

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF GARDNER, KANSAS BY AMENDING THE SECTIONS OF TITLE 17 OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the City of Gardner, Kansas initiated changes to Sections of Title 17 entitled "Land Development Code", by action of the Planning Commission on the 25th day of October, 2016, and on the 28th day of March, 2017; and

WHEREAS, a public hearing on the herein changes to the Land Development Code was properly noticed and held before the Planning Commission of the City of Gardner, Kansas, on the 20th day of December, 2016 and the 26th day of February, 2017, and the 28th day of March, 2017, and the 25th day of April, 2017; and

WHEREAS, said Planning Commission has recommended that the herein amendments to the Land Development Code of the City of Gardner, Kansas be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

Section 1: Title 17 of the Code of the City of Gardner Kansas, 2016, shall be amended to read as follows:

CHAPTER 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.020 Platting, Subsection E

E. **Final Plat.** After approval of the preliminary plat, the applicant may submit a final plat for all or portions of the preliminary plat area. A final plat shall be processed according to the following criteria and specific procedures in addition to those identified in Table 3-1 and applicable in GMC 17.03.010:

1. *Review Criteria.* A final plat shall be reviewed according to the following criteria:
 - a. The layout and design of the final plat is in substantial compliance with the approved preliminary plat considering the number of lots or parcels; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments.
 - b. The construction plans for any utilities, infrastructure or public facilities shall have been found to meet all technical specifications, or final plat approval shall be conditioned on such plans meeting all technical specifications, before the recording of the final plat.
 - c. The phasing and timing of public improvements ensures construction and performance guarantees.
 - d. Any deviations in the final plat from the preliminary plat brings the application in further compliance with the Comprehensive Plan and the purposes and intent of this Code.
 - e. The recommendations of professional staff, or any other public entity asked to officially review the plat.
2. *Planning Commission Review.* If the Planning Commission approves or conditionally approves the final plat, the plat shall be forwarded to the Governing Body with a recommendation that they accept dedication of land for public purposes such as easements, rights-of-way and public facilities.
3. *Dedication of Land.* The Governing Body shall accept or reject the dedication of land for public purposes within 30 days after the first meeting of the Governing Body following submission of the recommendation of the Planning Commission. The Governing Body may defer action for an additional 30 days for allowing modifications to comply with the requirements established by the

Governing Body. If the Governing Body defers or rejects such dedication, it shall advise the applicant and Planning Commission of the reasons and specify the nature of the noncompliance.

4. *Effect of Decision.* The approval of the final plat; acceptance of the dedication of land for public purposes; finding that the construction plans for any utilities, infrastructure or public facilities meets all City technical specifications; and payment of the excise tax if applicable, authorizes the filing of the plat with the Johnson County Records and Tax Administration. Any approval with conditions or exceptions to the rules shall be clearly stated on the plat. Any plat not recorded within two years from the date of acceptance of land by the Governing Body shall be null and void. Upon approval of the final plat, dedications, and construction plans and recording of the plat, the applicant may proceed with the construction of required improvements. No building permit shall be authorized until the completion, inspection and acceptance of all required improvements.

CHAPTER 17.05 ZONING DISTRICTS & USE STANDARDS, Section 17.05.020 General Zoning Standards, Subsection C

C. **Accessory Buildings.** Accessory buildings shall be permitted in association with and on the same lot as a principal building, and are subject to the following additional limitations.

1. *Generally.* All accessory buildings shall be at least 10 feet from the principal building.
2. *Small Sheds.* Accessory buildings 120 square feet or less and less than 10 feet tall shall be limited to one per lot, located behind the rear building line of the principal building, and be no closer than five feet from the rear or side property line.
3. *Detached Building.* Accessory buildings over 120 square feet shall meet the following:
 - a. No more than one per lot.
 - b. Located behind the front building line.
 - c. Be at least five feet from the rear or side lot line, except that any accessory building providing garage access off a rear alley may be located within three feet of the rear lot line.
 - d. Be no more than one and one-half stories (25 feet), or no higher than the principal building, whichever is less.
 - e. Shall not exceed 30 percent building coverage within the required rear yard, alone or in combination with other accessory buildings, except that any accessory building providing garage access off a rear alley shall not exceed 50 percent building coverage within the required rear yard, alone or in combination with other accessory buildings.
 - f. Shall not exceed 250 square feet for each 3,000 square feet of lot area up to a maximum of 1,200 square feet.
 - g. Be constructed with materials, architectural details and style, and roof forms that are compatible with the principal structure. Any accessory building larger than 120 square feet not meeting this criteria shall meet the setback requirements for the principal structure.
4. *A and RE District.* In the A and RE districts, lots used primarily for residential purposes may have one additional accessory building up to 1,200 square feet and up to 20 feet high, provided it is located behind the rear building line and at least 10 feet from any lot line. However, any intended uses or activities of the accessory building may require greater setbacks subject to other use or performance standards.
5. *Agriculture Buildings.* In the A district, accessory buildings for property used primarily for agriculture purposes are not limited by this Code.

