

dence that the tower owner has the obligation under the governing lease to dismantle and remove the tower upon abandonment); or

- (2) For placement into a communication tower removal account established with the city finance director the adequate amount of an irrevocable cash deposit to cover the cost of removal of the tower. The city shall be entitled to use the funds deposited into such account for the necessary removal of any communication tower within the city limits. The adequate amount shall be \$30.00 per foot of height for monopole towers and \$100.00 per foot of height for lattice or guyed towers. In no event shall any one service provider be required to place more than \$30,000.00 into the account for the cumulative number of towers under its control and located within the city.

(b) Notwithstanding any contracts between the owner of the communication tower and the owner of the real property on which a communication tower is located, the owner of the communication tower shall be responsible for all costs of dismantling and removal. If an abandoned tower is not dismantled and removed within the time required, the city may proceed with the dismantling and removal and assess the costs thereof against the owner of the communication tower in the form of a fine, and such fine shall bear interest at the prevailing statutory rate. If the owner of the communication tower is financially insolvent, the owner of the real property on which a communication tower is situated shall be ultimately responsible for all costs of dismantling and removal, and if the abandoned tower is not dismantled and removed within the time required the city may proceed with the dismantling and removal and assess the costs thereof against the real property. The lien of such assessment shall bear statutory interest, shall have priority and shall be collectable at the same rate and in like manner as provided for special assessments under state law. (Ord. No. 97-31, § 1 (29-21), 9-11-97)

Sec. 70-69. Application and submission requirements for special exception and variance.

The following information shall be submitted concurrently with special exception, variance, ap-

peal of the city manager's decision or building permit applications. The application may utilize any combination of the site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

- (1) A scaled site plan clearly indicating the location, type and height of the proposed communication tower, on-site land uses and zoning, adjacent land uses and zoning including when adjacent to other municipalities, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures.
- (2) A current tax map and aerial as provided by the county property appraiser's office showing the location of the proposed tower.
- (3) Legal description of the parent tract and leased parcel, if applicable.
- (4) If not within the separation distance from residential areas in subsection 70-57(c), approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatte residentially zoned properties. If within the separation distance requirements in subsection 70-57(c), the exact distances, locations and identifications of the properties shall be shown on an updated tax map.
- (5) If within the separation distance from another tower in subsection 70-58(b), the exact distance, location, and identification of other towers shall be shown on an updated tax map. The applicant shall also identify the type of construction of the existing tower and the owner/operator of the existing tower, if known.
- (6) A landscaping plan showing specific landscape materials.
- (7) Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
- (8) A notarized letter signed by the applicant stating that the tower will comply with all EIA/TIA 222-E standards and all applicable county and city codes.

- (9) A statement by the applicant as to whether construction of the tower will accommodate colocation of additional antennas for future users and, if so, the number of colocation points that the tower can accommodate.
- (10) An inventory of all communication towers and communication antennas located in the unincorporated county which are under the applicant's control or are being used by the applicant. Information on each tower or antenna listed shall include the type of tower or structure, the height of the tower or structure including antennas, latitude and longitude location, street address, and indication whether the site is colocated and, if so, with whom.
- (11) A copy of the recorded memorandum of lease evidencing colocation, if such memorandum exists.
- (12) If deemed necessary by the city, the city manager may require the applicant to hold a community meeting prior to the planning and zoning board hearing meeting in addition to the other requisite notice requirements.
- (13) For all special exception and variance requests, the applicant shall provide the RF search ring used with respect to distance separations. The applicant shall provide adequate documentation to substantiate the applicant's determination of compliance of the selected site with the requirements of this article.

In addition to subsections (1) through (13) of this section, all communication towers, communication antennas and ancillary buildings and equipment shall comply with the applicable requirements set forth in chapter 18.

(Ord. No. 97-31, § 1 (29-22), 9-11-97)

Secs. 70-70—70-95. Reserved.

DIVISION 3. DEVELOPMENT REVIEW, SPECIAL EXCEPTIONS AND VARIANCES

Sec. 70-96. Development review procedure.

Procedures relating to building permits and related matters set forth in chapter 18 shall apply for all communication tower uses.

(Ord. No. 97-31, § 1 (29-23), 9-11-97)

Sec. 70-97. Special exception.

If a special exception for a communication tower is sought, the procedures in division 3 of article II of chapter 118 shall apply.
(Ord. No. 97-31, § 1 (29-24), 9-11-97)

Sec. 70-98. Variance.

