



December 8, 2006

TO: Mayor and City Council

FROM: Mari E. Macomber, City Manager *MEM*

SUBJECT: Study Session – **December 13, 2006**

The City Council will convene in Study Session at 5:30 p.m. or immediately following the close of the Executive Session that has been scheduled at 5:00 p.m. on December 13, 2006. Both the Executive Session and the Study Session will be held in the second floor conference room of City Council of City Hall. The following are the agenda items for the 5:30 p.m. meeting.

- 1. MEETING WITH JUDGE HERRIN**
- 2. REVIEW OF PROPOSED TELECOMMUNICATIONS TOWER ORDINANCE**
- 3. SESQUICENTENNIAL UPDATE**
- 4. REVIEW OF FUTURE STUDY SESSION AGENDA TOPICS**
- 5. REVIEW NEWSLETTERS - December 1 and 8 2006**

**1. MEETING WITH JUDGE HERRIN**

Phoebe Powel Herrin has been the City's Municipal Court Judge since 1995. Prior to Judge Herrin, the City was served by Judge Otten. Due to demands on the Associate Circuit Court Judge, the City began to solicit for a possible Municipal Court Judge. After completing the process, the City selected Judge Herrin to serve. At the time of her appointment, Judge Herrin had served as the Municipal Court Judge for the City of Macon. She had previously served as the City Attorney for the City of Macon and has provided legal services to the cities of Bevier, Callao and Atlanta.

The agreement between the City and Judge Herrin is a two-year agreement and is set for renewal in early 2007. A copy of the current agreement is attached to this cover memorandum.

Since there are several new members on the City Council, Judge Herrin and I thought it would be a good opportunity for those City Council members who have not met her to do so. Judge Herrin will be available to speak with the City Council and answer any questions that you might have regarding the services that she provides to the City of Kirksville.

**RECOMMENDATION:** It is recommended that the Council visit with Judge Herrin and that the City Council support the renewal of Judge Herrin as the Municipal Court Judge for the City of Kirksville for another two-year period by directing the City Manager to renegotiate the contract.

## **2. REVIEW OF PROPOSED TELECOMMUNICATIONS TOWER ORDINANCE**

Over the past few years, the Codes Department has had several inquiries from communication-related companies about building communication towers in the Kirksville city limits. Several years ago the Telecommunications Commission, and the Planning & Zoning Commission, met to discuss a potential city ordinance regulating the building of communication towers in Kirksville. Since then we have been able to accommodate several of the requests we've had by allowing companies to lease space on the City's water towers. However, there is a limit to the number that can be on a tower, and with our downtown tower we have reached that limit.

When a tower ordinance was last discussed, the groups looked at the Blue Springs ordinance as a model. The Telecommunications Commission met on November 14, 2006 to discuss the Blue Springs ordinance and make recommendations on an ordinance for Kirksville. The Commission felt the Blue Springs ordinance was very thorough and comprehensive and would be acceptable for Kirksville with a few changes. Attached is a draft of the ordinance with a few highlighted areas that were questioned by the Telecommunications Commission and need to be finalized.

IN addition to the Telecommunications Commission, the Planning and Zoning Commission had reviewed this same ordinance some time ago and supported it as a model for a Kirksville Ordinance.

**Recommendation:** This is an issue that has come up on several occasions and as noted has been resolved through other measures. Since we do not have any regulations regarding towers, both staff, the Telecommunications and Planning and Zoning Commissions believed it in the best interest of the City to develop some criteria for the construction of a telecommunications tower. We would like to spend a time reviewing those sections that are highlighted and obtain City Council input on the overall components and requirements of this proposed ordinance.

## **3. SESQUICENTENNIAL UPDATE**

As a beginning to our planning for celebrating Kirksville's Sesquicentennial in 2007 we invited a group of citizens interested in Kirksville's history to give us feedback on our plans and to make suggestions about other things that we might incorporate into our celebration. Attendees at this meeting included: Pat and Eleanor from the Historical Society; Judy Neuweg from the Arts Association; Elaine Doak from Truman Special Collections; Nettie Carpenter from Sojourners; as well as representatives from the City. We shared some ideas with them including developing a website with a City of Kirksville timeline which would highlight significant events in the community's history, having a birthday-type celebration on the date of incorporation (January 30<sup>th</sup>) and having other events in conjunction with the Red, White, and Blue festival taking place on July 4<sup>th</sup>. They were all supportive of these ideas and had some additional ideas – having some other smaller commemorative events on the dates of the cyclone, battle of Kirksville, etc. – that would spread the celebration throughout the year. Judy from Kirksville Arts tentatively offered to house the January 30<sup>th</sup> event in their

building since the City doesn't have space to house such an event. Other items we are pursuing include having banners with a City logo announcing the Sesquicentennial printed and displayed downtown and on each of the City's buildings (police, fire, public works, and aquatic center). We are also drafting a resolution recognizing Kirksville's 150<sup>th</sup> anniversary to be made by the state legislature once session begins in January.

**Recommendation:** It will be important to hear comments and suggestions from the City Council on our plans for this event.

#### **4. REVIEW OF FUTURE STUDY SESSION TOPICS**

During the City Council Retreat, there were a few items that were identified that at least one member of the City Council wanted to pursue further. As I begin to prepare the agendas for future Study Sessions, I want to make sure that the City Council is able to focus on those matters that you have identified as important.

It is important that we stay focused on the overall goals of the City Council and make sure that the time spent by the Council is as productive as possible.

I have attached a list of some of those items that have been identified in previous discussions. Please note that there will be other agenda items that come up throughout the year that are unexpected and that there will also be those items that are an annual agenda topic.

**Recommendation:** It is recommended that the City Council review the list and identify any other topics or issues that should be explored by City staff.

#### **5. REVIEW NEWSLETTER – - December 1 and 8 2006**

##### **Attachments**

Agreement with Judge Herrin – pgs. 5 – 8

Proposed Telecommunications Tower Ordinance – pgs. 9 - 42

Study Session Topics – pgs. 43



# Municipal Court Judge Agreement

THIS AGREEMENT (the "Agreement") is dated effectively as of the 28<sup>th</sup> day of February 2005, by and between the **City of Kirksville ("City")**, and **Phoebe Powell Herrin (Ms. Herrin)**, a professional attorney practicing in Macon County, Missouri.

WITNESS TO:

WHEREAS, Phoebe Powell Herrin is a licensed attorney in the State of Missouri and qualified to provide Municipal Court judicial services; and

WHEREAS, the City desires that Ms. Phoebe Powell Herrin provide such judicial services to the City.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the Parties hereto have agreed, and do hereby agree as follows:

1. **Term of Appointment.** The City Council hereby appoints Ms. Herrin for a period commencing on the effective date hereof and continuing for a term of two (2) years, unless such appointment shall have been sooner terminated as hereinafter provided. This Agreement may be renewed by execution of a letter by both Parties to that effect. Ms. Herrin hereby accepts such appointment and agrees to perform the services hereinafter described, all upon the terms and conditions herein stated.
2. **Scope of Services to be Provided.** Ms. Herrin is hereby appointed by the City Council as Municipal Court Judge, and will be responsible for all Municipal Court proceedings, supervision of the activities of the Kirksville Municipal Court, and the discharge of other duties of the Municipal Court Judge as required by law.