CHAPTER 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.040 Accessory Uses, Subsection C

- C. Accessory Home Occupation.** Where home occupations are permitted as an accessory use to a residence subject to additional standards (as indicated in Table 5-2), the use shall be approved by the Business and Economic Development Director or designee upon review of a plot plan, site plan and/or floor plan in accordance with the following standards:
1. Home occupations shall be entirely contained within the interior of a structure. A home occupation shall use no more than 20 percent of the total dwelling unit floor area.
 2. No visible evidence of the business shall be apparent from the street or surrounding area. Signage shall be permitted per the requirements of Chapter 17.10 GMC. There shall be no outdoor storage or display of products, equipment, or merchandise other than of a type and quantity characteristically found at a single residential dwelling. The appearance of a dwelling shall not be altered to the extent that attention is drawn to the structure as a commercial or business operation.
 3. The following uses are prohibited as home occupations in all districts:
 - a. Food and beverage service;
 - b. Retail operations (does not include mail order businesses);
 - c. Vehicle/equipment service and repair (including parts) or machine shop;
 - d. Gymnastics, dance, or recording studios and similar uses;
 - e. Mortuaries.
 4. No traffic shall be generated by any home occupation in substantially greater volume than would normally be expected in a residential neighborhood. No vehicle or delivery truck shall block or interfere with normal traffic circulation. If parking for a home occupation occurs in a manner or frequency causing disturbance to the normal traffic flow for the neighborhood, the occupation shall be considered a business best handled in a commercial district rather than as a home occupation.
 5. No more than six clients or 2 employees shall visit per day, and only between 8:00 am and 8:00 pm.
 6. A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration, glare or bright lighting which would be over and above that created by a single residential dwelling. The production, dumping, or storage of combustible or toxic substances shall not be permitted on-site; and no materials which are radioactive, poisonous, or corrosive shall be discharged into any sewer, drainage way, water body, or the ground. Additionally, a home occupation shall not cause electrical or communications interference. If any home occupation presents a safety hazard to the public or adjacent or nearby properties, it shall be rendered safe upon notice or terminated.
 7. The application shall include a signed affidavit from the business owner/resident pledging continued compliance with all standards.

CHAPTER 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.030 General Use Standards, a portion of Table 5-2: Use Table

Table 5-2: Use Table																
	Residential Districts								Nonresidential Districts							
	A	RE	R-1	R-2	R-3	R-4	R-5	RM-P	C-O	CO-A	C-1	C-2	C-3	M-1	M-2	REC
Service and Employment																
Food and Beverage – Mobile	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*	T*

CHAPTER 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.050 Specific Use Standards, Subsection P

P. **Food and Beverage – Mobile.** Where Food and Beverage – Mobile uses are permitted as a temporary use subject to additional standards (as indicated in Table 5-2), all of the following standards shall be met in addition to the standards of Section 17.05.050 (Y) pertaining to temporary uses (this section does not apply to special events, seasonal stationary product sales, or transient merchants using public streets who do not park at one location):

1. Standards applicable to all Food and Beverage – Mobile uses:
 - a. Shall provide appropriate waste receptacles at the site of the unit and remove all litter, debris, and other waste attributable to the vendor on a daily basis.
 - b. Shall comply with all other applicable federal, state, county and City regulations and obtain all applicable permits or licenses.
 - c. Shall not be located within the sight triangle as prescribed in Section 17.04.010 (D).
 - d. Shall be located at least 10 feet from building entrances.
 - e. Shall only be located on properties that contain permitted non-residential uses in all districts, or on vacant properties that contain approved access and parking surface improvements.
 - f. Shall provide evidence of property-owner approval.
 - g. Shall be limited to intermittent, not continuous or permanent, operation at any one location per calendar year.
 - h. Shall be permitted per location on an annual basis (permit duration is one calendar year).
 - i. Shall be limited to one unit per lot except as provided below.
2. Standards applicable to Vending Carts:
 - a. Shall meet all requirements for accessory outdoor food and beverage service except that it need not be associated with the adjacent business.
 - b. Vending carts shall be limited to a maximum size of 40 square feet in area and shall not exceed a maximum height of 10 feet.
 - c. All vending carts shall be securely anchored while in use, but shall have wheels to enable removal in case of emergency.

3. Standards applicable to Mobile Food Vending Unit. (i.e. Food Trucks / Trailers):

a. Standards applicable to all Mobile Food Vending Units:

- (1) All food shall be prepared, sold, or displayed inside of a mobile food vending unit or on equipment directly associated with the mobile food vending unit.
- (2) There shall be no dining area within 10 feet of a mobile food vending unit, including but not limited to tables and chairs, booths, stools, benches, and stand up counters.
- (3) When extended, awnings for mobile food vending units shall have a minimum clearance of seven feet between the ground level and the lowest point of the awning or support structure.
- (4) Besides signage that is physically part of the mobile food vending units, only one portable pedestrian sign is allowed in accordance with Chapter 17.10 GMC.
- (5) Shall not use any flashing or blinking lights or strobe lights; all exterior lights over 60-watt equivalent shall contain opaque, hooded shields to direct illumination downwards.
- (6) Shall not use loud music, amplification devices, or "crying out" or any other audible methods to gain attention which causes a disruption or safety hazard as determined by the Code Inspection Officer.
- (7) Shall be parked at least 25 feet from driveways at all times.

b. Standards applicable to Mobile Food Vending Units located on public property:

- (1) The customer service area for mobile food vending units shall be on the side of the street that faces a curb, lawn, or sidewalk when parked. No food service shall be provided on the driving lane side of the truck or vehicle.
- (2) Mobile food vending units parked on public streets shall conform to all applicable parking regulations and shall not hinder the lawful parking or operation of other vehicles.
- (3) Mobile food vending units utilizing public parking spaces shall be parked in conformance with all applicable parking restrictions, and shall not hinder the lawful parking or operation of other vehicles.
- (4) Shall not operate on public property within one block of a City-sanctioned or authorized street fair, public festival, farmer's market or event without authorization from the event sponsor.
- (5) Any required power on City-controlled property shall be self-contained and shall not use utilities drawn from the City-controlled property without City approval.

c. Standards applicable to Mobile Food Vending Units located on private property:

- (1) Any required power on private property shall be negotiated with the property owner, however power cables or similar devices shall not be run across any City street, alley, or pedestrian facilities.

d. Standards applicable to Mobile Food Vending groupings (i.e. Food Truck Courts, Food Truck Rallies):

- (1) There shall be a 20' separation between any mobile food vending unit and any permanent structure.