If a variance for a communication tower is sought, the procedures in division 4 of article II of chapter 118 shall apply.
(Ord. No. 97-31, § 1 (29-25), 9-11-97)

Sec. 70-99. Public notice.

(a) For purposes of this article, any special exception request, variance request, zoning approval in a PUD, substantial change in a PUD zoning, or appeal of the city manager's decision, regarding this article, shall require public notice to all abutting property owners and all property owners of properties that are located within 660 feet of the perimeter of the parent parcel upon which the proposed communication tower is located. Further, an authorized representative of homeowners' and property owners' associations registered with or known to the city planning department within 1,500 feet of the perimeter of the parent parcel upon which the proposed communication tower is located will be provided public notice on a courtesy basis; however, inadvertent failure to supply courtesy notice shall not invalidate the hearing procedure. For purposes of this section, any variance request shall require public notice to all abutting properties that are located within the corresponding separation distance listed in this section.

(b) An applicant for a communication tower variance or special exception shall submit with the application a list, complied from the county tax assessor's records, containing the tax parcel numbers, property owner names, and property owner addresses, and a map of all surrounding properties located within 660 feet of the base of communication tower that is the subject of the application. In addition, the applicant shall provide number ten envelopes, preaddressed with the city clerk's business address in the return address area and the current owner information, including parcel number and as stated on the list,

in the addressee area on the envelope for all surrounding property owners within 660 feet of the base of communication tower that is the subject of the application.

(Ord. No. 97-31, § 1 (29-26), 9-11-97)

Sec. 70-100. Abandonment.

(a) If the use of any communication tower has been discontinued for a period 180 consecutive days, the tower shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the city manager, who shall have the right to consider documentation and affidavits from the communication tower owner/operator regarding the issue of tower usage and other information. Upon such abandonment, the owner/operator of the tower shall have 180 days within which to:

- (1) Reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower; or
- (2) Dismantle and remove the tower.

(b) At the earlier of 181 days after the date of abandonment without reactivation or upon completion of dismantling and removal, any special exception or variance approval for the tower shall automatically expire.

(Ord. No. 97-31, § 1 (29-27), 9-11-97)

Sec. 70-101. Special exception time limits for compliance with colocation condition for towers 80 or more feet high.

(a) Every special exception for a communication tower which is 80 feet in height or taller and which is issued after the effective date of the ordinance from which this article derives shall automatically expire five years after the date of approval of the special exception, unless a copy of a memorandum of lease recorded in the public records of the county or some similar document deemed sufficient by the city is delivered to the city prior to that date. The memorandum of lease shall indicate that one or more other service providers have entered into an agreement with

the tower owner and the other service providers have the right to colocate on the communication tower.

(b) If the communication tower applicant provides a recorded memorandum of lease of colocation as part of the application, the five-year expiration condition shall not be part of the special exception conditions of approval. An unrecorded copy of the memorandum of lease may be submitted to the city under this subsection; provided, however, no building permit shall be issued for such communication tower until the memorandum of lease is recorded in the public records of the county and a recorded copy is presented to the city.

(c) Upon the passage of five years without this condition being fulfilled, the special exception shall terminate and the communication tower removed at the applicant's expense. Notwithstanding any other remedies available at law or in equity, the city may seek an injunction to have the tower removed.

(d) A communication tower special exception holder may seek to continue the special exception beyond five years without a recorded memorandum of lease evidencing colocation by filing an application for a new special exception not less than 90 days prior to the expiration of the current special exception under this section. As part of the application, the applicant shall supply evidence as to the reasons colocation at the site has not been achievable. Provided the special exception holder is able to document that a continuous, good-faith, proactive effort has been made to secure a colocated service provider before, during and after the tower is constructed, the city shall grant a reasonable extension.

(Ord. No. 97-31, § 1 (29-28), 9-11-97)

Sec. 70-102. Standards and criteria for review of special exception requests.

(a) *Intent and purpose.* The intent and purpose of this section is to address and balance the concern that communication towers may not be appropriate uses in residential areas because of the aesthetic and compatibility conflicts that arise when these facilities are located in close proxim-

ity to residential uses and the recognized need of the services the communication towers provide to the public. These issues shall be reviewed on a case-by-case for each special exception request in accordance with the standards set forth in division 3 of article II of chapter 118 and this section. The city shall consider and weigh the aesthetic impact and compatibility issues with the public benefit derived from having an efficient and reliable wireless communications systems when determining whether or not to grant special exception approval. To assist the city in reaching such determination, the application shall provide the information set forth in subsections (b) through (f) of this section and shall comply with the procedures and requirements set forth in this section, including production of documentation to verify the completion of these requirements.