Except for reasonable vacation and absences due to temporary illness, Ms. Herrin shall devote up to one full day each week (or the equivalent thereof) to the City and shall not during her employment be engaged in any activity which in the reasonable judgment of the City, conflicts with the duties of Municipal Court Judge; whether or not such activity is pursued for gain, profit or other pecuniary advantage. The foregoing restrictions shall not be construed as preventing Ms. Herrin from participating in any professional private practice, provided that such practice will not require services on the part of Ms. Herrin which would directly or indirectly impair the performance of her duties under this Agreement. If Ms. Herrin does participate in any private practice considered to be in contradiction to this clause, Ms. Herrin will be given ample time to disengage in such activity Ms. Herrin will not provide legal representation for persons, firms or corporations in any proceeding where the City of Kirksville is a party.

Ms. Herrin shall endeavor to be supportive of the City's business and its best interests and shall not, directly or indirectly, take any action which could reasonably be expected to have an adverse effect upon the business or best interests of the City. Ms. Herrin covenants, represents and warrants that she will at all times honestly and fairly conduct her duties as described herein or as otherwise directed by the City and will at all times maintain the highest of professional standards in representing the interests of the City.

3. **Fees.** For the services rendered pursuant to this Agreement, Ms. Herrin shall be paid by the City the sum of \$1,380.00 per month payable to the “Law Office of Phoebe Powell Herrin.”

4. **Expenses.** Ms. Herrin will pay all costs of travel to and from her home and Kirksville Municipal Court, phone and FAX charges, and other miscellaneous fees from the monthly fees delineated in Section 3.

5. **Professional Training.** Ms. Herrin agrees to attend statutorily required continuing municipal legal education training sessions, at her own cost and expense, and will provide documentation of said training to the City.

6. **Indemnification.** Ms. Herrin shall indemnify and hold the City harmless for any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of Ms. Herrin in providing services pursuant to this Agreement which are determined to be the result of Ms. Herrin’s negligence, malfeasance or misconduct as determined by a court of competent jurisdiction. The City shall indemnify and hold Ms. Herrin harmless from any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of the City or its employees in connection with the provision of services hereunder.

7. **Independent Contractor.** In performing the services herein specified, Ms. Herrin is acting as an independent contractor, and shall not be considered an employee of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties hereto, and nothing herein contained shall be construed to authorize either party to act as agent for the other. Each party shall be liable for its own debts, obligations, acts and omissions. Each party shall, with respect to its employees and independent contractors, be solely responsible for payment of all applicable compensation, wages, taxes, withholdings, fringe benefits, and contributions to insurance, pensions, worker’s compensation and other withholdings and benefits.

8. **Compliance with Law.** In performing their duties pursuant to this Agreement, both parties shall act in compliance with all applicable federal, state and local laws, rules and regulations. This agreement in no way diminishes Ms. Herrin’s accountability, as a Municipal Court Judge, to the Presiding Judge of the 2<sup>nd</sup> Circuit.

9. **Termination.**

9.1 **Death.** If Ms. Herrin should die during this Agreement period, the City shall have no further obligation hereunder to Ms. Herrin, her spouse, or her estate, except to pay to Ms. Herrin’s estate the amount of compensation earned by Ms. Herrin through the month of her death, such compensation to be prorated to the date of death.

9.2 **Disability.** If, during this Agreement, Ms. Herrin shall be prevented for a continuous period of nine (9) weeks from performing her duties by reason of disability, the City may terminate the Agreement, in which event Ms. Herrin shall receive any compensation earned or accrued to the date upon which any determination of disability shall have been made as hereinafter provided, and any compensation Ms.

Herrin would have earned pursuant to Section 3 herein. For the purposes of this Agreement, Ms. Herrin shall be deemed to have become disabled when the City, upon the advice of two qualified physicians of its selection, determines that Ms. Herrin has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illnesses) of performing her duties under this Agreement and that such disability has disabled Ms. Herrin for a cumulative period of twelve (12) weeks.

**9.3 Voluntary Termination.** Notwithstanding herein to the contrary, Ms. Herrin or the City may elect to terminate this Agreement, with a notice period of at least thirty (30) days by Ms. Herrin and ninety (90) days by the City, by notifying the other party of such termination in writing at any time during the term of this Agreement. In the event of termination of this Agreement pursuant to this Section 9.3, neither the City nor Ms. Herrin shall have any further liability to the other hereunder, and Ms. Herrin shall be entitled to the amount of earned compensation, stipulated in Section 3 prorated to the date of such termination.

**9.4 Termination for Cause.** The City shall have the right to terminate this Agreement “for cause” upon the occurrence of one or more of the following events or circumstances:

9.4.1 The neglect, malfeasance, nonfeasance, or other conduct of Ms. Herrin in the performance of the services contemplated by this Agreement which, in the reasonable judgment of the City and the Circuit Court, is detrimental to the best interests of the City; or

9.4.2 Any other breach of this Agreement by Ms. Herrin as determined in the reasonable judgment of the City; or

9.4.3 Any intentional dishonesty, discrimination or other ethical misconduct by Ms. Herrin, as determined in the reasonable judgment of the City and the Circuit Court; or

9.4.4 Conviction of a felony by a court of competent jurisdiction; or

9.4.5 Death of Ms. Herrin, as provided in Section 9.1; or

9.4.6 Disability of Ms. Herrin, as defined in Section 9.2.

**10. Effect of Expiration of Termination.** This Agreement will be of no further force or effect as of the date of expiration or termination except that the parties shall cooperate to promptly resolve any outstanding issues upon the expiration of this Agreement.

11. **Entire Agreement; Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement. All continuing covenants, duties and obligations shall survive the expiration or earlier termination of this Agreement. Although appointment of Ms. Herrin is for a period of two years, the parties to this Agreement will examine fee provisions after one year to determine if the contractual workload and direct expenses incurred are compatible with the compensation provided.

12. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Missouri. Although no conflict is anticipated, where the terms of this Agreement may be found to be in conflict with state or local laws concerning municipal court and municipal judges, then state and local laws shall prevail.

13. **Partial Invalidity.** If any provision of this Agreement is prohibited by any applicable law or court decree, said prohibition shall not invalidate or affect the remaining provisions of this Agreement.