- (2) There shall be a 10' separation between mobile food vending units.
- (3) A fire lane shall be maintained.

CHAPTER 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.050 Specific Use Standards, Subsection Z (renumbered to reflect changes to Subsection W)

Y. **Temporary Use.** Where temporary uses are permitted (as indicated in Table 5-2), all of the following standards shall be met:

1. A temporary use meeting the standards of this section shall be permitted by the Business and Economic Development Director or designee upon review of a plot plan or site plan in accordance with standards.
2. The temporary use shall be comparable in scale, impact and type of use to an otherwise allowed use in the district.
3. All temporary structures shall meet the required minimum setback for the building type located on the property, or (in the case of vacant property) the required minimum setback for one of the permitted building types in that zoning district.
4. No portion of the temporary use, or accessory activities associated with the temporary use, shall be located within 30 feet of the property line of an existing residence or a residentially zoned district.
5. The use, considering expected attendance, duration, hours of operation, and peak times, shall not create any traffic problems considering access to the site, parking on the site or on adjacent streets, or travel patterns on surrounding streets.
6. The hours of operation shall be between 7:00 am and midnight, except as may be further limited through administrative review based on the specific use and the context of the proposed location.
7. Any use where typical visits are longer than two hours, or an event where a significant component is on-site consumption of food and beverages, shall provide adequate sanitary facilities. Such facilities shall generally be based on one station per 100 persons expected in a peak hour.
8. The duration of the event shall be limited as follows (does not apply to Food and Beverage – Mobile uses):
 - a. Special events – no more than seven days.
 - b. General merchandise sales or services – no more than seven days.
 - c. Seasonal sales – no more than 90 days.
 - d. Or other appropriate administrative limitation based on the specific use and context of the proposed location.
9. All necessary permits for facilities, public safety, or insurance shall be obtained prior to the final approval and activation of the use.
10. All materials, equipment and temporary structures shall be removed upon the discontinuance of the use, and the site otherwise restored to its pre-use condition.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.010 General – All Applications, Subsection D

D. **Staff Review.** Upon receipt of an application, the Director shall take the following steps:

1. Determine if the application is complete within seven days of filing. If the Director determines that it is incomplete, the Director shall notify the applicant of the specific ways in which the application is deficient and no further processing of the application shall occur until the deficiencies are corrected. If the application is not completed within 30 days of the notice, the incomplete application is deemed rejected.
2. Schedule complete applications for further review according to these regulations.
 - a. Applications that require a public hearing shall be scheduled for initial review within 60 days of a determination of a complete application.
 - b. Applications that do not require a hearing but an official public meeting shall be scheduled for review within 30 days of a determination of a complete application or the recommendation from another required review body.

In the event that the next regular meeting of the review body is beyond these time periods, or the required notice cannot be given within these time periods, the application shall be scheduled for the closest available meeting.

3. Prepare a staff report that reviews the application in light of the appropriate policies, plans and regulations. The Director shall provide a copy of the report to the review body and the applicant before the scheduled meeting.
4. Notwithstanding the above, applications for communication facilities shall follow the process contained in and be subject to the provisions, definitions and requirements of Chapter 17.11 GMC.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.010 General – All Applications, Subsection G

G. **Action by Review Bodies.** Review bodies shall take the actions indicated in Table 3-1. A review body may take any action on the application consistent with notice given or criteria in this chapter, regardless of the presence of the applicant, including the following (or recommend the following when the review body is a recommending body):

1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.
3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.
5. Notwithstanding the above, actions by review bodies on applications for communication facilities shall follow the process and applicable timeframes contained in Chapter 17.11 GMC.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.010 General – All Applications, Subsection H

- H. **Appeals.** Where a review body is designated as the appellate body in Table 3-1, the following appeal procedures apply:
1. Appeals shall be filed with the Director within seven days of the decision by the decision-making review body; provided that, this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).
 2. The following persons and entities shall have standing to appeal the action of the review body: the applicant; the Director, on behalf of any public official, department or agency; any owner of land directly impacted by the action or proposed action; and any person given the right of appeal by law.
 3. The review body designated as the appellate body shall consider the application as a new matter, and within 60 days of the date that the appeal was filed may take any action authorized by the decision-making review body. The procedure and required notice shall be the same as required of the original application.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.010 General – All Applications, Subsection I

- I. **Technical Studies.** The Director, on behalf of any public official, department, or agency, the Planning Commission or the Governing Body may require applicants for development or permit approval to submit technical studies as may be necessary to evaluate the application. Technical review by outside entities with expertise or jurisdiction over some aspects of the application may be required in place of, in addition to, or in association with any studies. Examples of technical studies that may be required include traffic studies, engineering studies, geologic or hydrologic studies, environmental impact assessments, noise studies, market studies or economic impacts. The persons or firms preparing the studies shall be subject to the approval of the Director. The costs of all studies shall be borne by the applicant. Any application that is determined to require technical studies or review from entities outside of the City may require special schedules based on the reasonable time frames to conduct those studies or additional reviews. Technical studies reasonably required for applications for communication facilities for wireless services shall be subject to the applicable provisions of state and federal law and regulations, and shall be processed within the applicable timeframes and tolling provisions set forth in GMC 17.11.040.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.050 Conditional Use Permit, Subsection C

