

## ARTICLE XII

### TELECOM STRUCTURES

#### 12-101. Purpose and Objectives.

- (A) The general purpose of this article is to regulate the placement, construction and modification of telecom structures and antenna support structures in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.
- (B) The objectives of this article are the following:
  - (1) To regulate the placement, construction and modification of telecom structures in the City;
  - (2) To protect residential areas and other land uses from potential adverse impacts of telecom structures;
  - (3) To minimize the potential adverse visual impact of telecom structures through careful design, siting, landscaping and innovative camouflaging techniques;
  - (4) To ensure that telecom structures are compatible with surrounding land uses;
  - (5) To promote and encourage shared use/co-location of telecom structures and antenna support structures as the primary option for personal wireless telecommunications services instead of the construction of additional single-provider towers;
  - (6) To avoid potential damage to property caused by telecom structures by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or when determined to be structurally unsound;
  - (7) To encourage the safe, effective and efficient provision of personal wireless telecommunication services to the community;
  - (8) To ensure that the regulation of personal wireless telecommunication services does not prohibit or have the effect of prohibiting the provision of such services; and,

- (9) To ensure that that the regulation of personal wireless telecommunication services does not unreasonably discriminate among functionally equivalent providers of such services.

12-102. Definitions.

The following words, terms, and phrases, when used in this article, shall have the following meanings:

**ACT:** The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended, including the amendment known as the Telecommunications Act of 1996, and all future amendments.

**ADMINISTRATIVE PERMIT:** A review process and approval by the Zoning Administrator as described in this article.

**ANTENNA:** Any structure or device used to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication.

**ANTENNA SUPPORT STRUCTURE:** Any building or structure other than a tower or stealth monopole that can be used for the location of telecommunications facilities.

**APPLICANT:** Any person who applies for an administrative permit, a conditional use permit, a PUD amendment, a variance, an exception or a building permit.

**CITY:** The City of Manhattan, Kansas.

**CO-LOCATION:** Locating wireless telecommunication facilities owned by more than one provider on a single antenna support structure, tower or stealth monopole structure.

**CONDITIONAL USE PERMIT:** A review process and approval by the Board of Zoning Appeals as described in these regulations.

**ENGINEER:** Any qualified, licensed engineer who specializes in either electrical or microwave engineering, especially the study of micro-frequencies; and/or, who specializes in structural integrity and determining whether a tower or antenna support structure has the capacity to accommodate more than one provider.

**FAA:** The Federal Aviation Administration.

**FALL ZONE:** The area on the ground within a prescribed radius, beginning from the base of a telecom structure or an antenna support structure, that may be impacted if a telecom structure fails or collapses.

**FCC:** The Federal Communications Commission.

**GUYED TOWER:** A type of tower that is supported, in whole or in part, by guy wires anchored to any surface.

**LANDOWNER:** Any person with fee title to a parcel of land within the City.

**LATTICE TOWER:** A self-supporting structure, erected on any surface, which consists of an open network of metal crossed strips or bars to support antennas and related equipment.

**MODIFICATION:** Any physical change to any element of a telecom structure or pre-existing structure that involves a Bulk Regulation, Section 12-110, or a Use Limitation, Section 12-112.

**MONOPOLE:** A monopole structure, erected on any surface, which supports antennas and any connecting appurtenances.

**MUNICIPAL FACILITIES:** An antenna support structure owned by the City, including, but not limited to, water towers, fire stations and other similar buildings and structures.

**OWNER:** Any person who develops, constructs, builds, modifies, erects or owns a telecom structure upon a parcel of land.

**PERSON:** Any individual person, firm, partnership, association, corporation, company or other legal entity, private or public, whether for profit or not for profit.

**PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES:** Any personal wireless service as defined in the Act, including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services.

**PRE-EXISTING STRUCTURE:** Any telecom structure that existed prior to the effective date of this article or any telecom structure that exists outside the City limits either before or after the effective date of this article and is annexed into the City limits.