14. **Waiver.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

15. **Assignment; Binding Effect.** Neither party shall assign nor transfer, in whole or in part, this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

**City of Kirksville, Missouri**

**Municipal Court Judge**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AN ORDINANCE ADOPTING A COMPREHENSIVE REGULATORY PROCESS FOR THE SITING AND CONSTRUCTION OF TELECOMMUNICATIONS FACILITIES, ANTENNAS AND TOWERS WITHIN THE CITY OF KIRKSVILLE, MISSOURI**

WHEREAS, changes in telecommunications technology, additional licenses granted by the Federal Communications Commission and the increased demand for telecommunications services, including both voice and data, have led to a significant increase in the demand for telecommunications antennas and towers within the limits of the City of Kirksville, several providers have expressed interest in locating facilities within the City; and

WHEREAS, information received from the industry and from other governmental agencies that have studied current technology establishes that telecommunications antennas and towers can be designed and installed in ways that will minimize adverse effects on aesthetics and property values and in some instances obviate the need for a tower; and

WHEREAS, the City wishes to maximize the use of existing structures and/or encourage co-location of telecommunications antennas and towers within the City; and

WHEREAS, the Federal Communications Commission has promulgated rules pertaining to certain telecommunications antennas and towers which impact on the City's ability to control siting of such facilities; and

Section 1: That the Code of Ordinances, the City of Kirksville, Missouri, is hereby amended by adding a Section to be numbered **XXX.XXX**, which said Section reads as follows:

**Telecommunications Facility Use Regulations**

A. Applicability

The following regulations shall apply to new Telecommunications Facility uses, including Facility Replacement. It shall not govern any broadcasting facility, one owned and operated by a federally-licensed amateur radio station operator, or one used exclusively for receive-only antennas. The use shall not be regulated or permitted as an essential service public utility, or private utility. The foregoing notwithstanding, all Pre-existing Telecommunications Facilities within the City of Kirksville, Missouri, at the time of passage of this Section shall be registered with the City's Director of Community Development within sixty (60) days from the effective date hereof together with the height, width and location thereof. The City of Kirksville shall use its best efforts to notify all persons or entities subject to the registration requirement, but the failure of the City to notify an individual or entity shall not relieve such individual or entity of the requirement of registration. Failure to register an existing

Telecommunications Facility shall raise a presumption that said Telecommunications Facility was not a legal non-conforming use on the date of passage of this Section. Except as provided in this Section, any current legal use being made of an existing Telecommunications Facility on the effective date of this Section (Herein "Non-conforming structures") shall be allowed to continue, even if in conflict with the terms of this Section. However any Pre-existing Telecommunications Facilities must comply with any FAA or FCC regulation or standard that requires retroactive application within six (6) months of the effective date of such standard or regulation, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to comply within the specified time period shall constitute grounds for removal of the Facility at the operator's expense. Any Telecommunications Facility site that has received City approval in the form of either a conditional use permit or building permit prior to the effective date of this Section, but has not yet been constructed or located, shall be considered a Non-conforming structure so long as such approval is current and not expired.

B. Purpose

1. To provide for the appropriate location and development of Telecommunications Facilities and systems to serve the citizens and businesses of the City of Kirksville;
  2. To maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;
  3. To promote and encourage shared use/co-location of Towers and Antenna Towers as a primary option rather than construction of additional single-use Towers;
  4. To facilitate the ability of the providers of Telecommunications Services to provide such services to the community through an efficient and timely application process; and
  5. To ensure that the regulation of Telecommunications Towers and structures does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service; and
1. To create a hierarchy that influences both where new Telecommunications Towers and Facilities are located and the types of Antennas that are used and that favors co-

location and City owned sites and promotes use of an Antenna with the least amount of adverse visual impact; and

C. Definitions

The following definitions shall be used. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

**"Antenna"** means a transmitting and/or receiving device mounted on a tower, building or structure and used in telecommunications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals and other communications signals, including directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips, but excluding radar antennas, amateur radio antennas and satellite earth signals. This definition does not include over-the-air reception devices which deliver television broadcast signals, direct broadcast signals, direct broadcast satellite services or multi-channel multi-point distribution services.

**"Antenna Dish"** ("**Dish Antenna**", "**Satellite Dish**") shall mean an antenna with a concave shape used for the reception and/or transmission of radio signals to and from satellites.

**"Antenna Tower"** shall mean a structure used to support an Antenna at some height above the ground which may be referred to as a "Tower."

**"Backhaul Network"** means the lines that connect a telecommunication service provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

**"Broadcasting Facility"** means any telecommunication tower built primarily for the purpose of broadcasting AM, FM or television signals.

**"Cable Micro-cell Network"** means a series of multiple low-power transmitters/receivers attached to existing wirelines

systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers. A cable micro-cell network is assumed to require co-location on existing poles.

**"City Owned"** means titled in the name of the City of Kirksville or the Kirksville Public Building Authority.

**"Co-Located Telecommunications Facility"** means the placement of a new Telecommunications Facility on an existing Telecommunications Tower, existing building or structure.

**"Dish Antenna"** - See Antenna Dish

**"Essential Service"** means those services provided by the City and other governmental entities that directly related to the health and safety of its residents, including fire, police and rescue.

**"Existing Tower"** means any Telecommunications Tower in existence at the time a Telecommunications Site Plan is submitted.

**"FCC"** mean the Federal Communications Commission.

**"FAA"** shall mean the Federal Aviation Administration.

**"Fair Market Value"** means the price at which a willing seller and a willing buyer will trade.

**"Guyed Tower"** means a Telecommunications Tower that is supported, in whole or part, by guyed wires and ground anchors.

**"Lattice Tower"** means a Telecommunications Tower that is constructed to be self-supporting by lattice type supports and without the use of guyed wires or other supports.

**"Major Telecommunications Facility Site Plan."** See

403.170.G.11.

**"Micro-cell Network"** means a series of multiple low-power transmitters/receivers of limited range that transmit to an Antenna that is attached to existing wire line systems, such as conventional cable or telephone wires, or similar

technology that does not require the use of towers. A Micro-cell Network is assumed to require co-location on existing poles.

**"Microwave Dish Antenna"** means a Telecommunications Tower consisting of a single free standing pole or spire self-supported on a permanent foundation, constructed without guy wire, ground anchors, or other supports.

403.170.F.8.

**"Minor Telecommunications Facility Site Plan."** See

**"Monopole Tower"** means a Telecommunications Tower consisting of a single free-standing pole or spire self-supported on a permanent foundation, constructed without guy wire, ground anchors, or other supports.

**"Operator"** means an individual, partnership, association, joint-stock company, trust, or corporation engaged in control and maintenance of all instrumentalities, facilities and apparatus incidental to wireless telecommunication transmission, including but not limited to, a tower, antennae, associated buildings, cabinets and equipment. For the purposes of this article, an "operator" may or may not hold a sublease, license or title on or for the lot on which a Tower is sited.

**"Owner"** means either the owner of the real property on which the Telecommunications Facility, Tower or Antenna is located or the owner of the Telecommunications Facility, Tower or Antenna itself.

**"Panel Antenna"** means a flat, rectangular antenna or array of antennas designed to concentrate a radio signal in a particular area.

**"Personal Wireless Services"** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

**"Pre-existing Facility, Tower or Antennae"** means any Facility, Tower or Antenna which has been constructed or for which a building permit has been properly issued prior to the effective date of this Section, including permitted Facilities, Towers, or Antennae that have not yet been constructed so long as such approval is current and not expired.

**"Privately Owned"** means owned by any entity other than City Owned.

**"Public Utility"** shall mean any publicly owned, franchised or regulated facility for rendering electrical, gas, communications, transportation, water supply, sewage disposal, drainage, garbage or refuse disposal and fire protection to the general public.