- C. **Effect of Decision.** Approval of a conditional use permit by the Governing Body shall authorize the applicant to apply for a building permit, and other applicable permits. Approval shall be valid for two years, and the Governing Body may grant a one-year extension; provided that, approvals for communication facilities for wireless services shall be for a term of not less than 10 years. Any application not acted upon according to the approval and conditions within this time period shall be void. Any amendment to a conditional use permit shall require the same process as the original approval.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.060 Site plan and Design Review, Subsection A

- A. **Applicability.** The site plan and design review process is a way to coordinate development projects within the public realm and with adjacent sites, and specifically to demonstrate how new projects meet the development and design standards of this Code for compatible arrangement of buildings, pedestrian and vehicle access, lighting and landscaping. Site plans may be initiated by the owners or authorized agents of any property affected. In addition to the general requirements in Table 3-1 and

GMC 17.03.010, the following requirements are specific to site plan and design review applications. The site plan and design review process specifically applies to:

1. Any new building, except detached houses and duplexes.
2. Any expansion to an existing building footprint by more than 15 percent, except detached houses and duplexes.
3. Any site development activity which expands the impervious surface by more than 25 percent of existing impervious surface on the lot.
4. Any changes to the site access and circulation which present a significant change impacting the design of the public realm or traffic conditions near the site.
5. Communications Facilities for Wireless Services:
 - a. The modification of an existing tower or base station that incurs a substantial change as described in GMC 17.11.020.
 - b. Any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as described in GMC 17.11.020.

Chapter 17.03 APPLICATIONS AND PROCEDURES, Section 17.03.070 Administrative Site Plan, Subsection A

A. **Applicability.** The administrative site plan process is a way to ensure that routine development projects meet the development and design standards of this Code, and all other standards applicable to the property. Administrative site plans may be initiated by the owners or authorized agents of any property affected. In addition to the general requirements in Table 3-1 and GMC 17.03.010, the following requirements are specific to administrative site plan applications. The administrative site plan process does not apply to detached houses or duplexes, but applies to all other buildings and sites subject to the following:

1. Structural alterations to an existing building that do not change the footprint.
2. Any expansion to an existing building footprint by 15 percent or less.
3. Any change or intensification of use which alters access and parking requirements of this Code.
4. Any site development activity which expands the existing impervious surface 25 percent or less.
5. Minor changes to the site access and circulation which do not present a significant change impacting the design of the public realm or traffic conditions near the site.
6. Significant exterior design alterations to an existing building that do not change the footprint. This excludes ordinary maintenance, but may include things such as refacing or changing exterior materials, altering the composition of the facade by changing patterns of windows and doors, changing architectural details and ornamentation.
7. Communications Facilities for Wireless Services:
 - a. The modification of an existing tower or base station that does not incur a substantial change or that otherwise qualifies as an eligible facilities request as described in GMC 17.11.020.
 - b. New antenna (including small cell/DAS facilities) on an existing tower, base station, utility pole, or street light; or replacement of a tower, utility pole or street light that does not constitute a substantial change. Provided that, a new tower or utility pole for small cell/DAS facilities in

Communication facilities designed as an architecturally compatible element mounted or collocated on non-residential buildings	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*
Communication facilities designed as an architecturally compatible element mounted or collocated on mixed use or live/work buildings						A*	A*		A*	A*	A*					
New tower (not in the public rights-of-way)	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*
Modification of an existing tower or base station that does not incur a substantial change to the tower or base station or that otherwise qualifies as an eligible facilities request	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Wind Energy Conversion System - Small	C*	C*				C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*
Wind Energy Conversion System - Large	C*														C*	C*
Solar Collector – Roof Mounted	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*
Solar Collector – Ground Mounted	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*

Chapter 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.030 General Use Standards, portion of Subsection B Description of Uses pertaining to Communications and Utilities (description for Wireless Communication Antenna revised to Communication Facilities for Wireless Services)

B. Description of Uses. This section contains general descriptions associated with the use of land and buildings organized by categories and types, and enabled by zoning districts in Table 5-2. Where a proposed use is not generally listed or appears to meet the description of more than one use type, the Director shall make an interpretation on the most relatively equivalent described use considering (1) the similarity of the use in terms of scale, impact and operations to other described uses; (2) the typical building formats and site designs associated with the use from existing examples; and (3) the potential contribution of the use and typical formats to the intent of the zoning district. Any use that may not be interpreted as relatively equivalent to a use described in this section or the use table are not anticipated by these regulations and may only be allowed by a text amendment.

COMMUNICATIONS AND UTILITIES

The Communications and Utilities category is for buildings, structures, or other infrastructure improvements that provide essential public services.

Communication Facilities for Wireless Services. Any structure or device used to collect or transmit electromagnetic waves for the provision of commercial wireless services, including all accessory equipment, facilities and support structures, and including all buildings used as a support structure. Such services include specialized mobile radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial wireless service not licensed by the Federal Communication Commission. For more specific definitions and applicable site, development, building and design standards, see Chapter 17.11 GMC.

