

CITY OF FENTON
COMMUNITY DEVELOPMENT DEPARTMENT
625 New Smizer Mill Road
Fenton, MO 63026
(636) 349-8110

TELECOMMUNICATIONS FACILITIES APPLICATION CHECKLIST

A **complete** application for Special Use Permit must be received by the Community Development Department no less than thirty (30) days prior to the next Planning and Zoning Commission Meeting in order to be placed on the agenda for consideration. ***Partial or incomplete applications will not be accepted.***

Please review the checklist below to verify that your application is complete before submitting materials to the Community Development Department. *Please check-off below that all items are included in your submittal, and sign at the bottom.*

REQUIRED DOCUMENTS FOR A COMPLETE TELECOMMUNICATIONS FACILITIES APPLICATION:

- Petition for Special Use Permit.** All blanks completed, application signed and notarized.
 - Legal property description (on 8 ½" x 11" paper with metes & bounds description)
 - Letter of property owner consent (if you are not the owner), or proof of ownership-under-contract.
 - Check for fee (\$300).
 - Sixteen (16) copies of all items/plans, plus one 11"x17" or 8 ½" x 11" or 8 ½" x 14" copy of all items/plans
 - Site Plan and/or Survey Plat must include the following:
 - Site coverage calculation
 - Building elevations
 - Building materials and colors
 - Lighting photometrics, if applicable
 - Landscape plan (note any trees to be removed of 6" or greater diameter.)
 - Photo simulation

- Registration Form**, with required materials as listed, and check for \$100 Registration fee.

- Documentation** as listed in Section 491.120 (1) of the Zoning Code (*Service area maps, NIER exposure studies, fencing and landscaping/screening detail, etc.*)

- Evidence** that an antenna, tower, or support structure is feasible (Section 491.120 (4.b) of the Zoning Code). (*Evidence should include signal propagation maps showing service area before and after addition of proposed telecommunications facility.*)

- Findings Report** (Section 491.120 (5) of the Zoning Code)

- Reminder:** A Maintenance/Facility Removal Agreement (*draft enclosed*) and associated bond will need to be submitted and approved by the Board of Aldermen prior to petitioner receiving approvals for building permits.

NOTE: A pre-application conference with the Community Development Director is encouraged.

I/we (Petitioner) _____ do submit the attached application for a Special Use Permit of (project name) _____ at (address) _____ and verify that all of the required documents are attached herewith. I understand that in order for my case to be placed on the agenda, all required materials must be received within 30 days of the next scheduled public hearing meeting. *If the application and materials are incomplete or are returned for corrections by the Community Development Director, placement of my case on an agenda will be delayed until such time as all required materials are received within the 30-day requirement.*

Signed: _____

Date: _____

City of Fenton
Community Development Department
625 New Smizer Mill Road
Fenton, MO 63026
(636) 349-8110

PETITION FOR SPECIAL USE PERMIT

DATE: _____

PETITION NO.: _____

DATE PAID: _____

FEE: _____

I (we), the petitioner(s) _____
am (are) seeking a **Special Use Permit** from the City of Fenton. I understand this petition will be scheduled for a public hearing with the Planning and Zoning Commission of the City of Fenton and a recommendation from this Commission will be made to the Board of Aldermen for a final decision.

I. The following information is required to complete this application:

A. Reason this Special Use Permit is being requested: _____

(separate letter may be attached)

B. Describe your legal interest in the property or state the name of the person or firm you are representing: _____
(if Petitioner is not the owner, a letter of legal consent from the property owner is required)

C. Address of property: _____

D. Legal description of property; attach if necessary: _____

E. A survey or plat of property, drawn to scale of 100 feet or less to the inch, showing nearest street intersection, dimensions of property, and north point must be attached to this petition. Outline portion of which Special Use Permit is petitioned showing appropriate angles, bearings, and distances.

F. Size of parcel to the nearest tenth of an acre: _____

G. Returned signed and notarized application, fee and 16 sets of any plans to the Community Development Department. *Please include one 8 ½ x 11" or 8 ½ x 14" or 11 x 17" size plan.*

II. The petitioner(s) further state(s) that the property described is:

A. Presently zoned: _____ district,

B. Presently used for: _____

III. Applicant's "Justification Statement" (why use is needed and applicant's opinion as to affect of use on surrounding properties.) *May be attached as separate document*

I (we) hereby certify that I (we) have a legal interest in the described property or I (we) am (are) the duly appointed representative(s) of the petitioner and that all information given herein is true and a statement of fact. As owner(s) or petitioner(s), I (we) will comply with all requirements and conditions set forth by the City of Fenton Planning and Zoning Commission and Board of Aldermen.

(Print Name)

(Petitioner's Signature)

Address: _____

Phone: _____

Subscribed and sworn to before me this _____ day of _____, 20__

SEAL:

(Notary Public)

My commission expires: _____, 20__

REMINDER: Applications, all attachments, and fee must be received by the Community Development Department at least **thirty (30) days prior to the next Planning and Zoning Commission Meeting** in order to be placed on the agenda for consideration.

IMPORTANT NOTICE

Petitions for Public Hearing

- The Planning and Zoning Commission holds a public hearing on the first Tuesday of every month, 7:00 p.m., at the City of Fenton City Hall, 625 New Smizer Mill Road.
- Prior to the public hearing, the City must have your completed application and other documents delivered to the Community Development Department thirty (30) days in advance of the Commission's next meeting date to post the required public notice. Staff will determine whether the petition will be on the Planning and Zoning Commission agenda for the following meeting.
- Your attendance at the Planning and Zoning Commission meeting is mandatory. Failure to appear will result in a Commission recommendation to continue or deny your request.
- The Planning and Zoning Commission will make their recommendation for approval or denial of your petition to the Board of Aldermen, which meets the fourth Thursday of every month.
- The Board of Aldermen will have final approval or denial of the petition. Three readings by the Board of Aldermen are required for final approval. If your petition is approved, it will be read two times at one meeting by title only; and the third reading will occur at the next monthly Board of Aldermen meeting. *(It is possible to receive all three readings on the same night.)*

If you have any questions, please do not hesitate to call the Community Development Department at (636) 349-8110.

STANDARDS OF SPECIAL USE (All Zone Districts)

The Special Use may be granted at the discretion of the Board of Aldermen if the Special Use:

1. Said use is designated, located and proposed to be operated in a manner that the public health, safety and general welfare will be protected.
2. Visual compatibility with adjacent land uses and surrounding area; including building height, form, materials and landscaping.
3. Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress to and within the site; traffic control; adequacy of off-street parking.
4. Said use will not cause substantial injury to the value of adjacent parcels or other property in the surrounding area.
5. The use authorized by Special Use Permit will conform to the applicable regulations of the district in which it is to be located.

Telecommunications Carriers and Providers
City of Fenton
REGISTRATION FORM

Registration Is Required. Per Section 491.050 of the Fenton Zoning Code: *All telecommunications carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City of Fenton, or outside the corporate limits from telecommunications facilities within the City, shall register with the City on forms to be provided by the Community Development Director.*

A. REGISTRANT INFORMATION:

Name of registrant: _____

Your legal status: _____

Affiliates: _____

Officer, Agent or Employee responsible for accuracy of the registration:

Name: _____

Address: _____

Phone: _____

B. Provide a narrative and map description of the existing or proposed telecommunication facilities within the City of Fenton.

C. Description of the telecommunication services you intend to offer or provide, or are currently offering or providing, to persons, firms, businesses or institutions within the City of Fenton.

D. Provide proof of certificate of authority from the Missouri Public Utility Commission to provide telecommunications services or facilities within the City of Fenton.

E. Provide proof of permits:

1. Construction Permit
2. Operating license
3. Other approval required by the FCC for the City of Fenton

F. Other information as determined by the Community Development Director: _____

G. REGISTRATION FEE: \$100

H. NOTIFICATION OF CHANGE:

Each registrant shall inform the City of Fenton within sixty (60) days of any change of information on this Registration Form.

<p>SIGNED: _____ <i>(Registrant)</i></p> <p>Date: _____</p>	<p>APPROVED: _____ <i>Community Development Director</i></p> <p>Date: _____</p>
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DRAFT

MAINTENANCE/FACILITY REMOVAL AGREEMENT

BETWEEN *(TELECOMM. NAME HERE)*
and THE CITY OF FENTON, MISSOURI
FOR TELECOMMUNICATION FACILITIES ERECTED AT
(ADDRESS HERE), FENTON, MISSOURI 63026

This Maintenance/Facility Removal Agreement is made and entered into by *(TELECOMM. NAME HERE)* (hereinafter called "PROVIDER") and THE CITY of Fenton, Missouri (hereinafter called "THE CITY").