(b) *Balloon test.* The purpose of this test is to assist the city in determining aesthetic impact with respect to height and closeness of a communication tower in proximity to nearby residential uses and zoning. The following criteria shall be met.

- (1) Balloon specifications shall be as follows:
 - a. The balloon diameter shall be no less than four feet.
 - b. Balloon color is restricted to red, orange or yellow.
 - c. The balloon is anchored to the ground at the same location as that of the proposed tower based pad.
 - d. The height at which the balloon is flown shall be the same as the combined height of the tower and its antennas up to 199 feet; balloons for towers taller than 199 feet shall be flown at 199 feet.
- (2) The balloon shall be flown after the public hearing poster is required to be erected on site. The balloon shall be flown, at a minimum for seven continuous hours, between the hours of 7:00 a.m. and 10:00 p.m. each day it is required to be flown. The balloon shall be flown for a minimum of two days. Failure to maintain the bal-

loon as specified in this subsection may result in a delay of the public hearing in order to achieve compliance.

- (3) Each notice required pursuant to section 70-99 shall include a statement that the balloon will be flown at least two days during the morning hours prior to the public hearing date.

(c) *Visual aids.* In addition to the balloon test, the applicant may take and submit for city review photographs and a videotaping of the subject site showing the balloon and of the subject site depicting the balloon in its relationship and proximity to neighboring residential lands and uses. The photographs/video may be accompanied by a corresponding written visual impact analysis prepared by the applicant.

(d) *Additional information.* The applicant may submit any other bona fide documentation or evidence that he feels may assist the city in determining visual impact. Any person or party opposing the applicant's special exception request should submit bona fide evidence or documentation that a proposed tower will have a substantial adverse aesthetic impact on his property.

(e) *Camouflaged facilities.* The purpose of this subsection is to assist the city in determining whether or not a tower as a camouflaged facility is appropriate in a given area. The applicant may use a camouflage agent in order to achieve compatibility with the nature and character of the surrounding area. Camouflaging shall be determined on a case-by-case basis. Any proposed camouflaging shall be submitted in conjunction with the special exception application. It shall include the following documentation:

- (1) Colorized pictorial representation, artist's rendering, or the like.
- (2) Design specifications as follows: total height, diameter, and colorations.
- (3) A corresponding statement accompanying the graphic representation explaining the following:
 - a. What is the nature and character of the area within which the camouflaged tower is proposed, with re-

spect to land use, surrounding environment, building heights and designs, and building/environment density.

- b. How will the proposed camouflaged agent blend in and harmonize with the nature and character of the area.

(f) *Separation distance reduction for camouflaged facilities.* If the city, using the standards set forth in subsection (e) of this section, determines the camouflaging agent is compatible with the surrounding area, the distance separation requirements set forth in subsections 70-57(c) and 70-58(b) for the proposed communication tower as a camouflaged facility shall be reduced by one-half. Maximum cumulative separation distance reductions shall not exceed a total of one-half of the separation distance requirements set forth in subsections 70-57(c) and 70-58(b).

(g) *City special exception criteria.* In considering a special exception request for a communication tower, in addition to those criteria set forth in section 70-99 and division 3 of article II of chapter 118, the city shall take into consideration the compatibility of a camouflaged tower in a given area and whether or not the proposed tower will have a substantial adverse aesthetic impact on neighboring residential lands. The city's determination shall be based on relevant and competent evidence, documentation, and testimony received at the public hearing both from the applicant and any party in opposition or their respective representatives. The city shall utilize the following criteria in determining if a special exception is deemed approvable:

- (1) *Aesthetic impact.* Aesthetic impact means the view of a tower that is not camouflaged. Aesthetic impact shall be measured by the amount of the tower that can be viewed from a residential zone in conjunction with its proximity (distance) to the residential zone.
- (2) *Compatibility.* Compatibility means the degree to which a tower is designed and located to be compatible with the nature and character of other land uses and with the environment within which the tower

is proposed to be located. The tower may be placed, designed or camouflaged to assist with mitigating the overall aesthetic impact of a tower. A camouflage agent shall be designed to be compatible with the surrounding land uses and the environment.