Wind Energy Conversion System – Small. Any structure or mechanical equipment used to collect, store and transmit energy from wind that is comparable in height and generally accessory to the buildings and site, including all accessory equipment.

Wind Energy Conversion System – Large. Any structure or mechanical equipment used to collect, store and transmit energy from wind that is large-scale and intended for production and use of energy other than on the specific site, including all accessory equipment.

Solar Collector. Any structure, mechanical equipment, or building material used to collect, store or transmit energy from sunlight, including all accessory equipment.

Chapter 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.040 Accessory Uses

Accessory uses are clearly incidental to and customarily associated with an otherwise permitted or conditionally allowed use, and generally do not need any specific enabling or development standards, other than the generally applicable standards. Examples include gardens, play equipment, pools, and amateur radio and receive-only antennas and small satellite dishes. The following accessory uses may be customarily incidental to otherwise permitted uses in the district, provided they meet the following additional limitations, performance standards and design criteria (such standards for accessory facilities associated with Communication Facilities for Wireless Services are contained within Chapter 17.11 GMC).

Chapter 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.050 Specific Use Standards

The following specific uses may have particular impacts different than the uses generally enabled in the zoning districts. These uses shall have the following additional limitations, performance standards, and design standards as specified and indicated in Table 5-2 (such standards for specific uses associated with Communication Facilities for Wireless Services are contained within Chapter 17.11 GMC).

Chapter 17.05 ZONING DISTRICTS AND USE STANDARDS, Section 17.05.050 Specific Use Standards, remove entire Subsection W, standards for Wireless Communication Antenna, and renumber the following Subsections thus:

- W. **Wind Energy Conversion System.**
- X. **Solar Collector.**
- Y. **Temporary Use.**

Chapter 17.07 BUILDING STANDARDS, Section 17.07.010 Intent and Applicability, Subsection B

- B. **Applicability.** The building standards apply to all new structures dependent on the appropriate Building Type; provided, however, that communication facilities for wireless services are subject to the application, location, building and design standards of Chapter 17.11 GMC. Specifically, building standards apply to:

Add a new chapter as follows:

CHAPTER 17.11 COMMUNICATION FACILITIES FOR WIRELESS SERVICES

17.11.010 Statement of Intent

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and modification of communications facilities. The intent of this chapter is to ensure the provision of quality wireless services within the City limits; establish a fair and efficient process for the review and approval of communications facility applications; assure an integrated, comprehensive review of environmental impacts of communications facilities, and promote the public health, safety, security, and general welfare of the City.

17.11.020 Definitions

Accessory Facility: means a building, structure or equipment being used in conjunction with communications facilities and generally located on the same site as the communications facilities, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

Antenna: means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.

A. **Distributed Antenna System (DAS):** means a network that distributes radio frequency signals and consisting of:

1. Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;
2. A high capacity signal transport medium that is connected to a central communications hub site; and
3. Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

B. **Small Cell Facility:** means a communications facility that meets both of the following qualifications:

1. Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and,
2. Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory facilities includes, but is not limited to, any electric meters, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches and vertical cable runs for the connection of power and other services.

C. **Small Cell Network:** means a collection of interrelated small cell facilities designed to deliver wireless service.

Base Station: means a station that includes a structure that currently supports or houses accessory facilities at a specific site that enables FCC-licensed or authorized wireless service to mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a tower or equipment associated with a tower, or any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in this paragraph, for example, a building, church steeple, water tower, street light, utility pole or other non-tower structure that can be used as a support structure for antennas or transmission equipment.

Collocation: means the mounting or installation of transmission equipment on an existing tower or base station for the purpose of transmitting and/or receiving radio frequency signals for wireless service.

Communications Facility: means a structure or location that supports antennas or other transmission equipment used in wireless services, specialized mobile radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial wireless service not licensed by the FCC. This includes, but is not limited to, towers of all types, accessory facilities, and base stations, and buildings, church steeples, water towers, signs, or other functionally equivalent structures that can be used to support antennas, transmission equipment, or accessory facilities.

Eligible Facilities Request: means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- A. Collocation of new transmission equipment;
- B. Removal of transmission equipment; or
- C. Replacement of transmission equipment.

Existing: means a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, shall also be considered existing.

FAA: means the Federal Aviation Administration.

FCC: means the Federal Communications Commission.

Modification or Modify: means the addition, removal or change of any of the physical and noticeably visible components or aspects of a communications facility such as antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include replacement of such components in kind. A collocation which changes the physical configuration of the existing facility or structure shall be considered a modification. The Director shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a communications facility.

Replacement: means substitution of an existing communications facility with a new facility of comparable proportions and height or such other height that would not constitute a substantial change; provided that a replacement tower shall be located within 15 feet, as measured horizontally along the ground, of an existing tower, and the existing tower shall be removed within 30 days from the installation of the replacement tower. The Director may approve a separation greater than 15 feet. Includes any associated removal of the pre-existing communications facilities.

Site: means, for towers not located in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site; and, for other existing tower or base stations, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Stealth or Stealth Technology: means using techniques to minimize adverse aesthetic and visual impacts of the communications facilities on adjacent properties or rights-of-way. For example, accessory facilities mounted onto a tower or structure shall not project greater than one foot, as measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a complementary color as the tower or structure; and cables shall not be allowed to travel along the exterior of a tower or structure. Understanding that new technologies are anticipated to change the components of communications facilities, the Director may determine if a communications facility or component is designed to be stealth or utilizes stealth technology.