WHEREAS, pursuant to Chapter 491 of Ordinance 3001, the PROVIDER petitioned THE CITY for a Special Use Permit to erect a *(flagpole, concealed)* antenna and support building at *(Address here)*, Fenton, Missouri 63026 to provide cellular communication service; and

WHEREAS, the location of the proposed antenna and support building is in a *(put zone district here)* where telecommunication facilities are permitted by Special Use Permit; and

WHEREAS, the Fenton Planning and Zoning Commission held a public hearing on *(Date of public hearing here)* to consider said petition; and

WHEREAS, the Planning and Zoning Commission has made a recommendation to the Board of Aldermen that the Special Use Permit of *(TELECOMM. NAME HERE)* at *(Put address here)* be granted; and

WHEREAS, the Fenton Board of Aldermen approved said recommendation and issued Special Use Permit *(Ordinance #_____)* at their Board meeting on *(Date of Board of Aldermen Meeting here)*; and

WHEREAS, pursuant to Section 491.130, a maintenance/facility removal agreement shall be submitted and approved prior to issuance of the Special Use Permit;

NOW THEREFORE, in consideration of the covenants, promises, and agreements herein provided;

IT IS MUTUALLY AGREED;

1. That the PROVIDER and successors in interest shall properly maintain the exterior appearance of the telecommunication facility in accordance with THE CITY adopted 1996 BOCA National Property Maintenance Code with amendments and other applicable CITY ordinances, and ultimately be responsible for the removal of the facility in compliance with the provisions of Chapter 491 and any conditions of approval;

2. That the PROVIDER shall pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse THE CITY for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform.
3. That THE CITY and its agents will be specifically authorized to enter onto the property to undertake said work so long as:
 - a.) The Community Development Director has provided the PROVIDER with:
 - i.) An initial compliance request identifying the work needed to comply with the agreement and providing the PROVIDER at least forty-five (45) calendar days to complete it; and
 - ii.) A follow-up notice of default specifying the PROVIDER'S failure to comply with the work within the time period specified and indicating THE CITY'S intent to commence the required work within ten (10) working days;
 - b.) The PROVIDER has not filed an appeal pursuant to Section 491.350 within fourteen (14) working days of the notice required under Section 491.130 (A1) (Section 3.a.i. of the agreement above). If an appeal is filed, THE CITY shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it is taken in favor of THE CITY;
 - c.) All costs incurred by THE CITY to undertake any work required to be performed by the PROVIDER pursuant to the agreement referred to in Section 491.130 including, but not limited to, administrative and job supervision costs, shall be borne solely by the PROVIDER. The PROVIDER shall deposit within ten (10) working days of written request therefore such costs as THE CITY reasonably estimates or has actually incurred to complete such work. When estimates are employed, additional monies shall be deposited as needed within ten (10) working days of demand to cover actual costs. The agreement shall specifically require the PROVIDER to immediately cease operation of the telecommunications facility involved if the PROVIDER fails to pay the monies demanded within ten (10) working days. It shall further require that operation remain suspended until such costs are paid in full.

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Maintenance/Facility Removal Agreement

COMPANY NAME HERE

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EXHIBIT 2 City of Fenton Ordinance # _____ authorizing the telecommunication facility by Special Use Permit (**Put address here**), Fenton, Missouri 63026.

EXHIBIT 3 City of Fenton Ordinance # _____ approving the Maintenance/Facility Removal Agreement between (**TELECOMM. NAME HERE**) and City of Fenton, Missouri.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this _____ day of _____, A.D.

ATTEST:

(TELECOMM. NAME HERE):

MEMBER

BY: _____
MEMBER

ATTEST:

CITY OF FENTON

CITY CLERK

BY: _____
MAYOR

CHAPTER 491: TELECOMMUNICATIONS FACILITY AND ANTENNA REGULATIONS

SECTION 491.010: GENERAL INFORMATION

- A. On February 8, 1996, Congress enacted the Federal Telecommunications Act of 1996, P.L. No. 104-104. The purpose of the Act included deregulation of the telecommunications industry and providing a more competitive environment for wired and wireless telecommunication services in the United States.
- B. The Telecommunications Act of 1996 preserves the authority of the City to regulate the placement, construction, and modification of towers and antenna support structures and to protect the health, safety and welfare of the public.
- C. The City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennae pursuant to its zoning powers established in Chapter 89, RSMo., and additionally pursuant to its general and specific police powers established by Statute and authorizing the regulations herein to protect the public health, safety and welfare.
- D. The Federal Communications Commission (FCC) has exclusive jurisdiction over:
 - 1. The regulation of the environmental effects of radio frequency emissions from telecommunications facilities, and
 - 2. The regulation of radio signal interference among users of the radio frequency spectrum.
- E. Consistent with the Telecommunications Act of 1996, the regulations of this Section will not have the effect of prohibiting the provision of personal wireless services, and do not unreasonably discriminate among functionally equivalent providers of such service. The regulations also impose reasonable restrictions to protect the public safety and welfare and ensure opportunities for placement of antennae with prompt approval by the City. The ordinance does not attempt to regulate in areas within the exclusive jurisdiction of the FCC.
- F. The uncontrolled proliferation of towers in the City of Fenton is threatened without adoption of new regulations, and would diminish property values, the aesthetic quality of the City, and would otherwise threaten the health, safety and welfare of the public. (R.O. 2006 §491.010; Ord. No. 2072 §1, 6-16-97)

SECTION 491.020: PURPOSE

- A. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards for the development of telecommunications facilities and installation of antennas. The regulations contained herein are designed to protect and promote the public health, safety, community welfare and aesthetic quality of Fenton as set forth within the goals, objectives and policies of the Fenton Comprehensive Plan; while at the same time not unduly restricting the development of needed telecommunications facilities and important amateur radio installations and encouraging managed development of telecommunications infrastructure to ensure Fenton's role in the evolution of technology. It is also the stated intent of this Chapter to provide a public forum to ensure a balance between public concerns and private interest in establishing telecommunications and related facilities.
- B. It is furthermore intended that, to all extent permitted by law, the City shall apply these regulations to specifically accomplish the following:
 - 1. Provide for the appropriate location and development of telecommunications facilities and systems to serve the citizens and businesses of the City of Fenton;
 - 2. Protect the visual character of the City from the potential adverse effects of telecommunications

facility development and minor antennae installation through careful design, siting, landscape screening and innovative camouflaging techniques;

3. Ensure against the creation of visual blight within or along the City's scenic corridors and ridgelines;
4. Maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;
5. Maximize the co-location of facilities on any new support structures;
6. Ensure that any new telecommunications tower or structure is located in an area compatible with the neighborhood or surrounding community to the extent possible;
7. Ensuring that 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;
8. Ensure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided to serve the business community;
9. Retain local responsibility for and control over the use of public rights-of-way to protect citizens and enhance the quality of their lives;
10. Protect the inhabitants of Fenton from the possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation); and,
11. Create and preserve telecommunications facilities that will serve as an important and effective part of Fenton's emergency response network. (R.O. 2006 §491.020; Ord. No. 2072 §1, 6-16-97)

SECTION 491.030: DEFINITIONS

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them in this Section:

ABOVE GROUND LEVEL—AGL: The ground level determined by the average elevation of the natural ground level within a radius of fifty (50) feet from the center location of measurement.

ANTENNA: Any system of wires, poles, rods, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna. Antennas shall include cellular on wheels (COWs) and cellular on light trucks (COLTs) facilities; as well as dispatch carriers for Specialized Mobile Radio (SMR) services and Enhanced SMR (ESMR).

1. *Antenna—building mounted:* Any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building mounted mast less than ten (10) feet tall and six (6) inches in diameter or structure other than a telecommunications tower.
2. *Antenna—directional:* (Also known as "panel" antenna) transmits and/or receives radio frequency signals in a directional pattern of less than three hundred sixty degrees (360°).
3. *Antenna—ground-mounted:* Any antenna with its base, single or multiple posts, placed directly on the ground or a mast less than ten (10) feet tall and six (6) inches in diameter.

