing of towers, including the sharing of technical information to evaluate the feasibility of co-location.
- ii. Colocation is prohibited if the installation will violate the standards of the original approval (except as to height allowed by this subsection), including violation of standards applicable to concealment.
- iii. All new type 1, 2 and 3 towers in allowed residential or PLI zones, or within 200 yards of the property line of such properties shall be engineered and constructed to accommodate a total of 3 separate antenna array without the need to re-engineer.

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2. Co-location for new Type 5 and 6, non-towers.

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i. All Type 5 and 6 facilities shall, for reasonable compensation, be made

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available for use by as many licensed carriers as can be

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technically co-located thereon when the use will not result

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in substantial injury to the owner, or in substantial

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detriment to the service to the customers of the owners.

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All licensed carriers shall cooperate with each other in co-

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locating additional facilities at such locations. All

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licensed carriers shall exercise good faith in co-locating

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with other licensed carriers and in the sharing of

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including the sharing of technical information to evaluate

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the feasibility of co-location.

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ii. Colocation is prohibited if the installation will violate the standards of the original approval including violation of standards applicable to concealment.

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m. Time period for construction

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Construction of a tower shall commence within one year from the later date of the building or land use permit, site plan, or conditional use approval, with opportunity for a six-month extension. If not used within one year, or within the extension period, the permit or approval, or both, shall become null and void.

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n. Interference

Within ~~3090~~ days of activation of an antenna, the operator shall provide written notice to property owners and residents in accordance with 21.03 notice. The notice shall include:

- i. The date of activation;
- ii. The operator's contact information, including phone number, and
- iii. Normal business hours or, if none, hours the operator can be reached by phone.

o. Annual inventory

Within 30 days from the end of each calendar quarter~~By January 31 of each year,~~ the owner of each antenna or tower regulated by this section shall provide the municipality Planning Department with an inventory of all additions and deletions of the owner's existing antennas, towers or approved sites for such facilities that are within the municipality or within one mile of the border thereof ~~as of December 31 of the previous year.~~ This inventory shall also be posted on the MOA Planning Department Website at the end of each quarter for public review.

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- i. The first inventory from each provider shall be a comprehensive current list of their existing antennas, towers and approved sites.
- ii. The inventory shall be provided in an electronic format, preferably in a spreadsheet, emailed to (address) and shall contain a separate entry for each tower or, if no tower, each site and antenna. Each entry shall contain:
 - (A) Municipal or borough parcel ID. In the absence of a parcel Id, a legal description or official street address,
 - (B) Actual height of the antenna or tower or, in the absence of a constructed antenna or tower, the approved tower height,
 - (C) Number of actual or planned antenna,
 - (D) Name of each antenna owner for co-located antenna,
 - (E) number of inactive antenna or, if applicable, indicate the entire tower or site is inactive, and

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(F) Unutilized number of antenna co-locations available on the tower, by counting designed or

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emissions for actual and planned antenna.

(G) Calculation of cumulative EMF and Radio

existing and known engineered capacity in 15 foot increments.

- iii. Failure to comply with this section is a violation enforceable under 21.13.040.

6. Specific Standards for types of telecommunications facilities

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a. Type 1.

- i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the setbacks of the underlying zoning district.

b. Type 2.

- i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from grade to the first taper transition.

c. Type 3.

- i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the distance measured from the tower structure axis to the outermost guy wire anchor. The guy wire levels and anchor radius must match manufacturer's criteria for the proposed application. That portion of guy wire anchor structure that is above grade shall be set back from any property line in accordance with the following:

(A) Guy wire with a nominal diameter of 0.25 inches or less—25 feet, provided the setback may be reduced to 0 feet if the anchor structure is enclosed within a sight obscuring fence.

(B) Guy wire with a nominal diameter greater than 0.25 inches but less than 0.625 inches—25 feet, provided the setback may be reduced to five feet if the anchor structure is enclosed within a sight obscuring fence.

(C) Guy wire with a nominal diameter equal to or greater than 0.625 inches—25 feet.

d. Type 4.

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i. **Setbacks.** The minimum distance from any lot line to the vertical axis of the tower structure shall be equal to or greater than the setbacks of the underlying zoning district.

No setback is required under this section.

However, general setback requirements and building code requirements still apply.