**PROVIDER:** An entity licensed by the FCC or a state agency to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication. A tower builder is not a provider.

**PUD:** Planned Unit Development.

**STEALTH:** A method of designing, constructing, and/or locating any telecom structure to blend in with the character and environment of the area in which it is

located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles of Section 12-114.

**STEALTH MONOPOLE:** Any freestanding, monopole structure, 50 feet or less in total height, as measured from the ground, that incorporates stealth design principles of Section 12-114, including but not limited to, camouflaging the structure as a tree, flagpole or light pole.

**TELECOM STRUCTURE:** Any tower, stealth monopole or telecommunications facilities.

**TELECOMMUNICATIONS FACILITIES:** Any cables, wires, lines, wave guides, antennas and any other equipment or facilities, including buildings, shelters or cabinets that house telecommunications providers' equipment, associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a commercial tower or antenna support structure.

**TOWER:** A self-supporting lattice, guyed or monopole structure that supports telecommunications facilities for the purpose of providing personal wireless telecommunications services. The term tower shall not include stealth monopoles, as defined herein, or amateur radio operators' equipment, as licensed by the FCC.

12-103. Applicability.

All telecom structures and antenna support structures, and any portion of which are located within the City, shall be subject to this article, except as follows:

- (A) Amateur radio operators. This article shall not apply to any short-wave radio tower that is owned and operated by a federally licensed amateur radio station.
- (B) Residential Antennas. This article shall not apply to accessory antennas attached to residential structures whose purpose is receiving television, radio, microwave, telephone, digital data or similar forms of wireless information transmission for the sole use of the occupants. A provider shall comply with this article to utilize a residential structure as an antenna support structure for its network, and shall obtain the appropriate permits as required by Section 12-104.
- (C) Utility poles. This article shall not apply to utility poles, which are utilized solely for the support of electrical, telephone, cable television or similar cables and wires, located on public rights-of-ways or easements for that purpose, and are part of a system of such poles throughout the City.
- (D) Broadcast systems and facilities. This article shall not apply to towers or telecommunications facilities utilized for the transmission of signals that do not constitute personal wireless telecommunications services.

#### 12-104. Zoning Requirements.

In non-residential districts, telecom structures are a principal structure and use. Notwithstanding these regulations, in residential districts on a residential zoning lot, telecom structures are a second principal structure and use.

- (A) Towers. A tower shall be a conditional use in all zoning districts, except PUD Districts (see paragraph E below). No person shall erect a tower upon any parcel of land unless:
- (1) An application for an administrative permit is made, and approved, by the City; and,
  - (2) An application for a conditional use permit is made, and approved, by the Board of Zoning Appeals.
- (B) Telecommunications Facilities in Residential Districts. Telecommunications facilities shall be a conditional use in any residential zoning district, except PUD Districts (see paragraph E below). No person shall erect telecommunications facilities within any residential zoning district, unless:
- (1) An application for an administrative permit is made, and approved, by the City; and,
  - (2) An application for a conditional use permit is made, and approved, by the Board of Zoning Appeals.
- (C) Telecommunications Facilities in Non-Residential Districts. Telecommunications facilities shall be a permitted use in any non-residential zoning district, except PUD Districts (see paragraph E below). No person shall erect telecommunications facilities within any non-residential zoning district, unless:
- (1) An application for an administrative permit is made, and approved, by the City.
- (D) Municipal Facilities. Notwithstanding Sections 3-412, 12-104(B) and 12-104(C) of these regulations, telecommunications facilities supported on municipal facilities shall be a second permitted principal use in any zoning district. No person shall erect telecommunications facilities upon any municipal facilities, unless:
- (1) An application for an administrative permit is made, and approved, by the City.
- (E) Towers, Stealth Monopoles and Telecommunication Facilities in Planned Unit Development Districts (PUD). Telecom structures proposed to be located within PUD Districts shall be subject to the provisions of Article IX, Planned Unit Development Districts, and if located within an existing PUD, the specific

ordinance establishing the PUD, as amended. No person shall erect any telecom structure in a PUD District unless:

- (1) An application for an administrative permit is made, and approved, by the City.
  - (2) An application for a PUD amendment is made, and approved, by the Manhattan Urban Area Planning Board and Governing Body, provided that, if the ordinance(s) that establishes and controls the PUD expressly permits telecom structures in its text, rather than by reference to another zoning district of these regulations, an application for a PUD amendment is not required.
- (F) **Stealth Monopoles.** Stealth monopoles shall be a permitted use in the following districts: C-1, C-2, C-3, C-4, C-5, C-6, I-1, I-2, I-3, I-4, I-5, LM-SC and U, however, if the proposed location is within 500 feet of a designated historic property or district, or within 200 feet of a residential district, the stealth monopole is a conditional use. No person shall erect a stealth monopole in a district in which it is a permitted use, unless:
- (1) An application for an administrative permit is made, and approved, by the City.

A stealth monopole in a residential district shall follow the procedure set forth in 12-104(A), and a stealth monopole in a PUD shall follow the procedure set forth in 12-104(E).

12-105. Pre-Application Conference.

- (A) **Required.** Prior to submitting any application to the City for an administrative permit, conditional use permit, exception, variance, or PUD amendment that will include any tower, stealth monopole, or telecommunications facility, the applicant shall contact the City and participate in a pre-application conference with the Community Development Department to discuss the proposed telecom structure.
- (B) **Participants.** The conference shall include, but is not limited to, the applicant or an appointed designee and representatives of the Community Development Department and other appropriate City departments.
- (C) **Information Provided.** The pre-application conference shall be an informal review of the proposal. The applicant shall bring the following items to the pre-application conference:
  - (1) A preliminary site plan showing the property lines and setbacks of the proposed telecom structure(s) and existing zoning and land uses on the site;
  - (2) A drawing or sketch of the proposed telecom structure(s); and,

- (3) The name, address and phone number of the applicant and the consultant that prepared the site plans and other documents.
- (D) Purposes. The pre-application conference has the following purposes:
- (1) To acquaint the applicant with the application submittal process;
  - (2) To provide for an exchange of information regarding the proposed telecom structure(s) and any plans for other current and future towers, stealth monopoles and telecommunication facilities;
  - (3) To advise the applicant about policies and regulations that create opportunities or pose constraints on the proposed telecom structure(s); and,
  - (4) To determine what information that the applicant shall submit, including, but not limited to, any accompanying studies, documents or reports.
- (E) Action. No official approval or disapproval of a proposed telecom structure occurs at the pre-application conference. A pre-application conference shall have effect for six (6) months. If no required application has been filed within six (6) months of the conference, the applicant shall participate in another conference, unless an extension is granted by the Community Development Department.

12-106. Administrative Permits, Conditional Use Permits, and PUD Amendments.

- (A) Permit Required. No person shall erect any telecom structure upon any parcel of land, or upon any antenna support structure, within any zoning district until the City has issued an administrative permit and, if required, a conditional use permit or a PUD amendment, and any applicable building permits.
- (B) Application Requirements for Administrative Permit. All applications for an administrative permit shall include the following information:
- (1) The name, address and telephone number of the landowner of any parcel of land or antenna support structure upon which the telecom structure will be situated. If the applicant is not the landowner, the applicant shall submit his or her name, address and telephone number. The landowner, owner and applicant shall sign the application.
  - (2) The legal description and street address of the parcel of land, or antenna support structure, upon which the proposed telecom structure will be situated.
  - (3) Elevation plans drawn to scale of all proposed telecom structures; an accurately scaled site plan showing existing buildings, proposed telecom structures and proposed landscaping and screening; and a written description of all proposed telecom structures and proposed quantities, types and sizes of landscaping materials.
  - (4) Photographs of the site in its current condition, and accurately proportioned photo-realistic representations of the site showing the telecom structure in place with proposed landscaping and screening.