4. *Antenna—omni-directional:* Transmits and/or receives radio frequency signals in a three hundred sixty degree (360°) radial pattern. For the purpose of this Chapter, an omni-directional antenna is up to fifteen (15) feet in height and up to four (4) inches in diameter.
5. *Antenna—parabolic:* (Also known as "*satellite dish antenna*"), means any device incorporating a reflective surface that is solid, open mesh or bar configured that is a shallow dish, cone, horn, bowl, or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communications/signals in a specific directional pattern. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations and satellite microwave antennas.
6. *Antenna—portable:* Any device used to transmit and/or receive electro-magnetic or radio frequency communications/signals in a specific directional pattern, located on a portable or movable base designed to be placed either for temporary or long-term use at a given site.
7. *Antenna—vertical:* A vertical type antenna without horizontal cross-sections greater than one-half (½) inch in diameter.

CO-LOCATION: See "*TELECOMMUNICATIONS FACILITY—CO-LOCATED*".

COMMERCIAL USE: A use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange of goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time.

COMMUNICATION TOWER MULTI-USE INTEREST AREA: An area as designated by the map of the same title indicating general locations in which more than one (1) wireless service provider may potentially seek to locate an antenna facility and in which the construction of co-locatable towers will be required. The map may be periodically revised in response to new information received regarding tower sites sought by wireless providers. A multi-use interest area shall be designated as appropriate for towers within one (1) mile of each other, unless the applicant demonstrates to the contrary.

DIRECT BROADCAST SATELLITE SERVICE—DBS: A system in which signals are transmitted directly from a satellite to a small (not exceeding eighteen (18) inches) home receiving dish. DBS competes with cable television.

DIRECTOR: The Community Development Director for the City of Fenton.

DISGUISED SUPPORT STRUCTURE: Any freestanding structure designed for the support of antennae, the presence of which is camouflaged or concealed as an appropriately-placed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, water towers, light standards, flag poles and artificial trees.

EQUIPMENT BUILDING, SHELTER OR CABINET: A structure for the protection and security of communications equipment associated with one (1) or more antennae where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed four (4) feet by six (6) feet and vertical height that does not exceed six (6) feet. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected antennas is prohibited.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

FIRE MARSHAL: The Fire Marshal for the Fenton Fire Protection District.

HEIGHT: The vertical distance measured from the average grade of the base of the structure at ground level to its highest point and including the main structure and all attachments thereto.

INHABITED AREA: Any residence, any other structure regularly occupied by people or any outdoor area used by people on a regular basis.

LATTICE TOWER: A self-supporting support structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.

MODIFICATION: Any addition, deletion or change, including the addition or replacement of antennae, or any change to a structure requiring a building permit or other governmental approval.

MONOPOLE: A wireless communication facility, which consists of a monopolar structure, erected on the ground to support wireless communication antennas and connecting appurtenances.

NIER: Non-ionizing electromagnetic radiation (i.e., electromagnetic radiation primarily in the visible, infrared and radio frequency portions of the electromagnetic spectrum).

PUBLIC SERVICE USE OR FACILITY: A use operated or used by a public body or public utility in connection with any of the following services: water, wastewater management, public education, parks and recreation, fire and police protection, solid waste management, transportation or utilities.

PUBLIC WAY: Means and includes all public streets and utility easements, now and hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license to occupy and use such streets and easements for telecommunications facilities.

QUASI-PUBLIC USE: A use serving the public at large and operated by a private entity under a franchise or other similar governmental authorization, designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public.

READILY VISIBLE: An object that stands out as a prominent feature of the landscape when viewed with the naked eye.

RELATED EQUIPMENT: All equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

SATELLITE DISH: A telecommunications facility consisting of more than a single satellite dish smaller than eight (8) feet in diameter that transmits to and/or receives signals from an orbiting satellite. See Chapter 490 of the City of Fenton Zoning Code for additional regulations.

SILHOUETTE: A representation of the outline of the towers and antenna associated with a telecommunications facility, as seen from an elevation perspective.

STRUCTURE RIDGELINE: The line along the top of a roof or top of a structure, if it has no roof.

SUPPORT STRUCTURE: A tower or a disguised support structure.

TELECOMMUNICATIONS FACILITY: A facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns and other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting said equipment, equipment buildings, parking areas and other accessory development.

1. *Telecommunications facility—exempt:* An attached wireless communications facility consisting of, but not limited to, the following:

a. A single ground or building mounted receive-only radio or television antenna including any

mast, for the sole use of the tenant occupying a residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five (25) feet.

- b. A ground or building mounted citizens band radio antenna, including any mast, if the height (post and antenna) does not exceed thirty-five (35) feet.
- c. A ground, building or tower mounted antenna operated by a Federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five (35) feet.
- d. A ground or building mounted receive-only radio or television satellite dish antenna, which does not exceed twenty-four (24) inches in diameter, for the sole use of the resident or business occupying the parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
- e. All citizens band radio antenna or antenna operated by a Federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this Chapter (June 16, 1997).
- f. Mobile services providing public information coverage of news events of a temporary nature.
- g. Hand held devices such as cellular phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Director.
- h. City Government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, stormwater, pump stations and/or irrigation systems, with heights not exceeding thirty-five (35) feet.

If a facility does not meet the criteria, then it is considered either a "mini", "minor" or "major" telecommunications facility.

2. *Telecommunication facility-major*: All telecommunication facilities not clearly set forth and included on the definition of "exempt", "mini" or "minor" facilities.
3. *Telecommunications facility—mini*: An attached wireless communication facility consisting of, but not limited to, the following:
 - a. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located; with an antenna height not exceeding fifty (50) feet.
 - b. A ground or building mounted citizens band radio antenna including any mast, if the height (tower, support structure, post and antenna) does not exceed seventy (70) feet.
 - c. A ground, building or tower mounted antenna operated by a Federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed seventy (70) feet.
 - d. A ground or building mounted receive-only radio or television satellite dish antenna, with diameter exceeding thirty-six (36) inches, but less than eight (8) feet in diameter, for the sole use of the resident or business occupying the parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
 - e. City owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy (70) feet.

If a facility does not meet these criteria, then it is considered either an "exempt", "minor" or "major" telecommunications facility.

4. *Telecommunications facility—minor:* Any of the following:
 - a. Antenna and satellite dishes which meet the definition of "Mini" with the exception of the height limit.
 - b. Telecommunications facilities less than thirty-five (35) feet in height.
 - c. A single ground or building mounted whip (omni) antenna without a reflector, less than four (4) inches in diameter whose total height does not exceed thirty-five (35) feet; including any mast to which it is attached, located on commercial and/or industrial zoned property.
 - d. A ground or building mounted panel antenna whose height is equal to or less than four (4) feet and whose area is not more than four hundred eighty (480) square inches in the aggregate (e.g., one (1) foot diameter parabola or two (2) feet by one and one-half (1.5) foot panel) as viewed from any one (1) point, located on commercial or industrial zoned property. The equipment cabinets shall be designed, placed and screened to be unobtrusive and effectively unnoticeable.
 - e. More than three (3) antennas, satellite dishes (greater than three (3) feet in diameter), panel antennas, or combination thereof, are proposed to be placed on the commercial or industrial parcel, including existing facilities.
 - f. Building mounted antennas which, in the opinion of the Director, are unobtrusive or undetectable by the way of design and/or placement on the building, regardless of the number; when located on commercial or industrial zoned property.
 - g. Telecommunications facilities less than fifty (50) feet in height, in compliance with the applications Sections of this Chapter, located on a parcel owned by the City of Fenton and utilized for public and/or quasi-public uses where it is found by the Director to be compatible with the existing City uses of the property.
 - h. Telecommunications facilities, including multiple antennas, in compliance with the applicable Sections of this Chapter, located on an industrial parcel and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the Director to be aesthetically compatible with the existing and surrounding structures.

If a facility does not meet these criteria then it is considered a "Major" telecommunications facility.

5. *Telecommunications facility—co-located:* A telecommunications facility comprised of a single telecommunications tower or building supporting one (1) or more antennas, dishes or similar devices owned or used by more than one (1) public or private entity.
6. *Telecommunications facility—commercial:* A telecommunications facility that is operated primarily for a business purpose or purposes.
7. *Telecommunications facility—multiple user:* A telecommunications facility comprised of multiple telecommunications towers or buildings supporting one (1) or more antennas owned or used by more than one (1) public or private entity, excluding research and development industries with antennas to serve internal uses only.
8. *Telecommunications facility—non-commercial:* A telecommunications facility that is operated solely for a non-business purpose.