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ii. **Qualification of Type 4 tower structure and antenna concealment designs for installation and use in residential, commercial and PLI zoning districts.**

(A) Each type 4 tower structure and antenna proposed for installation and use in a residential, commercial or PLI zoning district based on its qualification as a concealed telecommunications facility shall be qualified as meeting the concealment standards in this section by the planning and zoning commission.

(B) An applicant for a building or land use permit for a type 4 tower structure and antenna design under this subsection shall provide the commission with evidence in the form of construction and installation drawings, photographs, renderings, or other data sufficient for the commission to find the concealment standards are satisfied.

(C) At completion of the construction of the first tower structure and antenna under a newly qualified design, it shall be reviewed by the director to confirm the installation complies with the design standards.

(D) If the installation complies, future installations using the same design do not require design approval by the municipality. If the installation fails to comply, subsequent tower structure and antenna design and installation shall be amended or redesigned as directed by the commission.

e. Type 5 and Type 6

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i. No specific setbacks required – however general setback requirements and building code requirements apply.

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ii. Qualification of Type 5 and Type 6 for installation and use in residential, commercial and PLI zoning

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18 districts
 19 (A) Each Type 5 "Non Tower" or Type 6 "Existing
 20 Building"
 21 proposed installation and use in a residential,
 22 commercial or PLI zoning district based on its
 qualification as a concealed telecommunications
 facility shall meet the standers for these Types
 of telecommunication facilities as described in this
 section of the code.

(B) An applicant for a Site Plan approval for a
 Type 5 or 6 telecommunication facilities under
 this subsection shall provide public notice as
 outlined in the Notice and Public Process sections
 written in this portion of the code.

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 39 **7. Modifications and Amendments**

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- 41 a. Standards for modifications to telecommunications facilities are
 42 as follows:
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- 44 i. Repairs and maintenance to a tower structure may be
 45 performed consistent with subsection 21.12.010F.
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- 47 ii. The replacement or repair of antennas, or addition of
 48 antennas to a tower that does not increase the maximum
 49 height or width of the tower, shall not be considered an
 50 amendment of final approval under subsection b. and

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shall be considered a use contemplated within the original approval where the replacement, repair, or addition:

- (A) Will serve the same user or successor entity under the original approval;
- (B) Will serve the same general purpose as was served under the original approval; and
- (C) Is consistent with the conditions and standards applicable to the original approval.

- iii. Antenna owners who replace or add an antenna shall comply with the notification of activation requirement in subsection K.5.n.
- iv. An application under this title for modification approval is not required. A review for eligibility and compliance with this subsection shall occur during the building or land use permit review.

b. Amendments to final approval

Applications for amendments to a conditional use shall be subject to the requirements of 21.03.080E. Applications for amendments to an administrative site plan approval shall be subject to the requirements of 21.03.180H.

- i. Utilization of the criteria provided in (FCC 6409) ("Rule"), as it may be amended from time to time, shall be treated as a minor amendment under this title if:
 - (A) The application clearly requests treatment of the modification as an insubstantial change under the Rule;
 - (B) The application is complete in accordance with this title and the Rule; and
 - (C) The director determines the application meets all the requirements of the Rule and applicable provisions of this title not preempted by the Rule. The director may use the maximum time allowed by the Rule to determine whether the application is complete and eligible under the Rule.

8. Building or land use permit, administrative site plan, or conditional use revocation

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- a. Unless cured, a building or land use permit or approval of a site plan or conditional use shall be revoked after notice and the opportunity to cure, for any of the following:
 - i. Construction, maintenance, and/or operation of a tower at an unauthorized location;
 - ii. Construction or operation of a tower in violation of any of the terms and conditions of this title or the conditions attached to the permit or approval;
 - iii. Material misrepresentation by or on behalf of an applicant or permittee in any application or written statement upon which the approving authority substantially relies in making the decision to grant, review, or amend any permit or approval pursuant to this section and which materially changes the application of the standards of approval of the permit or issuance of the approval;
 - iv. Abandonment of a tower as set forth in this section; or
 - v. Failure to relocate or remove facilities as required in this section.
- b. After having a permit or approval revoked, no tower shall be re-permitted or subsequently approved for that property or by that tower owner on any property within the municipality for a period of one year except through a conditional use approval.