- (5) If the applicant is not the landowner, the landowner shall provide an affidavit indicating consent to develop upon the landowner's property. The landowner shall sign an agreement with the City that states that if abandonment occurs, the landowner shall be responsible for the removal of the proposed telecom structure if the owner fails to remove it. The landowner shall file the agreement with the Register of Deeds in the appropriate county, as a condition of approval of any administrative permit for any telecom structure, and shall provide a copy of the filed agreement to the City prior to the construction of the telecom structure.
- (6) An affidavit from the manufacturer or engineer describing the maximum capacity of the telecom structure for co-location, including the number and type of providers it can accommodate, with consideration of radio frequency interference, mass, height and other characteristics, as well as options to overcome any problems those considerations may pose to service delivery. The affidavit shall certify that the telecom structure has been designed and will be constructed to support the specified number of providers.
- (7) For a stealth monopole or tower application, certification from the engineer of the structure's manufacturer that the structure is designed and shall be constructed to ensure that a structural failure or collapse will not create a safety hazard to adjoining properties and that the structure will collapse on itself within the fall zone designated by the manufacturer.
- (8) Written statements from the applicant or engineer that indicate the following:
  - (a) The need for the telecom structure to provide or enhance personal wireless telecommunication services in the area, including: a map showing the location of the proposed telecom structure and its service area; the location of the providers' other existing telecom structures in the area; applicable propagation models, search ring maps and other relevant documentation.
  - (b) The minimum height required to serve the proposed service area.
  - (c) An explanation why the proposed site is required to meet service demands and how it would interact with the providers' other existing telecom structures in the service area.
  - (d) Proposed stealth measures designed to minimize potentially adverse visual effects on nearby properties, with consideration of design, unobtrusiveness, minimum height necessary to accommodate antennae, avoidance of artificial light and the color of the telecom structure.
  - (e) A description of the fall zone of the telecom structure.
  - (f) The distance between the proposed telecom structure and the nearest residential dwelling unit and residentially zoned properties.
  - (g) A description of the security barrier, if any, surrounding the base of the telecom structure, including the method of fencing, finished color and, if applicable, the method of camouflage and illumination.



- (9) Applicants shall be required to submit information on the proposed power density of their proposed telecom structure and demonstrate compliance with FCC standards regulating radio frequency (RF) emissions. This information is used solely for public information, as the FCC has the sole jurisdiction to regulate RF emissions. The City will not condition or deny an application because of potential RF impacts.
  - (10) When applicable, documentation that the proposed tower or stealth monopole meets FAA requirements.
  - (11) Any other information requested by the City that is reasonably necessary for the City to fully evaluate the application.
- (C) Additional Application Requirements for Conditional Use Permits. Each application for a Conditional Use Permit shall, in addition to that information required by Article XIV, Administration, PART 7, Conditional Uses, include the following:
- (1) An engineer shall provide the following written technical evidence:
    - (a) Evidence that existing telecom structures and antenna support structures within the proposed service area and within a one (1) mile radius of the proposed telecom structure site are not capable of co-location to provide reasonable service to the proposed service area, due to height, capacity, structural strength or interference with other electromagnetic/radio frequencies, including, but not limited to, public safety communications, radio and television signals.
    - (b) Evidence that the proposed telecom structure meets the standards set forth in Section 12-111, "Structural Requirements."
    - (c) Evidence that the proposed site of the telecom structure does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials such as LP gas, propane, gasoline, natural gas or corrosive or other hazardous chemicals.
  - (2) The applicant shall provide an affidavit, attesting to the following:
    - (a) That the applicant made diligent efforts to install or co-locate on existing telecom structures or antenna support structures within the proposed service area.
    - (b) That the fees, cost or contractual provisions required by the owner(s) of other telecom structures or antenna support structures within the proposed service area are unreasonable.
    - (c) That other limiting factors render the use of other telecom structures and antenna support structures within the proposed service area, and within a one (1) mile radius of the proposed telecom structure, unsuitable.
  - (3) For towers, the applicant shall provide evidence that indicates why the use of alternative types of telecom structures, such as stealth monopoles or

telecommunications facilities mounted on antenna support structures or municipal facilities, is insufficient or inadequate to meet the providers' service area needs.