TELECOMMUNICATIONS TOWER: A mast, pole, monopole, guyed tower, lattice tower, free-standing tower or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten (10) feet tall and six (6) inches in diameter supporting one (1) or more antenna, dishes, arrays, etc., shall be considered a telecommunications tower. (R.O. 2006 §491.030; Ord. No. 2072 §1, 6-16-97)

SECTION 491.040: GENERAL REQUIREMENTS

- A. The provisions of this Chapter are subject to all City of Fenton building regulations and codes pertaining to building permits.
- B. The following requirements shall be met for all telecommunications facilities in any zoning district:
 - 1. An applicable General Plan Goals, Objectives, Programs and Policies, Specific Plan, PUD Standards, Design Guidelines and the permit requirements of any agencies which have jurisdiction over the project;
 - 2. All the requirements established by the other Chapters of the City of Fenton Municipal Code and City of Fenton Zoning Ordinance that are not in conflict with the requirements contained in this Chapter;
 - 3. The Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, where applicable;
 - 4. Any applicable airport land use compatibility criteria/policies and Federal Aviation Administration regulations;
 - 5. Any applicable easements or similar restrictions on the subject property, including adopted PUD Standards;
 - 6. Facilities and minor antennas cannot be located in any required yard setback area of the zoning district in which it is located with the exception of possible encroachment of the antenna array into airspace over said setback;
 - 7. All setbacks shall be measured from the base of the tower or structure closest to the applicable property line or structure;
 - 8. All commercial telecommunications facilities and minor antenna shall comply at all times with the FCC rules, regulations and standards.
 - 9. All telecommunications facilities shall maintain in place a security program that will prevent unauthorized access and vandalism. A description of proposed security measures shall be provided as part of any application to install, build or modify antennae or support structures and be subject to the review and approval of the Chief of Police.
 - 10. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
 - 11. All telecommunications carriers and providers engaged in the business of transmitting, supply or furnishing of telecommunications originating or terminating in the City of Fenton shall register with the City pursuant to Section 491.050 of this Chapter.
 - 12. Prior to the issuance of any permit to install, build or modify any tower, the tower owner shall furnish the Director an inventory of all of that owner's towers in or within one-half (½) mile of the City limits of Fenton. The inventory shall include the tower's reference name or number, the street

location, latitude and longitude, structure type, height, type and mounting height of existing antennas and an assessment of available ground space for the placement of additional equipment shelters. (R.O. 2006 §491.040; Ord. No. 2072 §1, 6-16-97)

SECTION 491.050: REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS

- A. *Registration Required.* All telecommunications carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City of Fenton, or outside the corporate limits from telecommunications facilities within the City, shall register with the City pursuant to this Chapter on forms to be provided by the Director, which shall include the following:
1. The identity and legal status of the registrant, including any affiliates.
 2. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
 3. A narrative and map description of registrant's existing or proposed telecommunications facilities within the City of Fenton.
 4. A description of the telecommunications services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
 5. Information sufficient to determine that the applicant has applied for and receiving any certificate of authority required by the Missouri Public Utility Commission to provide telecommunications services or facilities within the City.
 6. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission (FCC) to provide telecommunications services or facilities within the City.
 7. Such other information as the Director may reasonably require.
- B. *Registration Fee.* Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee as set forth by resolution of the City Board of Aldermen.
- C. *Purpose Of Registration.* The purpose of registration under this Section is to:
1. Provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate telecommunications facilities with the City;
 2. Assist the City in enforcement of this Chapter;
 3. Assist the City in the collection and enforcement of any license fees or charges that may be due the City; and
 4. Assist the City in monitoring compliance with local, State and Federal laws.
- D. *Amendment.* Each registration shall inform the City, within sixty (60) days of any change of the information set forth in Section 491.050. (R.O. 2006 §491.050; Ord. No. 2072 §1, 6-16-97)

SECTION 491.060: AGREEMENT

No approval granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the approval to occupy and use public ways of the City will be granted. (R.O. 2006 §491.060; Ord. No. 2072 §1, 6-16-97)

SECTION 491.070: NON-EXCLUSIVE GRANT

No approval granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes. (R.O. 2006 §491.070; Ord. No. 2072 §1, 6-16-97)

SECTION 491.080: RIGHTS GRANTED

No approval granted under this Chapter shall convey any right, title or interest in the public ways, but shall be deemed approval only to use and occupy the public ways for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title. (R.O. 2006 §491.080; Ord. No. 2072 §1, 6-16-97)

SECTION 491.085: EXEMPT TELECOMMUNICATION FACILITIES—BASIC REQUIREMENTS

Exempt telecommunication facilities defined in Section 491.030 of this Chapter may be installed, erected, maintained and/or operated in any residential zoning district for residential use, where such antennas are permitted under this Title, without benefit of a building permit or other entitlement process, so long as all the following conditions are met:

1. The antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;
2. In a residential zone, no more than one (1) support structure per licensed amateur radio operator or satellite dish twenty-four (24) inches or less in diameter is allowed per lot;
3. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury;
4. All applicants comply with St. Louis County Department of Public Works' regulations for electrical inspection permits. (R.O. 2006 §491.085; Ord. No. 2072 §1, 6-16-97)

SECTION 491.090: MINI TELECOMMUNICATION FACILITIES—BASIC REQUIREMENTS

Under the following conditions, mini telecommunication facilities defined in Section 491.030 of this Chapter may be installed, erected, maintained and/or operated in any residential, commercial or industrial zoning district where such antennas are permitted under this Title, upon the issuance of a building permit which has received site plan review and approval by the Director:

1. On a commercial or industrial lot, no more than three (3) antenna or one (1) satellite dish eight (8) feet or less in diameter; where adequate screening, at the discretion of the Director, is provided; and the telecommunications facilities are solely for the use of the project site tenants—location subject to the discretionary review and approval of the Director.
2. Replacement of pre-existing telecommunications facilities, installed under a prior approval under this Chapter which is being proposed for replacement by equipment of identical or a smaller size, at the discretion of the Director.
3. On a residential lot, no more than one (1) antenna or one (1) satellite dish (twenty-four (24) inches or

less in diameter for rooftop, eight (8) foot diameter for ground mounted) are proposed.

4. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury. (R.O. 2006 §491.090; Ord. No. 2072 §1, 6-16-97)

SECTION 491.100: MINOR AND MAJOR TELECOMMUNICATION FACILITIES—BASIC REQUIREMENTS

Minor and major telecommunication facilities as defined in Section 491.030 of this Chapter may be installed, erected, maintained and/or operated in any industrial zoning district where such antennas are permitted under this Title, upon the issuance of a building permit. Minor and major telecommunication facilities proposed for any commercial or residential zone districts shall first be permitted by issuance of a special use permit. The following conditions must be met:

1. The minor antenna use involved is accessory to the primary use of the property which is not a telecommunications facility.
2. The combined effective radiated power radiated by all the antenna on a minor facility present on the parcel is less than one thousand five hundred (1,500) watts.
3. The combined NIER levels produced by all the antenna present on the parcel does not exceed the NIER standard established in Section 491.280 of this Chapter.
4. The antenna is not situated between the primary building on the parcel and any public or private street adjoining the parcel, so as to create a negative visual impact.
5. The antenna is located outside all yard and street setbacks specified in the zoning district in which the antenna is to be located and no closer than ten (10) feet to any property line.
6. None of the guy wires employed are anchored within the area in front of the primary structure on the parcel.
7. No portion of the antenna array extends beyond the property lines or into the area in front of the primary building on the parcel, so as to create a negative visual impact.
8. At least ten (10) feet of horizontal clearance exists between the antenna and any power lines, unless more clearance is required to meet AmerenUE standards.
9. All towers, masts and booms are made of a non-combustible material and all hardware such as brackets, turnbuckles, clips and similar type equipment subject to rust or corrosion has been protected either by galvanizing or sheradizing after forming.
10. The materials employed are not unnecessarily bright, shiny or reflective and are of a color and type that blends with the surroundings to the greatest extent possible.
11. The installation is in compliance with the manufacturer's structural specifications and the requirements of the Uniform Building Code including Section 507. Exceptions include Table SD, Table 23–24 and Section 3602, as applicable.
12. The height of the facility shall include the height of any structure upon which it is placed, unless otherwise defined within this Chapter.
13. No more than two (2) satellite dishes are allowed on the parcel, one (1) of which may be over three (3) feet in diameter, but no larger than eight (8) feet in diameter, with adequate screening, at the discretion of the Director;