**"Satellite Dish"** - See Antenna Dish

**"Section"** means Section 403.170 of the Kirksville Code of Ordinances and all its sub-parts.

**"Telecommunications"** or **"Communications"** means the transmission, between or among points as specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received, by wire, radio, optical cable, electronic impulses, or other similar means, including, but not limited to, any "telecommunication service," "enhanced service," "information service," or "internet service," as such terms are now, or may be in the future be, defined under federal law. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

**"Telecommunications Facility"** means any cables, wires, lines, wave guilds, antennas and any other equipment or facility that is used or associated with the provision of one or more Telecommunications Services, including, without limitation, radio transmitting towers, Telecommunications Towers, other supporting structures, and associated facilities used to transmit telecommunications signals. The term Telecommunications Facility shall specifically exclude amateur radio transmitting towers and broadcasting facilities. An open video system is not a Telecommunications Facility to the extent that it provides only video services; a cable system is not a Telecommunications Facility to the extent that it provides only cable service.

**"Telecommunications Services"** means the offering of Telecommunications (for the transmission, between and among points, specified by the user of information of the user's choosing, without change in the form or content of the

information as sent and received, by wire, radio, optical cable, electronic impulses, or other similar means), for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used. They include all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to the transmissions. Personal wireless telecommunications services shall not be considered as essential services, public utilities or private utilities.

**"Telecommunications Stealth Facility"** means a state of the art facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that make it not readily identifiable as a Telecommunications Facility. An existing or proposed structure may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc.). This term shall be synonymous with "camouflaged facility".

**"Telecommunications Tower Height"** means the vertical distance measured from the finished grade of the parcel to the highest point of the structure, including the base pad. This measurement does not include antenna, lighting or lightning rods which extend vertically from the highest point of the structure.

**"Telecommunications Tower"** means any structure and support thereto, designed and constructed primarily for the purpose of supporting one or more antennas intended for transmitting or receiving personal wireless services, telephone, and similar and other telecommunications purposes and services, including lattice, monopole, and guyed Towers. The term includes personal wireless service facilities for the provision of commercial mobile services, unlicensed wireless service facilities (telecommunications services using duly authorized devices which do not require individual licenses), and common carrier wireless exchange access services. Also referred to as "Tower." The term does not include radio and television transmission towers, amateur radio transmitting towers and broadcast facilities.

**"Unlicensed Wireless Service"** means the offering of Telecommunications Service using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

**"Whip Antenna"** means a cylindrical antenna that transmits signals in 360 degrees.

D. General Regulations - Local, State and Federal Requirements.

1. A Telecommunications Facility (also referred to herein as "Facility") owner shall certify to the City that all franchises/licenses required by law for the provision of Telecommunication Services in the City have been obtained and shall file a copy of these with the City. The construction, operation and repair of a Facility shall be in accordance with all applicable local, state and federal requirements. The construction, operation and repair shall be performed in a manner consistent with the applicable industry standards, including the Electronic Industries Association. The Facility must be designed to meet or exceed current standards and regulations of the FAA, and FCC, including emissions standards, and any other agency of the local, state or federal government with the authority to regulate the facility prior to issuance of a building permit by the City. A statement shall be submitted by a licensed engineer certifying compliance with this subsection.

If such applicable federal or State standards and regulations require retroactive application, then the Facility owner shall bring its Facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring it into compliance with such revised standards and regulations shall constitute grounds for removal at the Facility's Owner or Operator's expense.

2. Inspection.

The City reserves the right to conduct periodic inspection of Facilities to ensure structural and electrical integrity. If inspection determines noncompliance with applicable codes and standards then, upon notice, the Owner shall have no more than

thirty (30) days to bring the Facility into compliance unless a time extension has been granted for good cause by the Codes Administrator. Failure to do so within thirty (30) days, unless a time extension has been granted for good cause by the Codes Administrator, shall constitute grounds for the removal of the Facility at the Facility Owner or Operator's expense.

3. Lighting.

No signals, artificial lights, or illumination shall be permitted on any Facility unless required by the FAA or other applicable authority. If required, the lighting shall be designed to minimize off-site impacts. Security lighting around the base of the Tower may be provided if the lighting is shielded so that no light is directed towards adjacent properties or rights-of-way.

4. Signs.

No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an Antenna or Telecommunications Tower (also referred to herein as "Tower"). Any signs placed in violation of this section shall be removed immediately at the Owner or Operator's expense. Notwithstanding any contrary provisions of the City's zoning code, the following warning signs shall be utilized in connection with the Tower or Antenna site, as applicable:

- a. If high voltage is necessary for the operation of the Tower or any Backhaul Network or associated equipment, "HIGH VOLTAGE – DANGER" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced – no more than 20 feet apart;
- b. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than 40 feet apart; (a) the height of the lettering of warning signs shall be at least 12 inches and the signs shall be installed at least 5 feet above the finished grade; (b) the warning signs may be attached to free standing poles if the content of the

sign may be obstructed by landscaping.

5. Parking.

Each Facility site shall provide paved parking only for use by maintenance personnel. A minimum of one space shall be provided per user located on the Facility site. No vehicle storage shall occur.

6. Security Fencing.

Towers and associated accessory building/equipment shall be enclosed by a security fence or wall that is a minimum of seven (7) feet in height and is equipped with an anti-climbing device or apparatus. Access shall be through a locked gate or door in the required fence or wall. A description of proposed security measures shall be provided as part of any application to install, build or modify a Telecommunications Facility. Additional measures may be required as a condition of the issuance of a building permit as deemed necessary by the Codes Administrator or the City Council in the case of a special use permit so long as the additional measures are reasonably related to a security issue.

7. Outdoor Storage.

No outdoor storage of vehicles, materials, or equipment is permitted. Mobile or immobile equipment not used in direct support of the Facility shall not be stored or parked on site unless repairs to the Facility are being made.

8. Facility Replacement.

- a. Modification to Existing Site. Up to 50% of the height of an existing Tower may be replaced with no increase in height as part of modifications made to provide for co-location of a new facility. Replacement of more than 50% shall be considered a new Tower and shall meet all of the applicable requirements.
- b. Rebuilding Damaged or Destroyed Existing Site. Existing Towers and Facilities that are damaged or destroyed may be rebuilt through administrative

**review and approval**, provided the replacement Tower or Facility is the same as the original in type, location and intensity or brings a previously nonconforming Tower or Facility into greater conformance and no more than 50% of the Tower or Facility is involved. If more than 50% of the Tower or Facility is involved, it shall be considered a new Facility that shall meet all of the applicable requirements. All replacement shall comply with the then applicable building codes and building permits obtained and by completed within 180 days from the date the Tower or Facility is damaged or destroyed. If no building permit is obtained or it expires, or replacement is not timely, the Tower or Facility shall be deemed abandoned.

9. Removal of Abandoned Facility

Any Facility deemed abandoned pursuant to this Code or any Facility that is not operated for a continuous period of twelve months shall be considered abandoned, and the Owner or last Operator thereof shall remove it within ninety days of receipt of written notice to remove from the City. Failure to remove an abandoned Tower or Facility within the ninety days shall be grounds to remove it at the Owner's or last Operator's expense. If there are two or more users of a single Tower or Facility, then this provision shall not become effective until all users cease using it.