- (D) Additional Requirements for PUD Amendments. An application for a PUD amendment shall include the information required by Article IX, "Planned Unit Development District," and the information required in subsection (C) above.

12-107. Approval or Denial.

- (A) Administrative Permit. The Zoning Administrator shall review the application within a reasonable time period after a complete application is duly filed, taking into account the nature and scope of the request. The applicant shall show in sufficient detail that the proposed telecom structure complies with all applicable design and structural requirements as set out in these regulations. The application shall provide sufficient information, as determined by the Zoning Administrator, to allow a complete review of the proposal. The failure to provide adequate information may result in the denial of an administrative permit. If an administrative permit is denied, the applicant shall have the right to appeal the decision to the Board of Zoning Appeals, in accordance with the provisions of Article XIV. If an administrative permit for a stealth monopole is denied, the applicant shall follow the application for towers under 12-104(A) or 12-104(E).
- (B) Conditional Use Permit. The Board of Zoning Appeals shall consider a conditional use permit application subject to the requirements set out in Article XIV, and shall also take into account the following additional standards:
- (1) Whether substantial evidence exists to demonstrate that existing or approved telecom structures or antenna support structures are unsuitable for co-location or to serve the proposed service area.
  - (2) Whether the proposed telecom structure(s) has incorporated a reasonable level of stealth design to minimize the visual impact of the telecom structure(s), given the type of telecom structure and the character of the area in which the structure(s) is proposed to be located.
- (C) PUD Amendments. The Manhattan Urban Area Planning Board and Governing Body shall consider applications for PUD amendments as per Article IX of these regulations.
- (D) Written Findings Required. The City shall create a written record of the review proceedings, and all decisions shall be supported in writing setting forth the reasons for approval or denial.

12-108. Pre-Existing Structures.

Pre-existing structures shall not be required to meet the requirements of this article, except as indicated in this section. Pre-existing structures shall meet all the requirements of this article upon modification, in accordance with Section 12-116. All pre-existing structures shall meet the following requirements of this article:

- (A) Section 12-117, "Building Permits, Certifications and Inspections."
- (B) Section 12-118, "Maintenance."
- (C) Section 12-119, "Abandonment."

12-109. Lot Size Requirements.

Telecom structures may be located on a parcel smaller than the minimum lot size of the underlying zoning district, provided that, the zoning lot on which the parcel is located meets the minimum lot size for the underlying district. The parent zoning lot, and not the parcel, shall be considered for the calculation of the required area for which public notice is to be provided.

12-110. Bulk Regulations.

(A) Maximum Height.

- (1) The height of a tower or stealth monopole shall be regulated by this article, except that if such structure is located within the Airport Overlay (AO) District, the height limitations of the AO District shall also apply to the structure.
- (2) The height of a tower, including any antenna, shall not exceed one-hundred-fifty (150) feet, as measured from the ground. The maximum height limitation does not include a lightning rod, which shall not exceed an additional twenty (20) feet in height.
- (3) The total height of a stealth monopole shall not exceed fifty (50) feet, as measured from the ground.
- (4) The following height requirements shall apply to telecommunications facilities mounted externally on antenna support structures or municipal facilities:
  - (a) On structures 30 feet in height or less, telecommunications facilities shall be mounted consistent with the stealth design principles in Section 12-114.
  - (b) On structures between 30 and 60 feet in height, telecommunications facilities shall not extend more than 10 feet above the roof line or surface on which it is mounted, as measured from the finish level of the portion of the roof or surface on which it is mounted.
  - (c) On structures 60 feet in height or more, telecommunications facilities shall not extend more than 15 feet above the roof line or surface on which it is mounted, as measured from the finish level of the portion of the roof or surface on which it is mounted.

- (d) On municipal facilities, the City shall determine the maximum height of the telecommunication facilities based on the nature, character and location of the municipal facility.