14. Any ground mounted satellite dish with a diameter greater than four (4) feet that is situated less than five (5) times its actual diameter from adjoining property lines has screening treatments located along the antenna's non-reception windows axes and low-level landscape treatments along its reception window axes; and
15. Any roof mounted panel antenna with a face area greater than three and one-half (3½) square feet shall be located so as to be effectively unnoticeable.
16. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
17. The facility is located more than seventy-five (75) feet from any residential dwelling unit, unless recognized as an exempt telecommunications facility as set forth in Section 491.030.
18. No trees larger than twenty (20) inches in diameter measured at four and one-half (4½) feet high on the tree would have to be removed;
19. Any new building(s), structure(s), control panel(s), etc., shall be effectively screened from view from off-site;
20. The site has an average cross slope of ten percent (10%) or less; and
21. All utility lines to the facility from public or private streets shall be underground.
22. The general criteria set forth in this Chapter are met. (R.O. 2006 §491.100; Ord. No. 2072 §1, 6-16-97)

SECTION 491.110: MINOR AND MAJOR TELECOMMUNICATION FACILITIES—REFERRAL

The Director shall refer proposals for minor or major telecommunication facilities proposed in any residential or commercial district to the Planning Commission for review. In such cases, the applicant shall follow the application procedures set forth in Section 491.120(D). (R.O. 2006 §491.110; Ord. No. 2072 §1, 6-16-97)

SECTION 491.120: TELECOMMUNICATIONS FACILITIES—MINIMUM APPLICATION REQUIREMENTS

The following are the minimum criteria applicable to all telecommunications facilities, except exempt facilities as defined in Section 491.030. In the event that a project is subject to discretionary and/or environmental review, mitigation measures or other conditions may also be necessary. All telecommunications facilities except exempt facilities shall comply with the following:

1. The Director shall establish and maintain a list of information that must accompany every application for the installation of a telecommunications facility. Said information may include, but shall not be limited to, a project description, completed supplemental project information forms, a specific maximum requested gross cross-sectional area, or silhouette of the facility, plans and exhibits, service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages, visual impact analysis, manufacturer's structural specifications, NIER (non-ionizing electromagnetic radiation) exposure studies, title reports identifying legal access, security considerations, detail of fencing and screening, lists of nearby telecommunications facilities known to the City, master plan for all related facilities within the City limits of Fenton and within one (1) mile therefrom; and facility design alternatives to the proposal and deposits for peer review,

if deemed necessary by the Director. The Director may release an applicant from having to provide one (1) or more of the pieces of information on this list upon a finding that in the specific case involved said information is not necessary to process or make a decision on the application being submitted.

2. Applications for building permits will involve receiving municipal zoning approval from the City of Fenton and shall be made on the appropriate forms to the Director and accompanied by payment of the established fee.
 - a. Five (5) sets of a detailed site plan, based on a metes and bounds survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, easements, public rights-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscaped areas, hydrologic features and the coordinates and height AGL of the existing or proposed tower.
 - b. The application shall be reviewed by the Director to determine compliance with the above standards and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.
 - c. Four (4) approved sets of plans are returned to the applicant to take to St. Louis County Department of Public Works for building permits.
3. The Director is explicitly authorized to recommend to the City of Fenton Board of Aldermen, an independent technical expert to review any technical materials submitted, including but not limited to, those required under this Section and in those cases where a technical demonstration of unavoidable need or unavailability of alternatives is required. The applicant shall pay all the costs of said review, including any administrative costs incurred by the City. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall not be disclosed to any third (3rd) party.
4. *Special use permit required.* All proposals to install, build or modify an antenna, tower or support structure in a commercial or residential zone district shall require the issuance of a special use permit following a duly advertised public hearing by the Planning and Zoning Commission.
 - a. Applications for special use permits shall be filed and processed subject to and in the manner and time frame as established in Section 420.020 of the Zoning Code. A recommendation by the Commission shall be accompanied by substantial evidence supporting the decision which shall be made a part of the written record of the meeting at which a final decision by the Board of Aldermen on the application will be rendered. Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others.
 - b. *Additional minimum requirements.* No special use permit shall be issued unless the applicant has clearly demonstrated by substantive evidence that placement of an antenna, tower or support structure is not technologically or economically feasible. The Planning and Zoning Commission may consider current or emerging industry standards and practices, among other information, in determining feasibility.
5. *Findings required.* In addition to the determinations or limitations specified hereby and by Section 420.020 for the consideration of special use permits, the Commission shall also base its decision upon, and shall make findings as to, the existence of the following conditions:
 - a. The proposed tower is not and cannot be located within a communications tower multi-use interest areas as designated by such map, or if so located, meets the co-location requirements of this Section.

- b. No existing towers, structures or buildings within the necessary geographic area for the applicant's tower meet the applicant's necessary engineering requirements considering:
 - (1) Height,
 - (2) Structural strength,
 - (3) Resulting signal interference,
 - (4) Feasibility of retrofitting,
 - (5) Feasibility of redesigning the applicant's tower network, or
 - (6) Other limiting conditions that render existing towers, structures or buildings within the applicant's required geographic area unsuitable.
- c. The design of the tower or structure, including the antennae, shelter and ground layout maximally reduces visual degradation and otherwise complies with provisions and intent of this Section. New towers shall be of a monopole design, unless it is shown that an alternative design would equally or better satisfy this provision.
- d. The proposal minimizes the number and/or size of towers or structures that will be required in this area.
- e. The applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Chapter or otherwise.
- f. No land owned by any agency of the Federal or State Government, or by any political subdivision of the State, is available for locating the structure or tower.

If any one, but not more than one (1), of the first (1st) six (6) determinations is not satisfied, approval may be granted only on a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of this Section.

6. *Additional limitations.*

- a. No tower shall be approved at a height exceeding one hundred (100) feet AGL unless the applicant clearly demonstrates that such height is required for proper function of the applicant's system or that of a public safety communications system of a governmental entity sharing the tower.
- b. If the City has by order agreed to participate in a multi-municipality commission to coordinate new tower or structure applications, an application made pursuant to this Section shall also be submitted to such commission simultaneous with the filing of the request with the City. The Planning and Zoning Commission may consider any comments from such commission but shall not allow a delay in receiving such comments to significantly delay a decision on the special use permit. (R.O. 2006 §491.120; Ord. No. 2072 §1, 6-16-97; Ord. No. 2699 §1, 11-15-04)

SECTION 491.130: TELECOMMUNICATIONS FACILITIES—STANDARD AGREEMENTS REQUIRED

- A. A maintenance/facility removal agreement signed by the applicant shall be submitted to the Director prior to approval of the use permit or other entitlement for use authorizing the establishment or modification of any telecommunications facility which includes a telecommunications tower, one (1) or more new

buildings/equipment enclosures larger in aggregate than three hundred (300) square feet, more than three (3) satellite dishes of any size or a satellite dish larger than four (4) feet in diameter. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately removal of the facility in compliance with the provisions of this Chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform. It shall also specifically authorize the City and/or its agents to enter onto the property and undertake said work so long as:

1. The Director has first provided the applicant the following written notices:
 - a. An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least forty-five (45) calendar days to complete it; and
 - b. A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the City's intent to commence the required work within ten (10) working days.
 2. The applicant has not filed an appeal pursuant to Section 491.340 within fourteen (14) working days of the notice required under Section 491.130(A)(1) above. If an appeal is filed, the City shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it is taken in favor of the City.
 3. All costs incurred by the City to undertake any work required to be performed by the applicant pursuant to the agreement referred to in Section 491.130 including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The applicant shall deposit within ten (10) working days of written request therefore such costs as the City reasonably estimates or has actually incurred to complete such work. When estimates are employed, additional monies shall be deposited as needed within ten (10) working days of demand to cover actual costs. The agreement shall specifically require the applicant to immediately cease operation of the telecommunications facility involved if the applicant fails to pay the monies demanded within ten (10) working days. It shall further require that operation remain suspended until such costs are paid in full.
- B. Standard agreement required by Section 491.130(A) shall be accompanied by the payment of a fee, as established by the Board of Aldermen, into a trust fund established to cover expenditures for the removal, screening, enhancement or similar activities relating to the existence of telecommunications facilities within the City.
- C. Standard agreement required by Section 491.130(A) shall include, but not be limited to, the following stipulations agreed to by the applicant:
1. Telecommunications facilities provider shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the City of Fenton. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, telecommunications facilities provider shall be responsible for any sanctions, fines or other monetary costs imposed as a result of the release of pollutants from their operations. "*Pollutants*" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic waves and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
 2. The telecommunications facility provider shall defend, indemnify and hold harmless the City or any of its boards, commissions, agents, officers and employees from any claim, action or proceeding against the City, its boards, commissions, agents, officers or employees to attack, set aside, void or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable State and/or local Statutes. The City shall promptly notify the provider(s) of any such claim, action or proceeding. The City shall have the option of coordinating in the

defense. Nothing contained in this stipulation shall prohibit the City from participating in a defense of any claim, action or proceeding if the City bears its own attorney's fees and costs and the City defends the action in good faith. (R.O. 2006 §491.130; Ord. No. 2072 §1, 6-16-97)

