



Case No. _____
 Application Date _____
 Application Fee \$100.00 _____

City of Branson West, Missouri

**APPLICATION
 CONDITIONAL USE PERMIT**

We, the undersigned, request that the City of Branson West, Missouri Board of Aldermen approve a conditional use permit for the tract of land as described in this application. We attest to the truth and correctness of all facts and information presented with this application and agree to pay all advertising and mail notification costs for the public hearing as required by the *Branson West Zoning Regulations*. The City of Branson West is authorized to prepare and publish all required legal advertising, and mail notifications, the cost of which is to be billed to the name listed below.

Legal Description of Property (attach additional sheet if necessary) _____

Street Address of Property _____

Current Zoning Classification of Property _____

Current Use of Property _____

Conditional Use Requested _____

Property Owner's Name _____

If Corporation, Corporate Official and Seal _____

Mailing Address _____

Telephone Number _____ Fax Number _____

PROPERTY OWNER'S SIGNATURE:

 (Not necessary if there is an authorized representative. Authorized representative must sign below.)

AUTHORIZED REPRESENTATIVE:

I hereby certify that I am authorized to represent all of the property owners of the above described tract in this application. A power of attorney is attached.

Name _____ Signature _____

Address _____ Telephone _____

Applicant's Name (if different than property owner): _____

If Corporation, Corporate Official and Seal _____

Mailing Address _____

Telephone Number _____ Fax Number _____

Applicant's Signature:

Indicate the applicant's legal interest in the property: _____

BILL LEGAL ADVERTISING AND MAIL NOTIFICATION COSTS TO:

Name _____ Telephone _____

Address _____

Attach written responses to the following questions to the conditional use permit application:

1. Provide evidence how the proposed conditional use will comply with the applicable standards in the *Branson West Zoning Regulations*, Article III, Section 314.7 (see Attachment A).
2. If the proposed conditional use is a telecommunication tower, also provide information as required in the *Branson West Zoning Regulations*, Article III, Section 314.8 and Section 609 (see Attachment B).
3. Indicate how the proposed conditional use is to be designed, arranged and operated in order to ensure that development and use of neighboring property in accordance with the applicable zoning district regulations will not be prevented or made unlikely, and that the value, use and reasonable enjoyment of such property will not be impaired or adversely affected.
4. Identify any potentially adverse effects that may be associated with the proposed conditional use, and the means proposed to avoid or minimize such effects.
5. Indicate the hours of operation of the proposed conditional use.

Attach a site plan as required by the *Branson West Zoning Regulations*, Article III, Section 317.

**APPLICATION CHECKLIST
CONDITIONAL USE PERMIT
City of Branson West, Missouri**

This checklist is provided to help you make sure that you submit everything that is required for a complete conditional use permit application. The application must be complete or this case will not be processed. Applications must be filed with the City Clerk's Office by 4:30 p.m. at least 30 working days before the date of the Planning and Zoning Commission hearing at which the application will be considered. Contact the City Clerk at the telephone number below for filing deadlines and meeting dates.

APPLICATION FORM:	
<input type="checkbox"/>	Applicant's name and address and legal interest in the property.
<input type="checkbox"/>	The owner's name and address if different than the applicant.
<input type="checkbox"/>	Street address, or common description, and a legal description of the property.
<input type="checkbox"/>	Zoning classification and present use of the property.
<input type="checkbox"/>	Attach answers to Questions 1,3, 4, and 5 for all conditional uses. See Attachment A for information to be provided for Question 1.
<input type="checkbox"/>	If the proposed conditional use is a telecommunication tower, also attach answers to Question 2. See Attachment B for information to be provided for Question 2.
<input type="checkbox"/>	Description of the proposed conditional use.
<input type="checkbox"/>	Statement as to why the proposed use will comply with the applicable standards in the <i>Branson West Zoning Regulations</i> , Article III, Subsection 314.7.
<input type="checkbox"/>	Statement identifying any potential adverse effects and how the proposed conditional use will be designed, arranged and operated in order to ensure that the conditional use will not cause harm to the community and that the value, use and reasonable enjoyment of property in the vicinity will not be adversely affected.
<input type="checkbox"/>	Any additional information as may be required in accordance with the requirements of the zoning district in which the conditional use is proposed to be located.
SITE PLAN:	
<input type="checkbox"/>	Submit eight (8) copies of a site plan for the proposed conditional use with the application. See <i>Zoning Regulations</i> , Article III, Section 317.4, for site plan contents.
PROPERTY OWNERS NOTIFICATION:	
<input type="checkbox"/>	Provide a list of property owners' names and addresses within 185 feet of the subject property that has been compiled from the records of the Stone County Assessor's Office.
<input type="checkbox"/>	Provide an addressed, stamped (not metered) business envelope for every property owner listed on the property owners' list.
APPLICATION FEE:	
<input type="checkbox"/>	Include the \$100.00 application fee. Applicant is also responsible for advertising and notification costs for public hearing. City will bill applicant for public notification costs.
<p>Note: The Planning and Zoning Commission <u>shall not</u> forward its recommendation to the Board of Aldermen when the applicant or applicant's agent does not appear at the hearing before the Commission to provide evidence regarding the request for a conditional use permit. Final action on any case shall not be taken until the applicant has reimbursed the City of Branson West for all advertising and notification costs.</p>	