(B) Setback Restrictions.

- (1) Towers. Towers shall be set back from all property lines a distance equal to the height of the tower, including any antenna, plus any other appurtenance such as a lighting rod.
- (2) Stealth Monopoles. Stealth monopoles shall be set back from all property lines a distance equal to the fall zone of the structure, as certified by the structure manufacturer's engineer. If the fall zone is not ascertainable, the stealth monopole shall be set back from all property lines a distance equal to the height of the stealth monopole, including any antenna, plus other appurtenances.
- (3) Accessory ground-level equipment including guy-wire anchors shall follow the setbacks for accessory uses in the applicable zoning district.

12-111. Structural Requirements.

- (A) All telecom structures shall be designed and certified by an engineer to be structurally sound and shall, at a minimum, be in conformance with these regulations and all applicable federal and city codes.
- (B) All towers and stealth monopoles shall be designed and constructed to collapse on themselves to minimize the impact on surrounding properties.
- (C) No new tower or stealth monopole shall be built, constructed or erected in the City unless the tower is capable of co-location. All new towers less than 100 feet in height and stealth monopoles shall provide space for at least two (2) separate providers. All new towers one-hundred (100) feet or higher in height shall provide space for at least three (3) separate providers.

12-112. Use Limitations.

- (A) Stealth Design. The City, Board of Zoning Appeals, or in the case of a PUD, the Manhattan Urban Area Planning Board and Governing Body, may require stealth design of a tower or telecommunications facilities, in accordance with Section 12-114, depending on the character of the proposed location and type of tower or telecommunications facility.
- (B) Illumination.
  - (1) Towers shall not be artificially lighted except as required by the FAA.
  - (2) Notwithstanding subsection (1), in the case of a stealth telecom structure, illumination may be provided that is appropriate and customary for the type

- of stealth structure, as approved by the City, Board of Zoning Appeals, or Manhattan Urban Area Planning Board and Governing Body, as applicable.
- (3) Security lighting may be installed around the base of a tower or accessory telecommunication facilities, provided the lighting is a full cut-off design to prevent direct light from being cast upon nearby property and to prevent glare on nearby public streets, as approved by the City, Board of Zoning Appeals or Manhattan Urban Area Planning Board and Governing Body.
- (C) Security Fencing. The City, Board of Zoning Appeals, or in the case of a PUD, the Manhattan Urban Area Planning Board and Governing Body, may require the installation of a security fence around all sides of a telecom structure located at ground level, and shall review and approve the material and design of any fence.
- (D) Screening and Landscaping. All landscaping on a parcel of land containing telecom structures and/or antenna support structures shall conform with the applicable landscaping requirements, if any, in the zoning district where the structure is located. The City, Board of Zoning Appeals, or in the case of a PUD, the Manhattan Urban Area Planning Board and Governing Body, may require year-round landscaping and/or screening in order to reduce visual impacts and enhance the compatibility of telecom structure(s) with the character of nearby land uses and the area. Such screening may consist of walls, fencing and/or landscaping or combinations thereof, as approved by the appropriate body.
- (E) Parking and Access. The parcel of land upon which a telecom structure is located shall contain at least one (1) off-street parking space on the site, and shall otherwise conform with the requirements of Article VII, Off-Street Parking and Loading.

#### 12-113. Signs.

- (A) Signs Prohibited. No signs, flyers, flags or banners, shall be permitted on any telecom structure, except as may be required by the FAA, FCC, other federal or state agency or the City. A flag may be hung on an approved stealth flagpole structure in accordance with Article VI, Section 6-104 (A) (1).
- (B) Removal of Signs. The owner shall remove any sign placed on any telecom structure in violation of this section within seven (7) days of receiving notice of removal from the City.
- (C) Emergency Contact Sign. Notwithstanding any contrary provisions of these regulations, the following sign shall be permanently attached to the entrance of the telecom structure site: A sign, one (1) to five (5) square feet in size, indicating the name and address of the owner, including a twenty-four hour phone number where the owner may be reached in the event of an emergency. In the case of a stealth monopole, the required sign shall be sized and designed to blend with the character of the location and may be placed on the equipment enclosure.