SECTION 491.140: TELECOMMUNICATIONS FACILITIES—LIFE OF PERMITS

- A. A special use permit issued pursuant to this Chapter or a site plan approval issued pursuant to this Chapter authorizing establishment of a telecommunications facility, except exempt telecommunication facilities as defined in Section 491.030, shall be reviewed at a minimum of every ten (10) years. Costs associated with the review process shall be borne by the telecommunications facility owner/provider. Grounds for revocation of the special use permit, pursuant to Section 420.020 of this Title, shall be limited to a finding that:
1. The use involved is no longer allowed in the applicable zoning district,
 2. The facility fails to comply with the relevant requirements of this Chapter as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Director that the facility will be brought into compliance within one hundred twenty (120) days,
 3. The permittee has failed to comply with the conditions-of-approval imposed,
 4. The facility has not been properly maintained, or
 5. The facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates. The grounds for appeal of issuance of a renewal shall be limited to a showing that one (1) or more of the situations listed above do in fact exist or that the notice required under Section 491.300 was not provided.
- B. If a use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing ten (10) years after it is issued or upon cessation of use for more than a year and a day, whichever comes first. Unless a new special use permit or entitlement of use is issued, within one hundred twenty (120) days thereafter all improvements installed, including their foundations down to three (3) feet below ground surface shall be removed from the property, and the site restored to its natural pre-construction state within one hundred eighty (180) days of non-renewal or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Director that these sections of road are necessary to serve some other allowed use of the property that is permitted or is currently present or to provide access to adjoining parcels. (R.O. 2006 §491.140; Ord. No. 2072 §1, 6-16-97)

SECTION 491.150: TELECOMMUNICATIONS FACILITIES—STRUCTURAL REQUIREMENTS

No telecommunications facility shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any telecommunications tower, except exempt facilities as defined in Section 491.030, located at a distance of less than one hundred ten percent (110%) of its height from a habitable structure, property line, or other tower shall be designed and maintained to withstand without failure the maximum forces expected from wind and earthquakes when the tower is fully loaded with antennas, transmitters and other equipment and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Building Official prepared by a structural engineer licensed by the State of Missouri describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the Director at least every

five (5) (self-supporting and guyed towers)/ten (10) (monopoles) years of an inspection report prepared by a Missouri-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Building Official may require repair of, or, if a serious safety problem exists, removal of the tower. (R.O. 2006 §491.150; Ord. No. 2072 §1, 6-16-97)

SECTION 491.160: TELECOMMUNICATIONS FACILITIES—BASIC TOWER AND BUILDING DESIGN

All telecommunications facilities, except exempt facilities as defined in Section 491.030, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:

1. Telecommunications towers shall be constructed out of galvanized steel, or other non-flammable material, unless specifically conditioned by the City to be otherwise.
2. Telecommunications towers taller than thirty-five (35) feet shall be monopoles or guyed/lattice towers, except where satisfactory evidence is submitted to the Director that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunications use to minimize the need for screening from adjacent properties or to reduce the potential for bird strikes.
3. Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Director as submitted showing that this is infeasible.
4. Telecommunications support facilities (i.e., vaults, equipment rooms, utilities and cabinets) shall have an exterior finish compatible with the natural or manmade environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located.
5. Telecommunications support facilities shall be no taller than one (1) story (fifteen (15) feet) in height and shall be treated to look like a building or facility typically found in the area.
6. Telecommunications support facilities in areas of high visibility shall, where possible, be sited below the ridgeline or designed (i.e., placed underground, depressed or located behind earth berms) to minimize their profile.
7. All buildings, poles, towers, antenna supports, antennas and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a "flat" paint. The color selected shall be one that in the opinion of the Director will minimize their visibility to the greatest extent feasible. To this end, improvements which will be primarily viewed against soils, trees or grasslands shall be painted colors matching these landscapes while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location.
8. The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility. The silhouette shall be measured from the "worst cast" elevation perspective.
9. The City shall have the authority to require special design of telecommunications facilities where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views and/or community features).
10. Telecommunications facilities shall ensure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
11. All towers shall be surrounded by a minimum six (6) foot high decorative wall constructed of brick,

stone or comparable masonry materials and a landscape strip of not less than ten (10) feet in width and planted with materials which will provide a visual barrier to a minimum height of six (6) feet. The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the Director. (R.O. 2006 §491.160; Ord. No. 2072 §1, 6-16-97)

SECTION 491.170: TELECOMMUNICATIONS FACILITIES—CRITICAL DISASTER RESPONSE FACILITIES

- A. All radio, television and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation. To this end all the following measures shall be implemented:
1. Non-flammable wall and roof covering shall be used in the construction of all buildings;
 2. Openings in all buildings shall be protected against penetration by fire and windblown embers;
 3. The telecommunications tower when fully loaded with antennas, transmitters, other equipment and camouflaging shall be designed to withstand the forces expected during an earthquake. All equipment mounting racks and equipment used shall be anchored in such a manner that such an earthquake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it;
 4. All connections between various components of the facility and with necessary power and telephone lines shall be protected against damage by fire, flooding and earthquake, and;
 5. Measures shall be taken to keep the facility in operation in the event of disaster.
- B. Demonstration of compliance with requirements Subsections (A)(1), (2), (4) and (5) (fire only) shall be evidenced by a certificate signed by the Fire Marshal of the Fenton Fire District on the building plans submitted.
- C. Demonstration of compliance with requirements Subsections (A)(3) through (5) (earthquake only) shall be provided via a second (2nd) certification on said plans signed by a structural engineer or other appropriate professional licensed by the State of Missouri. (R.O. 2006 §491.170; Ord. No. 2072 §1, 6-16-97)

SECTION 491.180: TELECOMMUNICATIONS FACILITIES—LOCATION

All telecommunications facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end, all of the following measures shall be implemented for all telecommunications facilities, except exempt facilities as defined in Section 491.030:

1. The attachment of additional or replacement of antennae or shelters to any towers existing on the effective date of this Chapter, June 16, 1997, or subsequently approved in accordance with these regulations, provided that additional equipment shelters or cabinets are located within the existing tower compound area.
 - a. The mounting of antennae on any existing building or structure such as a water tower, provided that the presence of the antennas is concealed by architectural elements or satisfactorily camouflaged by painting a color identical surface to which they are attached.
 - b. The mounting of antennae on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than ten (10) feet.

- c. The installation of antennae or the construction of a tower or support structure on buildings or land owned by the City following the approval of a lease agreement by the Board of Aldermen.
 - d. The attachment of additional or replacement antennae or shelters to any tower existing on the effective date of this Chapter, June 16, 1997, or subsequently approved in accordance with these regulations and requiring the enlargement of the existing tower compound are as long as all other requirements of this Section and the underlying zoning district are met.
 - e. The one-time replacement of any tower existing on the effective date of this Chapter, June 16, 1997, or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new tower shall be of the same type as the original except that a guyed or self-supporting (lattice) tower may be replaced by a monopole. If the guyed or lattice tower to be replaced is one hundred eighty (180) feet or less in height, it shall only be replaced with a monopole. (The height of the new tower may exceed that of the original by not more than twenty (20) feet.) Subsequent replacements shall require the approval of a special use permit.
 - f. The construction of a disguised support structure provided that all related equipment shall be placed underground or concealed within the structure when the structure is located in any district other than a district authorizing industrial uses. Equipment may be placed in a cabinet if the disguised support structure is incidental to an industrial, commercial, institutional or other non-residential use.
 - g. The placement of dual polar panel antennas on wooden or steel utility poles not to exceed forty (40) feet in height provided that all related equipment is contained in a cabinet.
 - h. Towers erected and maintained for a period not to exceed thirty (30) days for the purpose of replacing an existing tower, testing an existing or proposed network or special events requiring mobile towers.
2. No telecommunications facility shall be installed within the safety zone of any airport or any helipad, unless the airport owner/operator indicates that it will not adversely affect the operation of the airport or helipad;
 3. No telecommunications facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence acceptable to the Director is submitted showing that this is the only technically feasible location for this facility;
 4. No telecommunications facility shall be installed on an exposed ridgeline, in or at a location readily visible from Interstate 44, a public trail, public park, or other outdoor recreation area, or on property designated as a floodway, park or open space on the City of Fenton Comprehensive Plan, unless it blends with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable and a finding is made that no other location is technically feasible;
 5. No telecommunications facility that is readily visible from off-site shall be installed closer than one-half (½) mile from another readily visible uncamouflaged or unscreened telecommunications facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the Director is submitted showing a clear need for this facility and the infeasibility of co-locating it on one (1) of these former sites;
 6. No telecommunications facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunications facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and manmade environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the Director is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one (1) of these former sites; and