9. Abandonment

Any antenna or tower structure that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower structure shall remove the same within 180 days of receipt of notice from the director notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower structure within said 180 days shall be grounds for the municipality to remove the tower structure or antenna at the owner's expense. If there are two or more users of a single tower structure, then this provision shall not become effective until all users cease using the tower structure.

10. Appeals

- a. Notwithstanding 21.03.050, a decision to
 - i. deny or issue a building or land use permit based on requirements of this section where an approval of an

administrative site plan or conditional use is not required,
or

ii. deny or approve an administrative site plan under the
authority set forth in this section,

is final unless appealed to the planning and zoning commission
within 30-days of the denial or effective date of the permit or
approval. An appeal may be filed by the applicant or by a
petition of at least one-third of the owners (excluding owners of
rights-of-way) of the privately owned land within 500 feet of the
outer boundary of the site. The appeal shall be heard by the
commission in accordance with the procedures in 21.03.050A.

b. An appeal from an original or appellate decision of the planning
and zoning commission may be brought in Superior Court.

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

Section 3. Anchorage Municipal Code section 21.14.040, definitions, is hereby amended
to add new definitions to read as follows (*the remainder of the section is not affected and
therefore not set out*):

21.14.040 Definitions.

Accessory equipment means any equipment serving or being used in
conjunction with a Telecommunications Facility or Support Structure. This
equipment includes utility or transmission equipment, antenna, power
supplies,
generators, batteries, cables, equipment buildings, cabinets and storage sheds,
shelters or other structures.

Concealed Telecommunications Facility means any Telecommunications Facility
as defined in section 21.05.040, and its support structure, that:

1. Is integrated as an architectural feature of an existing structure
and is designed and built so that the purpose of the facility for
providing wireless services is not readily apparent to a casual
observer. Common concealments include integration into building
facades, street light poles, flagpoles, free standing signs, steeples
and spires at places of worship, and water towers. The antennas
of the facility are mounted on the structure so that they are located
and designed to minimize or eliminate visual and aesthetic
impacts to surrounding land uses and structures and shall, to the
greatest extent practical, blend into the existing environment. This
definition shall include any antenna or antenna array complying
with the objective of this definition whether it is mounted on a
support structure or not. By itself, paint schemes on the support
structure or telecommunication facility are presumptively not
sufficient to classify a facility as concealed under this definition; or

- 2. Has the appearance of a natural feature, consistent with its surroundings, that is not commonly recognized as a man-made structure. Common types include trees, large rocks, and cliff faces.

DAS or distributed antenna system means a system that distributes RF signals from transceivers at a central hub to a specific service area with otherwise poor coverage or inadequate capacity. DAS provides another alternative to macrocells mounted on tall antenna structures and its deployment is an alternative to macrocells mounted on tall antenna structures. As typically configured, a DAS network consists of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the antennas. DAS deployment offers robust and broad coverage without creating the visual and physical impacts of multiple macrocells. Whereas *small cells* are usually operator-managed and support only a single wireless service provider, DAS networks can often accommodate multiple providers using different frequencies and/or wireless air interfaces.

Small cell means a low-powered wireless base station that function like cells in a mobile network but provide significantly smaller coverage area than traditional macrocells. Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. It includes femtocells, picocells, metrocells, and microcells. For this definition a "Small Cell" equipment installation must be no larger than 2 feet high 1 foot wide and 1 foot deep and be installed on an existing pole, tower or building.

Utility Pole means one of a series of poles usually located at the side of a street or road, or within a utility easement, and used to support wires and other equipment used by utilities, generally transmitting or distributing electricity or serving primarily as a light pole. A structure used solely or primarily for antennas or their associated facilities is not a utility pole.

WMN or Wireless mesh networking facility means low-powered telecommunication devices including nodes, wireless access points (WAPs) and repeaters which are part of a decentralized internet backbone system or wireless local area network (LAN) intended to deliver telecommunications and internet services to small areas within a larger network coverage area. These facilities operate on the 802.11 family of protocols and range in frequencies from 2.4 GHz to five GHz.

"Antenna" means -----(staff to insert definition)

Section 4. This ordinance shall be effective immediately upon passage and approval by

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AO regarding telecommunication facilities
the Assembly.

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PASSED AND APPROVED by the Anchorage Assembly this _____ day of
_____, 2015.

Chair of the Assembly

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ATTEST:

Municipal Clerk