#### 12-114. Stealth Design Principles for Telecom Structures

Stealth telecom structures shall be designed to blend in with the character and environment of the area in which they are proposed to be located, and to enhance compatibility with nearby land uses by minimizing visual impacts. Stealth telecom structures shall incorporate the following design principles, as applicable to the type of telecom structure and character of the location:

- (A) Preserve the pre-existing character of the area as much as possible.
- (B) Minimize the height, mass and proportion of telecom structures to minimize impacts on the character of the nearby area.
- (C) Minimize the silhouette presented by new towers, stealth monopoles, antenna support structures and antenna arrays. Monopoles are favored over lattice-type towers; antennas mounted inside an antenna support structure or monopole, or mounted flush to the antenna support structure, are favored over triangular “top-hat” or other projecting external types of antenna arrays.
- (D) Use colors, textures and materials that blend in with the existing environment; surfaces shall be painted, or otherwise treated, to match or complement existing background structures and surfaces, and to minimize reflection.
- (E) Conceal telecommunication facilities from view by placing inside a building, steeple, penthouse, clock tower, flagpole or other appropriate structure. Architectural additions or appurtenances to existing antenna support structures that are intended to conceal telecommunication facilities, shall be designed to be appropriate in mass, scale, material, texture, color and character with the existing antenna support structure.
- (F) Camouflage and/or disguise telecom structures to look like another type of structure or object, through methods including, but not limited to design, placement, use of materials, texture, color, year-round landscaping and screening, to blend in with the character of the surroundings, or integrate into the architectural elements and character of an existing antenna support structure to such an extent that it is indistinguishable by the casual observer from the structure on which it is located, or from the surroundings in which it is placed. Stealth monopoles designed to look like a flagpole shall utilize a flag that is appropriately sized for the height of the pole. Stealth monopoles disguised as a tree shall be of a height, character and placement that is appropriate to the location. Telecom structures mounted on roofs or similar structures shall be concealed from view by

placement and setback from the edges and/or through use of architectural screening that is in character with the building or antenna support structure.

- (G) Locate telecom structures in areas where trees and/or buildings obscure some or all the telecom structures from view, and install new year-round landscaping and screening around the site where visible from public streets or residential areas.
- (H) Locate accessory equipment inside a building or in underground vaults when possible. Screen ground-level telecom structures through use of walls, fencing or year-round landscaping, or combinations thereof, which is appropriate in design, height and material to the character of the location and the structure to be screened.

#### 12-115. Exceptions.

The Board of Zoning Appeals may grant exceptions to Section 12-109, "Lot Size Requirements," Section 12-110, "Bulk Regulations," Section 12-111(C) pertaining to co-location, and Section 12-112, "Use Limitations," in accordance with Article XIV, Part 6, "Exceptions."

- (1) To apply for an exception, the applicant shall submit an application for an exception, as required by Article XIV, Part 6, in addition to the applications required by Section 12-104.
- (2) The Board of Zoning Appeals shall consider the application for an exception based on the following standards, as applicable, in addition to the standards set out in Article XIV, PART 6, "Exceptions:"
  - (a) For all exceptions, whether the proposed telecom structure has incorporated a reasonable level of stealth design measures to minimize the adverse visual impact of the telecom structure(s), given the character of the telecom structure and the area in which the telecom structure(s) is proposed to be located.
  - (b) In the case of a request for an exception of the height limit, that the exception is necessary to do the following:
    - (i) To facilitate co-location of other providers in order to avoid construction of a new tower; or,
    - (ii) To meet the coverage requirements of the applicant's personal wireless telecommunications system.

#### 12-116. Modification and Replacement.

- (A) Modification of Pre-existing Structures. Pre-existing structures shall meet all the requirements of this article upon modification, except that the City shall not impose any new requirements of this article if a pre-existing structure is modified

to facilitate co-location or to increase the number of providers, provided that the height of the pre-existing structure is not increased.