(h) *Minimum standards.* In addition to the other requirements of this section, the minimum performance standards with respect to separation between towers, separation between residences and towers, etc., as referenced in this article shall be met. These standards, however, are minimum standards; the city is empowered to impose more restrictive conditions to a special exception as conditions to approval so as to achieve the desired protection with respect to aesthetic impact and harmony and compatibility with the surrounding community.

(Ord. No. 97-31, § 1 (29-29), 9-11-97)

Secs. 70-103—70-130. Reserved.

DIVISION 4. COMMUNICATION ANTENNAS AND EXISTING POLE STRUCTURES

Sec. 70-131. Communication antennas.

Any communication antenna existing on the effective date of the ordinance from which this article derives which is not attached to a communication tower shall be a permitted ancillary use to any commercial, industrial, professional, institutional, office, multifamily, or public utility structure of at least two stories in height, provided that:

- (1) The communication antenna and its ancillary supporting apparatus do not extend above the highest point of the structure the greater of 30 feet or 50 percent of the height of the building, not to exceed a maximum combined height of 60 feet for the antenna and its supporting apparatus, and further provided that the antenna and its ancillary supporting apparatus are not attached to the ground;

- (2) The communication antenna complies with all applicable Federal Communications Commission and Federal Aviation Administration regulations; and
 - (3) The communication antenna complies with all applicable building codes.
- (Ord. No. 97-31, § 1 (29-30), 9-11-97)

Sec. 70-132. Colocation of communication antennas.

(a) To minimize adverse visual impacts associated with the proliferation and clustering of communication towers, colocation of communication antennas by more than one carrier on existing or new communication towers shall take precedence over the construction of new single-use communication towers as provided in this section.

(b) Proposed communication antennas may and are encouraged to colocate onto existing communication towers. Provided such colocation is accomplished in a manner consistent with this article, such colocations are permitted by right, and new or additional special exception or variance approval shall not be required.

(c) A communication tower which is modified or reconstructed to accommodate the colocation of an additional communication antenna shall be either of the same type as the existing communication tower or a monopole tower that is replacing an existing lattice or guyed tower.

(d) Height shall be subject to the following:

- (1) Additional height which does not comply with distance separation requirements:
 - a. A communication tower existing on the effective date of the ordinance from which this article derives which meets or, as of the effective date of the ordinance from which this article derives, is in nonconformity of the separation requirements set forth in subsections 70-57(c) and 70-58(b) may be modified or rebuilt to a taller height, not to exceed 40 feet over the tower's existing height, to accommodate the colocation of additional communication antennas when the re-

sulting taller height will not comply with the separation requirements set forth in subsections 70-57(c) and 70-58(b).

- b. The height change referred to in subsection (d)(1)a of this section may only occur one time per communication tower.
- c. The additional height referred to in this subsection shall not require an additional distance separation as set forth in either subsection 70-57(c) or 70-58(b). The communication tower's premodification height shall be used to calculate such distance separations.
- (2) Additional height which does comply with the distance separation requirements:
 - a. A communication tower existing on the effective date of the ordinance from which this article derives may be modified or rebuilt to a taller height, not to exceed 300 feet, to accommodate the colocation of additional communication antennas.
 - b. Subject to subsection (f) of this section, the height change referred to in subsection (d)(2)a of this section may occur, provided the resulting height of the modified or rebuilt tower complies with the distance separation requirements set forth in subsections 70-57(c) and 70-58(b).
- (e) On-site location.
 - (1) A communication tower which is being rebuilt to accommodate the colocation of an additional communication antenna consistent with the height requirements of this section may be moved on site within 250 feet of its existing location, provided that the separation distances to residential units or residentially zoned lands as established in subsection 70-57(c) are maintained.
 - (2) After the communication tower is rebuilt to accommodate colocation, only one tower may remain on the site.

(3) A relocated on-site communication tower shall continue to be measured from the original tower location for purposes of calculating separation distances between communication towers pursuant to subsection 70-58(b). The relocation of a tower under this subsection shall in no way to be deemed to cause a violation of subsection 70-58(b).

(f) A communication tower which collocates two or more communication antennas and which is located in a commercial or industrial zoning district as a permitted use pursuant to chapter 118 shall be exempt from the separation distances between communication towers as set forth in subsection 70-58(b) from only those other towers that are located in either a commercial or industrial zoning district. A new communication tower permitted under this subsection is still required to comply with the separation distances set forth in subsection 70-57(c), but the new tower may utilize the one-time provision for existing towers set forth in subsection (d)(1) of this section to obtain up to 40 additional feet of height, which will cause the tower to comply with the distance separation requirements as if the new colocated tower was an existing tower. In no event shall a communication tower permitted in a commercial district exceed the maximum building height of the zoning district by more than 40 feet without a special exception and variance.