10. Facility Appearance.

- a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color to reduce visual obtrusiveness and so as to be consistent with the natural or built environment of the site.
- b. The design of the equipment structure and any other associated permitted structures shall, to the maximum extent practicable, use materials, colors, textures, screening, and landscaping that minimize the visual impact and enhance compatibility with the surrounding natural or built environment. Camouflage and Stealth technology, if available and economically feasible, shall be used to

minimize visual impact on surrounding property.

Additional design of the site shall also comply with any design guidelines as may be applicable to the particular zoning district in which the Facility is located. Monopole structures shall be preferred.

- c. The City may require landscaping in excess of those requirements in order to enhance compatibility with adjacent uses or zoning districts. At a minimum the landscaping shall consist of a landscape strip of not less than 10 feet in width planted with materials which will provide a visual barrier to a minimum height of 6 feet, as approved by the City. The landscape strip shall be exterior to any security wall.
- d. For co-located Telecommunications Facilities, the Antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure to minimize the visual impact and enhance compatibility with surrounding development.
- e. If an Antenna is installed on a structure other than a Tower, the Antenna and supporting electrical and mechanical equipment must be to the maximum extent practicable, of stealth design.

11. Security Fund.

- a. Every provider of Telecommunications Services and Telecommunications Operator shall establish a cash security fund, or irrevocable letter of credit, to secure the payment of removing their Tower or Facility that has been determined to be abandoned, to secure the payment of removing their Tower or Facility that has been determined to be in non-compliance with this Code, and to provide the City a fund from which to deduct fines and penalties for non-compliance with this Code or other applicable laws. The amount to be provided for each Tower shall be twenty-five thousand dollars (\$25,000); the amount for

each Antenna array shall be five thousand dollars (\$5,000),

b. In the alternative, said provider or Operator may, in lieu of the cash security fund or irrevocable letter of credit, file and maintain with the City a bond in the amount of twenty-five thousand dollars (\$25,000) for each Tower and the amount of five thousand dollars (\$5,000) for each Antenna array. The Operator and provider and the surety shall be jointly and severally liable under the terms of the bond.

1. Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the City of the amount deducted and the deficiency created thereby.
2. Within a reasonable period of time, not to exceed three (3) months after a Tower/or Antenna is removed, any remaining funds on deposit with the City pursuant to this section, after application and above all expenses provided for herein, shall be refunded to the appropriate provider or Operator who created the security fund.

c. Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the City of the amount deducted and the deficiency created thereby.

d. Within a reasonable period of time, not to exceed three (3) months after the Tower/or Antenna is removed, any remaining funds on deposit with the City pursuant to this Section, after application and above all expenses provided for herein, shall be refunded to the appropriate provider or Operator who created the security fund.

12. **Building Codes: safety standards.**  
Prior to the issuance of a building permit to construct a Facility, Antenna or Tower, the Owner/applicant or Operator/applicant shall provide the City with all required licenses and certifications from federal, state, and county agencies. To ensure the structural integrity of Towers, the Owner or Operator of a Tower shall ensure that it is maintained in compliance with

standards contained in applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Codes Administrator or his/her designee concludes that a Tower fails to comply with such codes and standards, then upon notice being provided to the Operator or owner of the Tower, the Operator shall have thirty (30) days to bring the Tower into compliance with such standards. Failure to bring a Tower into compliance within thirty (30) days shall constitute grounds for the removal of the Tower at the Owner or Operator's expense.

13. Franchises

Owners and/or Operators of Towers and Antennae shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the City of Kirksville have been obtained and shall file a copy of all required franchises with the Codes Administrator as a part of the Minor or Major Telecommunications Site Plan Submission.

14. Separation.

All Towers shall be separated by a distance of one mile. A new Tower shall not be permitted in a location within one mile distance of another Tower, unless it is determined by the body or individual making the decision regarding the submission that both Towers are acceptably screened from any adjoining residential uses.

15. Prohibition of antennae mounted on utility poles or light poles.

Antennae shall be prohibited on utility poles, telephone poles or light poles. Cable Micro-cell Network and Micro-cell Network transmitters/receivers shall be exempt from this prohibition.

E. Siting Alternatives Hierarchy

Development of a Facility use shall be in accordance with the following siting alternatives hierarchy. The order of ranking, from highest to lowest, shall be 1a, 1b, 2a, 2b, 3a, 3b. Where a lower ranked alternative is proposed (e.g., 2b), the applicant must demonstrate by substantial evidence that

higher ranked options are not technically feasible or available.

1. Co-Location on Existing Telecommunications Tower
  - a. On city-owned site
  - b. On privately-owned site
2. Co-Location on Existing Building/Other Structure
  - a. On city-owned site
  - b. On privately-owned site
3. Development of New Telecommunications Tower
  - a. On city-owned site
  - b. On privately-owned site

F. Co-Location Regulations. The following are required for co-location of Facilities, Towers or Antennae:

1. Use Regulations.
  - a. Co-location is permitted in any zoning district
2. Height:
  - a. Tower (see Section 403.170.G.3)
  - b. Building/Other Structure. The minimum height of the building/structure before installation of the Telecommunications Facility shall be 50 feet. The maximum height of the Telecommunications Facility or Antenna installed on an existing building or structure other than a Tower shall not exceed 25 feet above the building/structure.
3. Antenna Type. To minimize adverse visual impacts, the Antenna used shall be in accordance with the following alternatives hierarchy. The order of ranking, from highest to lowest, shall be a, b, c, d. Where a lower ranked alternative is proposed (e.g., c), the

applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible.

- a. Stealth
  - b. Panel
  - c. Whip
  - d. Dish
4. Modification. Modifications to the structure to accommodate Co-location subject, however, to Section 403.170.D.8.
  5. Future Co-Location. Wherever feasible, the Facility owner shall provide for future co-location on the Facility by other service providers and for public purposes or demonstrate by substantial evidence that it is not feasible. The owner of a Tower shall not charge providers seeking to co-locate in excess of the Fair Market Value for the space, as determined at the time of the request for co-location. In the event of a dispute, the parties shall select an independent appraiser to determine Fair Market Value. If the parties cannot agree on the selection of an appraiser, the City shall select one. All appraisals shall be performed at the expense of the parties.
  6. Lease. The City may require, as a condition of entering into a lease agreement with the City, the dedication of space on the facility for public health and safety purposes, as well as property improvement on the leased space. Any dedications and improvements shall be negotiated prior to the execution of the lease.
  7. Equipment Structure.
    - a. Ground Installed  
The equipment structure shall not contain more than 450 square feet of gross floor area or be more than 10 feet in height (excluding any platform structure). The equipment shall meet the minimum setbacks required for a principal building in the underlying zoning district.

- b. Roof Installed  
The equipment structure shall not contain more than 450 square feet of gross floor area or be more than 10 feet in height (excluding any platform structure), subject to compliance with the regulations of all building codes adopted by the City.