7. Telecommunications towers shall be set back at least twenty percent (20%) of the tower height from all property lines and at least one hundred (100) feet from any public trail, park or outdoor recreation area. Guy wire anchors shall be located on the same parcel as the tower, and meet the setbacks of the applicable zoning district.
8. The placement of advertising on telecommunications facilities is prohibited. (R.O. 2006 §491.180; Ord. No. 2072 §1, 6-16-97)

SECTION 491.190: TELECOMMUNICATIONS FACILITIES—HEIGHT DETERMINATION

The height of a telecommunications tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of "crank-up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised, or as stipulated by conditions with permit issuance. (R.O. 2006 §491.190; Ord. No. 2072 §1, 6-16-97)

SECTION 491.200: TELECOMMUNICATIONS FACILITIES—CO-LOCATED AND MULTIPLE-USER FACILITIES

A. *Analysis.*

1. An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision making body, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunications service. The intention of the alternatives analysis to present alternative strategies which would minimize the number, size, and adverse environmental impacts of the facilities necessary to provide the needed services to the City and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the decision making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The City may be required independent verification of this analysis at the applicant's expense.
2. Facilities which are not proposed to be co-located with another telecommunications facility shall provide a written explanation why the subject facility is not a candidate for co-location.

B. All co-located and multiple-user telecommunications facilities shall be designed to promote facility and site sharing. To this end telecommunications towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and equipment buildings shall be shared by site users when in the determination of the Director this will minimize overall visual impact to the community.

C. The facility shall make available unutilized space for co-location of other telecommunications facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing, and copies shall be provided to the City's and County's permit files. Unresolved disputes may be mediated by the Planning and Zoning Commission or the City Board of Aldermen. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it became necessary for the host to go off-line for a significant period of time.

- D. Approval for the establishment of facilities improved with an existing microwave band or other public service use or facility, which creates interference or interference is anticipated as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities. (R.O. 2006 §491.200; Ord. No. 2072 §1, 6-16-97)

SECTION 491.210: TELECOMMUNICATIONS FACILITIES—LIGHTING

All telecommunications facilities shall be unlit, except for the following:

1. A manually-operated or motion-detector controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night;
2. The minimum tower lighting required under FAA regulation, in which case a description of the required lighting scheme will be made a part of the application to install, build or modify the telecommunications facility; and
3. Where tower lighting is required, it shall be shielded or directed to the greatest extent possible in such a manner as to minimize the amount of light that falls into nearby properties, particularly residences. (R.O. 2006 §491.210; Ord. No. 2072 §1, 6-16-97)

SECTION 491.220: TELECOMMUNICATIONS FACILITIES—ROADS AND PARKING

All telecommunications facilities, except exempt facilities as defined in Section 491.030, shall be served by the minimum roads and parking areas necessary. To this end all the following measures shall be implemented:

1. Existing roads shall be used for access, whenever possible and be upgraded the minimum amount necessary to meet standards specified by the Fire Marshal and Director. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunications facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the Fire Marshal and Director;
2. Existing parking areas shall, whenever possible, be used; and
3. Any new parking areas constructed shall be no longer than three hundred fifty (350) square feet. (R.O. 2006 §491.220; Ord. No. 2072 §1, 6-16-97)

SECTION 491.230: TELECOMMUNICATIONS-FACILITIES—VEGETATION PROTECTION AND FACILITY SCREENING

All telecommunications facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all of the following measures shall be implemented for all telecommunications facilities, except exempt facilities as defined in Section 491.030:

1. A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility for adjacent land uses and public view areas. The landscape plan shall be subject to review and approval of the site plan and review process. All trees, larger than four (4) inches in diameter shall be identified in the landscape plan with indication of species type, diameter at four and one-half (4½) feet high and whether it is to be retained or removed

with project development;

2. Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunications line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:
 - a. A tree protection plan shall be submitted with the building permit or improvement plan. This plan shall give specific measures to protect trees during the project construction;
 - b. Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas to be protected and the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Director. Trash, debris or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the Director; and
 - c. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems;
3. All areas disturbed during project construction other than the access road and parking areas required under Section 491.220 shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Director;
4. Any existing trees or significant vegetation, on the facility's site or along the affected access area that die shall be replaced with native trees and vegetation of a size and species acceptable to the Director; and
5. No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunications lines serving it. (R.O. 2006 §491.230; Ord. No. 2072 §1, 6-16-97)

SECTION 491.240: TELECOMMUNICATIONS FACILITIES—FIRE PREVENTION

- A. All telecommunications facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. To this end, all of the following measures shall be implemented for all telecommunications facilities, when determined necessary by the Fire Marshal, except exempt facilities as defined in Section 491.030:
 1. At least one (1) hour fire-resistant interior surfaces shall be used in the construction of all buildings;
 2. Monitored automatic fire extinguishing systems approved by the Fire Marshal shall be installed in all equipment buildings and enclosures;
 3. Rapid entry systems shall be installed as required by the Fire Marshal;
 4. Type and location of vegetation and other materials within ten (10) feet of the facility and all new structures, including telecommunications towers, shall have review for the fire safety purposes by the Fire Marshal. Requirements established by the Fire Marshal shall be followed; and
 5. All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first.

- B. Demonstration of compliance with requirements in Subsection (A)(1) through (A)(5) shall be evidenced by a certificate signed by the Fire Marshal on the building plans submitted. (R.O. 2006 §491.240; Ord. No. 2072 §1, 6-16-97)

SECTION 491.250: TELECOMMUNICATIONS FACILITIES—ENVIRONMENTAL RESOURCE PROTECTION

All telecommunications facilities shall be sited so as to minimize the effect on environmental resources. To that end, the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 491.030:

1. No telecommunications facility or related improvements, including but not limited to, access roads and power lines shall be sited so as to create a significant threat to the health and survival of rare, threatened or endangered plant or animal species;
2. No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
3. No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;
4. The facility shall comply with all applicable City floodplain, floodway and storm drainage and erosion control regulations;
5. Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;
6. Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and
7. Drainage, erosion and sediment controls shall be required as necessary to prevent soil erosion and sedimentation of waterways. Structures and roads on slopes of ten percent (10%) or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over ten percent (10%). Natural vegetation and topography shall be retained to the extent feasible. (R.O. 2006 §491.250; Ord. No. 2072 §1, 6-16-97)

SECTION 491.260: TELECOMMUNICATIONS FACILITIES—NOISE AND TRAFFIC

All telecommunications facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. To that end, all the following measures shall be implemented for all telecommunications facilities, except exempt facilities as defined in Section 491.030:

1. Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 7:30 A.M. and 4:30 P.M., unless allowed at other times by the Director;
2. Backup generators shall only be operated during power outages and for testing and maintenance purposes. If the facility is located within one hundred (100) feet of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least an Ldn of 60 dB at the property line, and an interior noise level of an Ldn of 45 dB. Testing and maintenance shall only take place on weekdays between the hours of 8:30 A.M. and 4:30 P.M.; and

3. Traffic, at all times, shall be kept to an absolute minimum, but in no case more than two (2) round trips per day on an average annualized basis once construction is complete. On-site parking for periodic maintenance and service shall be provided to all antenna or tower location consistent with the underlying zoning district.
4. Vehicle or outdoor storage on any tower site is prohibited, unless otherwise permitted in the zoning district. (R.O. 2006 §491.260; Ord. No. 2072 §1, 6-16-97)

SECTION 491.270: TELECOMMUNICATIONS FACILITIES—VISUAL COMPATIBILITY

- A. Facility structures and equipment shall be located, designed and screened to blend with the existing natural or building surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunications service and the need to be compatible with the neighboring residences and the character of the community.
- B. The facility is designed to blend with any existing supporting structure and does not substantially alter the character of the structure or local area.
- C. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and
- D. A visual analysis, which may include photo montage, field mock up or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Director. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunications facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunications service. All costs for the visual analysis and applicable administrative costs shall be borne by the applicant. (R.O. 2006 §491.270; Ord. No. 2072 §1, 6-16-97)