(g) Colocation conditions for towers 80 feet in height and taller shall be as follows:

(1) Every special exception for a communication tower which is 80 feet in height or taller and which is issued after the effective date of the ordinance from which this article derives shall include the following conditions:

- a. All new communication towers shall be designed and constructed to accommodate at least one other service provider;
- b. The applicant for a new communication tower shall provide a notarized letter acknowledging that the communication tower is designed and

will be constructed to accommodate at least one other service provider; and

c. All service providers shall cooperate in good faith with other service providers to accomplish colocation of additional antennas on communication towers which are existing, permitted, or otherwise authorized by the city, where feasible.

(2) Technical requirements, site constraints, and reasonable terms and conditions are relevant factors in determining if colocation is feasible.

(3) Any request for colocation by one service provider to the applicant for or holder of a special exception for a communication tower shall be in written form and a copy forwarded by the requesting service provider to the city manager. A request for colocation shall also include the following:

a. A request for colocation by a third-party service provider under a memorandum of lease for a tower which is not yet physically colocated; and

b. An inquiry by the city manager as to whether a tower actually provides for colocation by physically supporting two or more antennas after the prescribed three-year period set forth in a memorandum of lease applicable to the particular tower, which three-year period is set forth in subsection (g)(4)d of this section; provided, however, that the inquiry authority of the city manager under this subsection and section 70-28 shall not be exercised with respect to a particular communication tower more frequently than once every three years.

(4) The applicant for or holder of a special exception for a communication tower shall respond to the request for colocation in written form within 45 days of receipt of the request by:

a. Granting the terms of colocation as mutually agreed upon by the parties;

- b. Denying such request and clearly setting forth the reasons for denial, so long as such does not disclose any trade secrets or confidential information; or
- c. Extending the time limits delineated in this subsection of this section by mutual agreement of the parties, not to exceed a total of 120 days for the request to be either granted or denied from the date of the receipt of the original request.

If responding to an inquiry from the city manager as to the status of provision of colocation under a memorandum of lease, by either establishing that two or more antennas are physically located on the tower or by providing a report to the city manager detailing the good-faith efforts made to accommodate colocation. Failure to have physical colocation accomplished within a three-year period from the date of the memorandum of lease shall require the tower approval to be subject to review under subsection (g)(6) of this section. If, after notification of the failure to comply, the city commission decides to review the matter, the city manager shall first prepare a report and send it to the city commission and the holder of the special exception.

- (5) The service provider shall submit a second notice to the applicant for or holder of a special exception for a communication tower seven days prior to the expiration of the response period set forth in subsection (g)(4) of this section.
- (6) If the procedures set forth in subsections (g)(1) through (g)(5) of this section are adhered to by the requesting service provider and the applicant for or holder of a special exception for a communication tower fails to comply with subsection (g)(4) of this section either within the timeframe set forth therein or by not providing adequate evidence to substantiate its denial of the colocation request, the city manager shall initiate actions to revoke the

tower's special exception. The reason deemed not adequate for denial is that the colocator is not willing to pay above market rents. The city manager shall forward the matter to the city commission and a date shall be scheduled for a hearing in accordance with the following procedures:

- a. The request to initiate action before the city commission shall be made within 30 days from the date of response by the holder of the special exception or the date such response would be due under subsection (g)(4) of this section.
- b. The general procedural provisions of article VII of chapter 2, addressing ex parte communications, and division 5 of article II of chapter 118, setting forth the appeal procedures, shall generally be applicable. Where this article differs or conflicts with these sections, this article shall control.
- c. At the hearing, the city commission shall allow the planning director, the service provider seeking colocation, and the special exception holder an opportunity to present evidence and to examine and cross examine witnesses. After considering the evidence and testimony, the city commission shall make factual determinations as to whether the special exception holder acted in violation of this section and issue an appropriate order. If the city commission determines that the special exception holder has not acted in good faith and is in violation of this section, the commission shall issue an order which shall state the basis therefor and provide a decision as to final action.
- d. Any appeal from the city commission's decision shall generally follow the procedures outlined in section 98-31 and may proceed to circuit court, pursuant to section 98-32. Any con-