- 8. Telecommunications Facility Site Plan. A Minor Telecommunications Facility Site Plan that meets the requirements of Section 403.170.H.3 shall be submitted with an application for Co-location, except that for a Micro-cell Network or Cable Micro-cell Network a Minor Telecommunications Facility Site Plan shall not be required for each individual low-power transmitters/receivers, but one is required for each Facility that transmits to, or receives from, the individual low-power transmitters/receivers.

G. New Telecommunications Facility, Telecommunications Tower, and Antenna Regulations that are not co-located.  
The following are required for new Facilities, Towers or Antennae:

- 1. Use Regulations (where allowed subject to the requirements of Section 403.170).
  - a. Permitted Use (Subject to requirements of Section 403.170.)
    - 1. City Owned property
    - 2. HI - Heavy Industrial District

A Telecommunications Tower may also be incorporated into new development of a permitted use as an accessory use, provided the permitted principal use is a telecommunications-related use and the applicant demonstrates that the Telecommunications Tower is a necessary and inseparable part of the operations of the use. In such cases, the Telecommunications Tower and any associated equipment structure shall comply with all applicable code provisions.

- b. Accessory Use. A new Telecommunications Tower that is, or will be, accessory to a

principal use shall be located only in the side or rear of the property. Accessory uses and activities shall be subject to the same regulations as apply to principal uses in each district, unless otherwise stated. Permitted uses and approved conditional uses shall be deemed to include accessory uses and activities that are necessarily and customarily associated with, and appropriate, incidental, and subordinate to the principal uses allowed in zoning districts.

2. Minimum Setbacks: 110% of the Tower height. The City Council may, on appeal, reduce the minimum setback along a public right of way to 50% of the Tower height if the applicant demonstrates that the Facility incorporates stealth design. Setback requirements shall be measured from the base of the Tower to the perimeter of the property (property line) on which it is located, except that, in addition, ground anchors of all guyed Telecommunications Towers, if permitted, shall be located on the same parcel as the Tower and shall meet the setbacks of the applicable zoning district. The equipment or associated structure shall meet the minimum setbacks required for a principal building in the underlying zoning district.

3. Maximum Telecommunications Tower Height:

- a. Single Antenna Array or a single user: 90 feet
- b. Two Antenna Arrays or for two (2) users: 120 feet
- c. Three or More Antenna Arrays of for three (3) or more user: 150 feet

Any Antenna, lighting, lightning rod, lighting beacon or other Facility shall not extend more than 10 feet above the height of the Telecommunications Tower.

4. Minimum Separation. Any new Telecommunications Tower shall be separated from any other Telecommunications Tower by a minimum distance of one mile, unless it is determined by the body or individual making the decision regarding the submission that both Towers are acceptably screened

from any adjoining residential uses. Separation distance shall be measured by a straight line between the bases of the Telecommunications Towers.

5. Separation from Existing Residential Uses. A Telecommunications Facility, Tower, or Antenna shall be located a distance of at least four (4) times its height from any then existing single-family use or two-family use that is not on the same lot as the Facility, Tower or Antenna measured from the base of the Telecommunications Facility, Tower, or Antenna to the closest property line of the existing single-family or two-family use.
6. Antenna Type. To minimize adverse visual impacts, the Antenna used shall be in accordance with the following alternatives hierarchy. The order of ranking, from highest to lowest, shall be a, b, c, d. Where a lower ranked alternative is proposed (e.g.,c), the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible.
  - a. Stealth
  - b. Panel
  - c. Whip
  - d. Dish
7. Future Co-Location. Wherever technically feasible, the Facility owner shall provide for future co-location on the Facility by other service providers and for public purposes or demonstrate by substantial evidence that it is not feasible. At a minimum, a Monopole Tower must be built to have the capacity to accommodate two Antenna arrays. At a minimum, a Self-support, Lattice or Guyed Tower must be built to have the capacity to accommodate three Antenna arrays. The Owner of a Tower shall not charge providers seeking to co-locate in excess of the Fair Market Value for the space, as determined at the time of the request for co-location. In the event of a dispute, the parties shall select an independent appraiser to determine Fair Market Value. If the parties cannot agree on the selection of an appraiser,

the City shall select one. All appraisals shall be performed at the expense of the parties.

8. Lease. The City may require, as a condition of entering into a lease agreement with the City, the dedication of space on the facility for public health and safety purposes, as well as property improvement on the leased space. Any dedications and improvements shall be negotiated prior to the execution of the lease.
9. Equipment Structure. The equipment structure shall not contain more than 450 square feet of gross floor area or be more than 10 feet in height (excluding any platform structure). The equipment shall meet the minimum setbacks required for a principal building in the underlying zoning district.
10. Temporary Facility. As part of a proposal to develop a new Telecommunication Tower or Facility, the Owner may construct a temporary Antenna support facility. The temporary facility shall be located on the same site as the new Tower, shall be subject to the provisions of Section 403.170.D and shall not continue in use for more than 30 consecutive days. A temporary facility needed to allow for modification and/or repairs to an Tower necessary to aid in post-disaster relief efforts are exempt from the 30 day limitation.
11. Site Plan. A Major Telecommunications Facility Site Plan that meets the requirements of Section 403.170.H.4 shall be submitted with an application for a new Telecommunications Facility, Telecommunications Tower or Telecommunications Antenna that are not co-located, except that for a Micro-cell Network or Cable Micro-cell Network a Major Telecommunications Facility Site Plan shall not be required for each individual low-power transmitters/receiver.

H. Telecommunications Facility Site Plan Submission and Review Requirements

1. All applicants for Telecommunications Facility Site Plan approval shall request and participate in a pre-application

conference with the City. Such a request will be submitted with a non-refundable fee of one hundred dollars (\$100.00) to reimburse the City for the cost incurred by the conference.

2. The City shall act on any Telecommunications Facility Site Plan application (submission) within a reasonable period of time after the request is filed with the City taking into account the nature and scope of such request. However, if the City does not accept the application (submission) as provided as complete and accurate, or if the City deems it necessary to make reasonable request for additional information, the time in which an application (submission) is processed shall be tolled pending receipt of the requested information and evaluation thereof. All applications that are reviewed administratively shall be completed within forty-five (45) days of a complete and accurate application. If Planning Commission review is required, the matter shall be heard by the Planning Commission within forty-five (45) days and shall be acted upon within seventy (70) days thereof. These time requirements notwithstanding, Conditional Use review shall proceed according to its schedule set out in this Code.
3. Minor Telecommunications Facility Site Plan. A Minor Telecommunications Facility Site Plan submission shall contain all of the information required as part of an application for site plan and design review and include a Minor Telecommunications Facility Site Plan submission fee of two hundred fifty dollars (\$250.00), and be subject to the following:
  - a. Information required.
    1. A scaled site plan clearly indicating the location, type and height of the proposed Telecommunications Facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other local governments), comprehensive plan future land use designation of the site and all properties within the applicable separation distances set forth in Section 403.170.D.14, adjacent roadways, proposed means of access, setbacks

from property lines set forth in Section 403.170.G.2, elevation drawings of the proposed Telecommunications Facility, topography, parking, and other information deemed by the Community Development Director to be necessary to assess compliance with this chapter.