- (B) Replacement of Telecom Structures and Pre-Existing Structures. All telecom structures and pre-existing structures that are damaged or destroyed may be rebuilt through administrative review and approval, provided that the replacement telecom structure is the same as the original in type, location, height and character and that the replacement telecom structure complies with the requirements of this article. If the replacement telecom structure is not the same as the original in type, location, height and character and/or does not meet the requirements of this article, the owner shall follow the appropriate procedure to rebuild the telecom structure, pursuant to Section 12-104.
- (C) Conference Required. Prior to the modification or replacement of any telecom structure or pre-existing structure, the owner shall participate in a conference with the Community Development Department for the purposes of discussing application requirements, if any, specifics of the site and plans for modification or replacement of the structure. The purpose of the conference is to determine what information shall be submitted for review of the proposed modification or replacement.
- (D) If the modification or replacement impacts a condition of approval imposed by the Board of Zoning Appeals, or in the case of a PUD, a condition imposed by the Manhattan Urban Area Planning Board or Governing Body, the modification or replacement may not be made without approval of the applicable board.

12-117. Building Permits, Inspections and Certifications.

- (A) The applicant shall apply for and receive all applicable City permits prior to the construction of an antenna support structure or telecom structure. Telecom structures shall conform to the requirements of the applicable city codes and all other construction standards set forth by federal and state law. The City shall inspect the antenna support structure or telecom structure and issue a certificate of occupancy prior to use by the providers. It shall be a violation of this subsection for an owner to construct or use a telecom structure without the required permit, inspection or certificate of occupancy.
- (B) An engineer shall certify that all telecom structures are structurally sound. For new telecom structures, such certification shall be based upon the construction plans, and shall be submitted with an application. The City may require subsequent certifications if the City reasonably believes that the structural and/or electrical integrity of the telecom structure is jeopardized.



12-118. Maintenance.

- (A) Owners shall employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public including sufficient anti-climbing and other measures to reduce the potential for trespass or injury.
- (B) Owners shall install and maintain telecom structures, fixtures and other equipment in compliance with the requirements of all federal, state and local codes and regulations, and in such manner that will not interfere with the use of other property.
- (C) All telecom structures shall be maintained in good condition, order and repair.
- (D) Licensed maintenance and construction personnel shall perform all maintenance and construction of telecom structures.
- (E) All telecom structures shall comply with the current RF emission standards, as determined by the FCC.

12-119. Abandonment.

- (A) Telecom Structure with One Provider. In the case of a non co-located telecom structure, the date of abandonment occurs when the owner has either:
  - (1) Failed to start operations within ninety (90) days of completion of the telecom structure; or,
  - (2) Ceased operations for a period of ninety (90) or more consecutive days.
- (B) Telecom Structure with more than One Provider. In the case of a co-located telecom structure, the date of abandonment occurs when the owner has either:
  - (1) Failed to start operations within one hundred and eighty (180) days of completion of the telecom structure; or,
  - (2) Ceased operation for a period of one hundred and eighty (180) days, beginning on the date when the final, single provider has ceased operation.
- (C) The owner and/or provider shall provide the City a copy of its notice to the FCC of intent to cease operations. The owner shall remove the telecom structure at the owner's expense within one hundred and eighty (180) days from the date of abandonment. If the owner and/or provider fails to provide the City with the proper notice of intent to cease, and the City learns that a telecom structure has been abandoned, the owner shall remove the telecom structure at the owner's

expense within ninety (90) days of receipt of a written notice from the City to remove the telecom structure.

- (D) If the owner does not remove the telecom structure within the required time period, the City shall require that the landowner remove the telecom structure pursuant to the agreement between the City and the landowner, as set forth in Section 12-106(B)(5). If the landowner refuses to remove the telecom structure as required, the City shall remove the telecom structure and place a lien on the property in the amount of all direct and indirect costs associated with the dismantling and disposal of the telecom structure.