Substantial Change: means a modification that changes the physical dimensions of an existing tower or base station by any of the following criteria:

- A. *Height.* Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (such as on buildings' rooftops); in other circumstances, changes in height are measured from the dimensions of the tower or base station.
 - 1. For towers not in public rights-of-way, an increase in the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater.
 - 2. For towers or base stations in public rights-of-way, an increase in the height of the structure by more than 10%, or more than 10 feet, whichever is greater.

B. *Width/Girth.*

1. For towers not in public rights-of-way, adding an appurtenance to the body of the tower that protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
2. For towers or base stations in public rights-of-way, adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.

C. *New equipment cabinets.*

1. For any existing tower or base station, the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.
2. For towers and base stations in public rights-of-way, the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets, or the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

D. Any excavation or deployment outside the current site.

E. Defeating the stealth technology or concealment elements of the existing tower or base station.

F. Not complying with conditions of approval, except when noncompliance does not exceed the thresholds identified in subsections one through four herein.

Transmission Equipment: means equipment that facilitates transmission for any FCC-licensed or authorized wireless service; private, broadcast and public safety services; and unlicensed and fixed wireless services such as microwave backhaul. Such equipment includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

Tower: means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas, transmission equipment, their accessory facilities and the associated site.

A. **Monopole** means a tower consisting of a single pole, constructed without guy wires and ground anchors.

B. **Lattice** means a guyed or self-supporting three or four sided, open, steel frame tower.

Wireless Services: means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through communications facilities or any fixed or mobile wireless services provided using communications facilities.

17.11.030 Overall Policy

In order to ensure that the placement, construction, and modification of communications facilities protects the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (subject to applicable state and federal law):

- A. Optimize the number of communications facilities in the City.
- B. Encourage opportunities for user collocation on existing communications facilities, buildings and other structures and maximize replacement strategies.
- C. Comply fully with established planning guidelines regarding land use and building, design and performance standards.

- D. Emphasize the use of stealth technology to visually integrate communications facilities, and to use existing communications facilities instead of building new communications facilities.
- E. Protect the public interests, where practical and applicable, in a competitively neutral, nondiscriminatory manner.
- F. Protect the public health, safety and welfare.

17.11.040 Review and Approval Procedures

A. Application Timeframe.

1. A final decision for applications that qualify for Site Plan and Design Review per GMC 17.03.060 or a Conditional Use Permit per GMC 17.03.050 shall be issued within 150 days for new tower and within 90 days for all others.
2. A final decision for applications that qualify for an Administrative Site Plan per GMC 17.03.070 shall be issued within 60 days.
3. Such timeframes begin when an application is filed following the required pre-application meeting per GMC 17.03.010 (C). The applicable timeframe may be tolled by mutual agreement, or in cases where the City determines that the application is incomplete. The timeframe shall pause on the date that the City provides written notice to the applicant, within 30 days of receipt of the application, specifically delineating all missing documents and information. The timeframe begins running again when the applicant makes a supplemental submission responding to the City's notice. The City then has 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.

B. Application Process.

1. A pre-application meeting is required before filing an application per GMC 17.03.010 (C), unless waived by the Director. Pre-application meetings for small cell/DAS facilities in the public rights-of-way will be conducted with the City's Director of Public Works.
2. Applications that qualify for Site Plan and Design Review shall be processed according to GMC 17.03.060.
3. Applications that qualify for an Administrative Site Plan shall be processed according to GMC 17.03.070.
4. Applications that qualify for a Conditional Use Permit shall be processed according to GMC 17.03.050 (see GMC 17.05.030 Table 5-2: Use Table). Conditional use permits for communication facilities for wireless services shall be for a term of not less than 10 years.
5. Pursuant to Kansas Statute, an applicant may file one consolidated application for a small cell network with up to 25 individual small cell facilities of a substantially similar design. The City may require a separate application for any small cell facilities that are not of a substantially similar design.
6. No zoning or siting approval is required for the construction, installation or operation of any small cell or DAS facilities located in an interior structure or upon the site of any campus, stadium or athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

- C. **Application Contents.** An application for the replacement or modification of an existing communications facility or the construction of a new communications facility shall include the following information and requirements, unless waived by the Director:

1. A site plan with all requirements as stated in the application.
2. A descriptive statement of the proposed communications facility. For towers or base stations, the statement shall provide the capacity of the structure, including the number and type of antennas it can accommodate.
3. An affidavit from the applicant stating that it conducted a thorough analysis of available collocation opportunities within the applicable search ring.
4. Elevation drawings of the proposed communications facilities showing all towers, base stations, antennas, transmission equipment, accessory facilities, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. The applicant shall note all specific colors and materials to be used.
5. Digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of the proposed communications facilities on the surrounding environment. Staff or the approval authority may require photo simulations from any specific vantage point.
6. A report from a licensed professional engineer which describes the communications facility's structural capacity, including a statement to the effect that the communications facility can safely accommodate all antennas, transmission equipment and/or accessory equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Director, as applicable, and in compliance with all City codes. In the event an existing communications facility is to be used, the report shall describe the condition of the existing communications facility based on a physical inspection and its ability to accommodate any additional accessory equipment and/or antennas.
7. A landscape plan that demonstrates the effective screening of the proposed communications facility and any accessory facilities as required by GMC 17.11.060 (H), in compliance with Chapter 17.08 GMC. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the approval authority.
8. If lighting is required by the FCC or the FAA, the applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way.
9. If an emergency power system will be utilized, the applicant will provide sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g., testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.
10. A statement that the proposed communications facility and any accessory facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.
11. An engineer's certification that the proposed communications facilities and the cumulative effect of all communications facilities on the site comply with all FCC standards, including but not limited to, certifying that all provisions and regulations for radio frequency (RF) emissions or exposure are met, and that anticipated levels of electromagnetic radiation to be generated, including the effective radiated power (ERP) of all transmission equipment, shall be within the guidelines established by the FCC.
12. When applicable, a signed copy of the lease between the applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner's approval for the proposed communications facility. The lease or other documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the communications facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.