2. The setback distance between the proposed Telecommunications Facility and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
  3. A description of compliance with all applicable federal, state or local laws including all provisions within this zoning ordinance.
  4. Identification of the entities providing the backhaul network for the Telecommunications Facility described in the application and other Telecommunications Facilities owned or operated by the applicant in the city and one mile outside the City limits.
  5. Certification. For all co-located Facilities, a sworn, notarized statement from a licensed engineer that certifies that the structure can support the additional load due to the co-location of Facilities and compliance with the antennae type hierarchy of this Section.
- b. Review and Approval. A Minor Telecommunications Facility Site Plan shall be administratively reviewed by the Director of Community Development and may be administratively approved by said Director. The City may commission a review by a licensed professional consultant, of the City's choice, with appropriate technical experience to review the Plan and all supporting documentation. The cost of this review shall be borne by the applicant through a cost

recovery process of the City and no review will commence until a cost recovery arrangement is finalized wherein the applicant agrees in writing to pay all the reasonable costs associated with said review and has advanced an amount equal to one-half of the amount estimated by the proposed reviewer for the cost of the review. The City and the Director reserve the right to require City Planning Commission approval. No building permit shall be issued to begin construction of any part of the co-located Facility, Tower or Antenna until the Minor Telecommunications Facility Site Plan is approved and any required Conditional Use Permit is granted.

4. Major Telecommunications Facility Site Plan. A Major Telecommunications Facility Site Plan submission shall contain all of the items required for a Minor Telecommunications Facility Site Plan, include a Major Telecommunications Facility Site Plan submission fee of five hundred dollars (\$500.00), and provide the following additional information:
  - a. Inventory of Towers.
    1. Each applicant shall submit an inventory of its, and those companies proposing to co-locate on the proposed Telecommunications Facility, Tower, or Antenna (if any), Existing Towers, Antennae, and approved Telecommunications Facilities within the City, or within one (1) mile of the building thereof. No new Tower shall be permitted or Major Telecommunications Facility Site Plan approved unless the applicant demonstrates to the satisfaction of the City by substantial evidence that no existing Facility (whether or not owned by the applicant) can accommodate, as is or through modification, the proposed Facility. Substantial evidence to demonstrate that no existing Facility is suitable shall consist of any of the following:

- (a) An affidavit demonstrating that the applicant made diligent efforts to install or co-locate on Existing Towers and other existing structures within the Geographic Search Area, as determined by a qualified radio frequency engineer, and within a one mile radius of the proposed Tower site.
- (b) An affidavit demonstrating that Existing Towers and structures located within the Geographic Search Area, as determined by a qualified radio frequency engineer, and within a one mile radius of the proposed Tower site do not have the capacity to provide reasonable technical service consistent with the applicant's technical system, including, but not limited to, applicable FCC requirements.
- (c) Written technical evidence from a qualified radio frequency engineer that Existing Towers and structures within the Geographic Search Area are not of sufficient height to meet the applicable FCC requirements.
- (d) Written technical evidence from a qualified structural engineer that Existing Towers and structures within the Geographic Search Area do not have sufficient structural strength to support the proposed Facility.
- (e) A written statement from a qualified radio frequency engineer submitting technical evidence substantiating his

opinion that the Existing Towers and structures within the Geographic Search Area are incompatible due to electromagnetic/radio frequency interference or interference with public safety communications or the usual and customary transmission or reception of radio, television, or other communications service enjoyed by surrounding properties and that antenna on the existing tower or structure cannot be relocated on the existing structure to accommodate additional users.

- (f) An affidavit that the fees, costs, or contractual provisions required by the Owner to share an Existing Tower or structure within the Geographic Search Area, or to adapt an Existing Tower or structure within the Geographic Search Area for sharing, are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable.
- (g) The applicant demonstrates that there are other limiting factors that render Existing Towers and structures within the Geographic Search Area and within a one-mile radius of the proposed Tower site unsuitable.
- (h) The applicant demonstrates that State of the Art technology used in the wireless telecommunications business and within the scope of the applicant's FCC license is unsuitable for the site involved.

- (i) The applicant demonstrates that there are other limiting factors that render Existing Towers and structures within the Geographic Search Area and within a one-mile radius of the proposed Tower site unsuitable.
2. The City reserves the right to share inventory information with other applicants seeking to site their Telecommunications Facilities; however, in doing so, the City shall neither be responsible for the accuracy of the information nor will it infer that any sites are available or suitable.
  - a. Engineering Report.

All proposals for a new Tower shall submit a written report certified by a licensed professional engineer who specializes in Radio Frequency engineering or Telecommunications Facilities. This report shall include:

    1. The Geographic Search Area;
    2. Site development plan;
    3. A projection of wind-load capacity for the proposed Facility. No Tower shall be permitted to exceed its wind loading capacity as provided for by the applicable City building code;
    4. A statement that the proposed Tower and the proposed Telecommunications Facilities, including reception and transmission functions, will not interfere with the visual and customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by surrounding properties;
    5. A statement of compliance with all applicable building codes, associated regulations and safety standards;

6. The power density footprint of the Facility and how it meets or exceeds the FCC's regulations on the environmental effects of radio frequency emission;
7. Evidence of compliance with Siting Alternative Hierarchy requirements and all other requirements of this Section.
8. Any additional information deemed warranted by the City to assess compliance with applicable regulations
9. The separation distance from other Telecommunications Facilities described in the inventory of existing sites submitted pursuant to Section 403.170.H.a.1 shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing Telecommunications Facilities and the operator of the Tower(s), if known.
10. A notarized statement of the applicant's engineer that the Telecommunications Facility will accommodate the co-location of additional antennae for future users.
11. A description of the feasible alternative location(s) of the proposed Tower or Antenna within the city based upon existing physical, engineering, technological or geographical limitations in the event the proposed Tower or Antenna is erected.

b. Additional Requirements.

1. A landscape plan which meets the requirements of the U.D.C. and this Section.
2. Method of providing security enclosure and finished color and the method of

providing stealth design and illumination.

3. A copy of the warranty deed and any lease or leases for the property on which the Telecommunications Facility, Tower or Antenna is to be located.

d. Review and Approval. A Major Site Plan shall be reviewed by the Director of Community Development and approved by the City Planning Commission. The City may commission a review by a licensed professional consultant, of the City's choice, with appropriate technical experience to review the Plan and all supporting documentation. The cost of this review shall be borne by the applicant through a cost recovery process of the City and no review will commence until a cost recovery arrangement is finalized wherein the applicant agrees in writing to pay all the reasonable costs associated with said review and has advanced an amount equal to one-half of the amount estimated by the proposed reviewer for the cost of the review. No building permit shall be issued to begin construction of any part of a new Facility, Tower or Antenna until the Major Telecommunications Facility Site Plan is approved and any required Conditional Use Permit is granted, unless a Special Exemption use has been approved pursuant to Section 403.170.I.