SECTION 491.280: TELECOMMUNICATIONS FACILITIES—NIER EXPOSURE

- A. No telecommunications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no telecommunications facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in Section 491.030 that exceed the ANSI (American National Standards Institute) C95.1-1992 Standard for human exposure or any more restrictive standard subsequently adopted or promulgated by the City, St. Louis County, the State of Missouri, or the Federal Government.
- B. Initial compliance with this requirement shall be demonstrated for any facility within four hundred (400) feet of residential users or sensitive receptors such as schools, churches, hospitals, etc., and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, of NIER (Non-ionizing Electromagnetic Radiation calculations) specifying NIER levels in the inhabited area where the levels produced are projected to be highest. If these calculated NIER levels exceed eighty percent (80%) of the NIER standard established by this Section, the applicant shall hire a qualified electrical engineer licensed by the State of Missouri to measure NIER levels at said location after the facility is in operation. A report of these measurements and findings with respect to compliance with the established NIER standard shall be submitted to the Director. Said facility shall not commence normal operations until it complies with, or has been modified, to comply with this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

- C. Every telecommunications facility within four hundred (400) feet of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with the NIER standard established by this Section. Every five (5) years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Director. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to the highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed eighty percent (80%) of the standard established by this Section, the operator of the facility shall hire a qualified electrical engineer licensed by the State of Missouri to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the findings with respect to compliance with the current NIER standard shall be submitted to the Director within five (5) years of facility approval and every five (5) years thereafter. In the case of a change in the standard, the required report shall be submitted within ninety (90) days of the date said change becomes effective.
- D. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by this Section shall be grounds for revocation of the use permit or other entitlement. (R.O. 2006 §491.280; Ord. No. 2072 §1, 6-16-97)

SECTION 491.290: TELECOMMUNICATIONS FACILITIES—EXCEPTIONS

- A. Exceptions to the requirements specified within this Chapter may be recommended as conditions by the Planning and Zoning Commission for issuance of a special use permit by the Board of Aldermen. Such recommendation may only occur if the Planning and Zoning Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.
- B. An exception to the requirements of Sections 491.170 and 491.240 may only be granted upon written concurrence by the Fire Marshal.
- C. Tower setback requirements may be waived under any of the following circumstances:
 - 1. The facility is proposed to be co-located onto an existing, legally-established telecommunications tower; and
 - 2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible. (R.O. 2006 §491.290; Ord. No. 2072 §1, 6-16-97)

SECTION 491.300: TELECOMMUNICATIONS FACILITIES—PUBLIC NOTICE

The Director shall cause public notice of such hearing to be given, as set out in Section 420.020(B) of this Title.

Any party seeking shared use of a tower subject to this provision shall after responding to notice of an application, negotiate with the applicant for such use. The applicant may on a legitimate and reasonable business basis choose between multiple requests for shared use on the same tower or structure, and may reject any request where legitimate technical obstacles cannot be reasonably overcome or where the party requesting shared use will not agree to reasonable financial terms. Any party believing that the applicant has breached its duty to negotiate in good faith for shared use shall immediately notify the applicant and the Director in writing. The Director may reject the application upon a finding that shared use has been improperly denied. A notice of breach of duty shall explain the precise basis for the claim and shall be accompanied by payment of an administrative review fee of five hundred dollars (\$500.00) to the City to offset the cost of review. After the applicant's receipt of the notice, the applicant shall have ten (10) calendar days to provide a written submission to the Director responding to the alleged violation of the

shared use requirement. If deemed necessary by the Director, he/she may engage, at the cost of the party alleging the violation, a neutral, qualified technical consultant to provide an opinion on feasibility or costs of the shared use request. If the Director receives a notice alleging a violation of the shared use requirement, the time for a decision on a building permit is automatically extended for up to thirty (30) days until the Director has determined that the applicant has complied. An application for a special use permit shall not be deemed complete for acceptance until a decision on compliance is reached. (R.O. 2006 §491.300; Ord. No. 2072 §1, 6-16-97)

SECTION 491.310: OBSOLETE TOWER STRUCTURES

Any upper portion of a tower which is not occupied by active antennae for a period of twelve (12) months and any entire tower which is not so occupied for a period of six (6) months, shall be removed at the owner's expense. Removal of upper portions of a tower manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the tower or property owner's expense. (R.O. 2006 §491.310; Ord. No. 2072 §1, 6-16-97)

SECTION 491.320: COMMERCIAL OPERATION OF UNLAWFUL TOWER OR ANTENNAE

Notwithstanding any right that may exist for a governmental entity to operate or construct a tower or structure, it shall be unlawful for any person to erect or operate for any private commercial purpose any new antenna, tower or disguised support structure in violation of any provision of this Chapter, regardless of whether such antenna or structure is located on land owned by a governmental entity. (R.O. 2006 §491.320; Ord. No. 2072 §1, 6-16-97)

SECTION 491.330: VIOLATIONS AND PENALTIES

- A. Any person violating any provisions of this Chapter shall be subject to a fine of not more than five hundred dollars (\$500.00) or ninety (90) days in Jail, or both. Each day the violation continues shall constitute a separate offense.
- B. Any corporation violating any provisions of this Chapter shall be subject to a fine of not more than five hundred dollars (\$500.00). Each day the violation continues shall constitute a separate offense. (R.O. 2006 §491.330; Ord. No. 2072 §1, 6-16-97)

SECTION 491.340: APPEAL

- A. Any person who disagrees with a ruling or interpretation of the Director regarding this Chapter may appeal the matter to the Board of Adjustment. Such appeal shall be made in writing and filed at the Community Development Department within thirty (30) calendar days of the ruling or interpretation. The Director will then transmit the appeal request to the Board of Adjustment by placing it on the agenda for the next meeting of the Board of Adjustment. If no appeal is made within that time, the ruling or interpretation shall be final. The appeal shall be addressed to the Chairperson of the Board of Adjustment and shall set forth in writing the grounds for the appeal and the relief sought by the appellant. The hearing shall be scheduled within sixty (60) days, or two (2) regularly scheduled meetings. The Director shall cause public notice of such hearing to be given, as set out in Section 420.020(B) of this Title. The Director shall transmit the application and all exhibits therewith to the Board of Adjustment for consideration.
- B. For the purposes of this Section, a ruling is a discretionary action, whereas an interpretation refers to the determination of the intent and application of provisions of this Chapter. Application or enforcement of provisions of this Chapter shall not be considered interpretations or rulings and are not subject to appeal.

Notwithstanding this Section, an individual may file for an exception from the provisions of this Chapter pursuant to Section 491.290 of this Chapter. (R.O. 2006 §491.340; Ord. No. 2072 §1, 6-16-97)

SECTION 491.350: STATUTORY SEVERABILITY

If any Section, Subsection, sentence, clause or phrase or word of this Chapter is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Aldermen of the City of Fenton hereby declares that it would have passed and adopted this Chapter and each and all provisions thereof irrespective of the fact that any one (1) or more of said provisions be declared unconstitutional. (R.O. 2006 §491.350; Ord. No. 2072 §1, 6-16-97)

PERFORMANCE BOND

BOND NO. _____

SITE NO. _____

KNOW ALL BY THESE PRESENTS, That we _____, as Principal, hereinafter called Principal, and _____, as Surety, hereinafter called Surety, are held and firmly bound unto **City of Fenton, MO**, as Obligee, hereinafter called Obligee, in the amount of **Fifteen Thousand and 00/100 Dollars (\$15,000.00)**, for the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract dated _____ for the facility located at: _____, which contract is by reference made a part hereof, and

WHEREAS, as a condition of said contract requires Principal to provide a Bond guaranteeing the removal, screening, enhancement or similar activities relating to the telecommunications facilities at said location.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if Principal guarantee the removal, screening, enhancement or similar activities relating to the telecommunications facilities in accordance with said contract, then this obligation is void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, That:

- 1, That no right of action shall accrue under this bond to or for the use of a person or entity other than the Obligee and its successors and assigns.
2. This bond shall become effective _____
3. The liability of this bond shall in no event exceed the penal sum of this bond.
4. If any conflict or inconsistency exists between the Surety's obligation or undertakings as described in this bond and those described in any related underlying documents, then the terms of this bond shall prevail.
5. This bond shall not bind the surety unless the bond is accepted by the Obligee. Obligee's acknowledgement and acceptance of such bond is demonstrated by signing where indicated below and returning a copy of signed bond to the surety at the

address listed below. If this obligation is not accepted by way of signature of the Obligee below, this bond shall be deemed null and void.

IN WITNESS WHEREOF, The said Principal and Surety have signed and sealed this instrument on this _____.

BY:

BY:
Attorney-In-Fact

The above terms and conditions of this bond have been reviewed and accepted by the City of Fenton

Acknowledged and accepted by: City of Fenton(Obligee)

BY: _____

Dated: _____

EXAMPLE BOND