13. Applicants for communications facilities shall provide notice by certified mail to the owners of record of all property within 200 feet of the proposed location. The notice shall provide a City-issued case number (if available); a description of the proposed facility; the location of the proposed facility; a plan sheet showing the proposed location and the facility improvements; and the applicant's contact information and a statement that the owner shall have 20 days from the date of the notice to provide the City with any input regarding the application. Each communications facility location shall be provided with its own notice; notices for multiple locations, even if under the same City case number, may not be provided in a single letter. No application will be approved until the applicant submits an affidavit affirming that the required notice was sent.
14. For locations near an airport, the applicant must submit an affidavit stating that the application is in compliance with applicable FAA and Johnson County Airport regulations.
15. Any other information to satisfy the performance standards in GMC 17.11.060 or that, as determined by the Director, will assist the review and approval process for communications facilities.

D. Independent Third Party Review.

1. The applicant may be required to provide an independent review of the application as determined by the Director.
2. The Director will select and approve a list of acceptable consultants to be used for the third party independent review.
3. The scope of the third party review will be determined by the Director and may vary with the scope and complexity of the application; the scope will be determined following the pre-application meeting. The independent third party review will generally be focused on the technical review of wireless services and verification of the information submitted by the applicant such as federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and data used in developing these technical requirements are valid and representative of the proposed communications facility.

17.11.050 Location of Communications Facilities

- A. When possible, the City encourages – but does not require – new communications facilities to be located on existing communications facilities or on existing structures (for example, non-residential buildings, water towers, utility poles and street lights), and to be architecturally integrated or otherwise camouflaged in a stealth manner to minimize the intrusion upon the public space and adjacent properties. New towers and base stations should be similarly located and designed to minimize the intrusion and to be architecturally integrated or camouflaged.
- B. The applicable review authority shall not discriminate against applicants with respect to the placement of communications facilities for wireless services as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

17.11.060 Building and Design Standards for Communications Facilities

A. Height.

1. *Towers.* The maximum height as indicated below includes any transmission equipment on top of the tower. A lightning rod 10 feet in height or less shall not be included within the height limitations. While tower height shall be controlled based on the specific context consistent with the provisions of this Chapter and other applicable provisions of the Land Development Code, in no case shall towers or antennas exceed the following:
 - a. 150' in the A and M-2 zoning districts;
 - b. 130' in the M-1, REC, C-3, and C-2 zoning districts;

- c. 100' in all residential districts;
 - d. No more than 20' above the top of a building when mounted on the roof or include a stealth on-building design in the C-O, CO-A, and C-1 districts.
2. *Towers in Rights-of-Way.* The maximum height which may be approved for a tower and related transmission equipment in the public rights-of-way is: 50' along an arterial street; 40' along a collector street; and 20' along a local street as defined within GMC 12.10.010.
3. *Base Stations.* Base stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

B. Design and Color.

1. *Towers.*
- a. *Design* – Towers shall be a monopole or some other stealth or stealth technology design unless required by the approval authority to be architecturally compatible to the surrounding development. Guy and lattice towers are not allowed. Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.
 - b. *Color and Finish* – Towers shall have a galvanized finish unless an alternative stealth or camouflaged finish is approved by the approval authority.
2. *Base Stations.* Base stations shall comply with any applicable color and design requirement for its particular type of structure as set forth in the applicable zoning district, and shall blend with the surrounding buildings and/or natural environment. When constituting an accessory use as indicated in Table 5-2: Use Table, the base station shall be designed as an architecturally compatible element to an existing nonresidential, live/work or mixed use.
3. *Antennas.*
- a. *Design on Towers* – Antenna bridges and platforms on towers are not allowed. Antennas on towers may be:
 - (1) Internal;
 - (2) A panel of slim-line design mounted parallel with the tower;
 - (3) A design deemed by the approval authority to be less obtrusive or more stealth than the above described designs; or,
 - (4) An omni-directional antenna placed at the top of the tower when it gives the appearance of being a similarly sized or smaller extension of the tower. (The latter will be included in the tower height calculation.)
 - b. *Design on Base Stations* – Antennas and visible accessory facilities on a base station or other building/structure shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with said building/structure and to camouflage their appearance in a stealth manner. Such facilities on rooftops may require screening that is architecturally compatible with the building. As applicable, the following additional requirements apply:
 - (1) Antennas may be installed on an existing building or structure (such as a water tower), that is three stories in height or greater, but no less than 35', provided that the additional antennas shall add no more than 20' to the height of said existing building or structure.