I. Special Exemption Provisions

For circumstances where a prospective Facility Owner or Operator or a Telecommunications Services provider is able to demonstrate, based upon clear and convincing, substantial verifiable technical evidence, that it is unable to locate a Telecommunications Facility, Tower or Antenna, which is necessary under its service requirements, under the terms of the existing provisions of this Section on any available sites (including opportunities for co-location), and that, pursuant to federal law, it has a right to locate a Facility, Tower or Antenna in a location not permitted under the

provisions of this Section or in accordance with the terms of this Section, the following will apply.

1. Application Requirements, Review and Approval
  - a. A Major Telecommunications Facility Site Plan that meets the requirements of Section 403.170.H.4 shall be submitted. As part of the Plan submission, the application shall clearly indicate the specific reasons why a Special Exemption is justified and provide documentation to support the justification.
  - b. Upon receipt of a complete Major Telecommunications Facility Site Plan, the City shall commission a review by a licensed professional consultant, of the City's choice, with appropriate technical experience to review the Plan and all supporting documentation. The cost of this review shall be borne by the applicant through a cost recovery process of the City and no review will commence until a cost recovery arrangement is finalized wherein the applicant agrees in writing to pay all the reasonable costs associated with said review and has advanced an amount equal to one-half of the amount estimated by the proposed reviewer for the cost of the review.
  - c. If the new Facility, Tower or Antenna is not a permitted or conditional use, as defined in Section 403.170.G.1, then Special Exemption approval shall be required.
  - d. The review of any application for a Special Exemption use under this section shall require approval of the Special Exemption by the City Council, after a public hearing, following a public hearing and recommendation by the Planning Commission. Notice of the public hearing shall be as is required for changes of Zoning.
  - e. In granting a Special Exemption approval, the City Council may impose conditions to the extent the City Council concludes such conditions are necessary to minimize any adverse effect of the proposed

Telecommunications Facility, Tower or Antenna.

- f. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
  - g. An applicant for Special Exemption use shall submit the information described in this section and Section 403.170.H. This information shall be accompanied by a non-refundable fee of one thousand dollars (\$1,000.00) to cover the administrative costs of the review. Any costs or expenses incurred by the City that exceed one thousand dollars (\$1,000.00) shall be reimbursed by the applicant or property Owner upon the applicant's receipt of an invoice from the City setting forth the expenses that exceeded one thousand dollars (\$1,000.00). Any pre-application conference fee shall accompany the information as provided in Section 403.170.H.1. The application shall be signed in the presence of a notary public and the notary shall affix his or her seal to the application.
  - h. Within forty-five (45) days of receipt of the review pursuant to Section 403.170.I.1.b, the matter shall be brought before the City Council for a public hearing. It shall be the burden of the applicant to make all showings by clear and convincing evidence and provide all evidence required for the granting of a Special Exemption.
2. Factors considered in granting Special Exemption approval for Telecommunications Facilities. The City Council shall consider the following factors in determining whether to approve a Special Exemption:
- a. Height of the proposed Tower/Antenna.
  - b. Proximity of the Tower/Antenna 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/Antenna, 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, buildings and other structures, in order to avoid the siting of new Towers or structures, as discussed in Section 403.170.H.4.a.1 of this Section.
3. The applicant shall comply with all requirements of this Code for a new Telecommunications Facility, Telecommunications Tower or Telecommunications Antenna which are technically and financially feasible as are reasonably determined by the City Council.
4. No building permit shall be issued to begin construction of any part of a Facility, Tower or Antenna that does not comply with all the applicable terms of Section 403.170 and all its sub-parts unless a Special Exemption use is approved.

J. Protection of the City and its Residents

1. Indemnification

The City shall not enter into any lease agreement until and unless the City obtains an adequate indemnity from such Owner or Operator provider. The indemnity must at a minimum:

- a. Release the City from and against any and all liability and responsibility in or arising out of the construction, operations or repair of the communications facility. Each Telecommunications facility Owner or Operator must further agree not to sue or seek any money or damages from the City in connection with the above mentioned matters;
- b. Indemnify and hold harmless the City, its elected and appointed officers, agents, servants, and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or

decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from or the of the negligent acts, errors, or omissions of any communications Facility Operator's, Owner, or their agents, employees, or servants.

- c. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in full force and effect as to the party's responsibility to indemnify.

## 2. Insurance

The City may not enter into any lease agreement until and unless the City obtains assurance that an Operator and/or Owner (and those acting on its behalf) has adequate insurance (amount to be determined at time of agreement). At a minimum, the following requirements must be satisfied:

- a. A Facility Operator or Owner shall not commence construction or operation of the Facility without obtaining all insurance required under this section and approval of such insurance by the City, nor shall a Facility Operator allow any contractor or subcontractor to continue work on its contract or sub-contract until all such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Facility is in existence. If the Operator or Owner, their contractors or sub-contractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.
- b. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the City. The certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.
- c. These certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Missouri.
- d. In the event that the insurance certificate provided

indicates that the insurance shall terminate or lapse during the period of the lease agreement with the City, the Facility Operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been secured for the balance of the lease agreement period.

### 3. Comprehensive General Liability.

A Facility Operator and its contractors or subcontractors engaged in work on the Operator's behalf, shall maintain minimum insurance (amount to be determined at time of agreement) to cover liability, bodily injury, and property damage. Exposures to be covered are: premises, operations, and those certain contracts relating to construction, installation or maintenance of the Facility, Tower or Antenna. Coverage shall be written on an occurrence basis and shall be included, as applicable, in the lease agreement between the City and the Facility Operator. The City shall be named as an "additional insured" in all such policies.

### 4. Violations.

It shall be unlawful to violate or fail to perform any of the required provisions of this Section. Each day that a violation continues shall be considered a separate offense. In addition, the violation of any provision may be deemed grounds for removal of the Telecommunications Facility and the City may seek any other remedy or damages to the full extent of the law.

## K. Non-Conforming Uses

1. No expansion of nonconforming use. Towers that are constructed, and Antennae that are installed, in accordance with the provisions of this Section shall not be deemed to constitute the expansion of a nonconforming use or structure.
2. Pre-existing Facility, Towers, or Antennae. Pre-existing Facility, Towers, or Antennae shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new Tower of like construction and height) shall be permitted on such Pre-existing Towers. New construction other than routine maintenance on a Pre-existing Tower shall comply with the requirements of this Section.

PASSED by the City Council of the City of Kirksville, Missouri, and approved by the Mayor of Kirksville, this 20<sup>th</sup> day of December, 2006.

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Martha Rowe, Mayor

ATTEST:

\_\_\_\_\_  
Vickie Brumbaugh, City Clerk

## 2007 LIST OF CITY COUNCIL STUDY SESSION TOPICS

- Water and Sewer Rate Study
- Update on Long Range Plans
- City-wide Storm Drainage Issues
- Hazel Creek Recommendations
- Future Water Source Plans
- Convention Center (West Plains) Sports Complex
- Industrial Park Expansion
- Annexation Plans
- Economic Development Projects outside of KREDI
- Moberly Area Community College
- Sales Tax Holiday
- Kirksville Arts Association- support for the arts