- (2) Antennas which are architecturally compatible to the building architecture may locate on non-residential, mixed use or live/work buildings less than three stories or 35' in height.
 - (3) Attached antennas on a roof shall be located as close to the center of the roof as possible; and antennas mounted on a building or structure wall shall be as flush to the wall as technically possible, and shall not project above the top of the wall.
 - (4) Accessory facilities for antennas mounted on buildings as indicated above may be permitted on the roof so long as the facilities are designed as an architecturally compatible element to an existing non-residential, mixed-use or live/work use, and are screened, constructed, and colored in conformity with and to match the structure to which they are attached.
- c. *Color and Finish* – Antennas and visible accessory facilities shall be colored and finished in a manner consistent with the tower or base station and any surrounding elements to camouflage their appearance in a stealth manner. Such facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the tower or base station to make such facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

C. Setbacks.

1. Communications facilities shall, at minimum, meet the greatest minimum setback requirement for all building types in that district. If the proposed communications facilities will exceed the maximum height allowed for all building types in that district, the communications facilities shall be setback a distance equal to the height of the facility; provided that a lesser setback may be approved upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the tower, antenna, or communications facility is within the radius of the setback.
2. Small cell/DAS facilities on utility poles or street lights shall not be subject to the setback requirements above; provided that, such small cell/DAS facilities on utility poles or street lights placed within the rights-of-way shall comply with the City's requirements and permits for the use of the public rights-of-way as set forth with Chapter 12.05 GMC and in the City's Technical Specifications.

D. Accessory Facilities. Accessory facilities shall include only such structures and facilities necessary for transmission functions for wireless services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory facilities shall be constructed of building materials consistent with the primary use of the site and shall be subject to the applicable approval process.

E. Equipment Storage. Mobile or immobile equipment not used in direct support of a communications facility shall not be stored or parked on the site of the communications facility unless repairs to the communications facility are being made or pursuant to emergency approval as set forth in GMC 17.11.080.

F. Parking Areas and Drives. All parking areas and drives associated with a communications facility shall comply with Chapter 17.09 GMC; provided that, the applicable approval authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.

G. Screens and Fencing. Accessory facilities located at the base of a tower or base station shall be screened from view with a solid opaque fence or wall a minimum of six feet in height. Fences shall meet the materials requirements of GMC 17.08.030. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures. The landowner or provider shall be responsible for maintenance of the screening. The applicable approval authority shall have the ability to waive or reasonably modify this

requirement where the design of the accessory facility is architecturally compatible to the primary use of the site or where the accessory facility will have no visible impact on the public rights-of-way and any other nearby property.

- H. **Landscaping.** A continuous landscaped area shall be provided around the perimeter of the accessory building or screening fence/wall; and utility boxes shall be screened according to the requirements of GMC 17.08.040 (A). All plant materials are subject to Chapter 17.08 GMC and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The owner or provider shall be responsible for maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the applicable approval authority.
- I. **Lighting.** Communications facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the approval authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security lighting around the base of a tower shall meet the requirements of GMC 17.08.050 and other applicable City requirements.
- J. **Utilities.** All utilities at a communications facility site shall be installed underground and in compliance with applicable codes.
- K. **Security.** All communications facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.
- L. **Signage.** Signage at the site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the approval authority.
- M. **Building Codes and Inspection.**
 - 1. *Construction and Maintenance Standards.* To insure structural integrity, communications facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for communications facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (as amended from time to time). If upon inspection the City concludes that a communications facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have 30 days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.
 - 2. *Inspection.* Not less than every 24 months, the communications facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of communications facilities. At a minimum, this inspection shall be conducted in accordance with the inspection checklist provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (as amended from time to time). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.
- N. **Operational Standards.**
 - 1. Communications facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, Environmental Protection Agency, and/or other applicable federal regulatory agencies. If such standards and regulations are changed, then the communications facilities shall be brought into compliance with the revised standards and regulations within six months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring

communications facilities into compliance with any revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.

2. It is the responsibility of the wireless service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

O. Removal of Abandoned Communications Facilities. Any communications facility that is not operated for a continuous period of 12 months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within 90 days of a receipt of notice from the City. If such facility is not removed within said 90 days, the City may remove such facility at the facility owner or landowner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

P. Unsafe Communications Facilities. Any communications facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense.

17.11.070 Denial of Application.

A. The City may deny an application for any of the following reasons:

1. Failure to submit any or all required application documents and information.
2. Conflict with safety and safety-related codes and requirements.
3. Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.
4. The use or construction of a communications facility is contrary to the previously stated purpose of a specific zoning or land use designation, fails to comply with this Code, and/or creates an unacceptable risk to the public health, safety, and welfare.
5. The placement and location of the communications facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the wireless service provider.
6. Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).
7. Conflict with planned future public improvements.
8. Conflict with or violation of any provision contained within this Chapter or any other applicable City code or with any applicable federal or state law.

B. In the event of a denial, the approval authority or the City shall notify the applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. Such notice shall be made within the applicable timeframe set forth in GMC 17.11.040.

C. Any denial shall not discriminate against the applicant with respect to the placement of communications facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

17.11.080 Emergencies and Disasters

In the event of a declared emergency or disaster, the City Administrator, or his or her designee, or the Director may authorize any temporary towers, base stations, transmission equipment or accessory equipment necessary to temporarily restore wireless services.

17.11.090 Interpretation and Severability

The provisions of this Chapter shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating communications facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Chapter, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 2: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

Section 3: This ordinance shall take effect and be in force from and after its passage, approval, and publication as provided by law.

PASSED by the City Council this 15th day of May, 2016.

APPROVED by the Mayor this 15th day of May, 2016.

CITY OF GARDNER, KANSAS

(SEAL)

/s/

Chris Morrow, Mayor

Attest:

/s/

Kim Garrison, Interim City Clerk

Approved as to form:

/s/

Ryan B. Denk, City Attorney