Submit Applications To:

Branson West City Hall
110 SilverLady Lane
P.O. Box 2229
Branson West, MO 65737
(417) 272-3313

Attachment A
Conditional Use Standards for All Uses
Branson West Zoning Regulations

The standards of Section 314.7 apply to all conditional uses:

Section 314.7 Conditional Use Standards. A conditional use permit shall be granted only if evidence is presented at the public hearings that the conditional use will comply, to the extent applicable, with the following standards:

- A. The conditional use will be consistent with the policies and intent of the *Branson West Zoning Regulations*.
- B. The conditional use will not increase flood or water damage hazard to adjoining properties.
- C. The conditional use will not generate noise that exceeds the sound levels that are typical of uses permitted in the district.
- D. Adequate access roads or entrance and exit drives will be designed and provided to prevent traffic hazards and to minimize traffic congestion at the site.
- E. Street right-of-way and pavement width in the vicinity of the conditional use is or will be adequate for traffic reasonably expected to be generated by the proposed use.
- F. Glare of stationary or vehicular lights from the conditional use will not adversely affect the character of the neighborhood, and if such lights will be visible from a residential district, measures to shield or direct lights to mitigate glare are proposed.
- G. The conditional use will not have any substantial adverse effect upon the use or enjoyment of adjacent and nearby property or conditions affecting the public health, safety and welfare.
- H. The conditional use will be designed, constructed and operated so as not to interfere with the development and use of adjacent property in accordance with the applicable zoning district regulations.
- I. In the case of existing structures to be converted to a use requiring a conditional use permit, the structure shall meet all fire, health, building, plumbing and electrical requirements of the City of Branson West.
- J. The conditional use otherwise complies with all applicable regulations of this Ordinance.

(See Attachment B for additional standards for towers)

Attachment B
Conditional Use Standards for Towers
Branson West Zoning Regulations

In addition to the standards of Section 314.7 (Attachment A), the standards of Section 314.8 and the requirements of Section 609 of the Branson West Zoning Regulations also apply to all conditional uses for towers:

Section 314.8 Conditional Use Permits for Towers

- A. **Purpose.** The purpose of these restrictions is to:
1. Minimize the adverse effects of towers on aesthetic and property values through careful design, siting and vegetative screening;
 2. Avoid potential damage to adjacent properties from tower failure and falling ice through engineering and careful siting of tower structures;
 3. Lessen traffic impacts on local streets; and
 4. Maximize use of existing towers to reduce the number of towers needed.
- B. **Applicability.** In addition to the provisions and restrictions listed above for a conditional use permit, the following requirements for conditional use permit shall also apply to all zoning districts where towers are permitted as a conditional use and to all zoning districts where towers are permitted as a principal or accessory use where:
1. The tower exceeds one-hundred (100) feet in height; or
 2. The tower is on a building, exceeds twenty (20) feet in height, as measured from the top of the building, and the combined height of the building and tower exceeds one-hundred (100) feet.
- C. **Exemptions.** An antenna and tower for the following uses are exempt from these requirements and are permitted uses in any district if accessory to a permitted use and if they comply with the applicable regulations of the district in which situated:
1. Ham radios
 2. Citizen band radios
- D. **Approval Standards.** All applications for a conditional use permit for a tower shall comply with the following requirements. **Site** includes all property described by the legal description submitted with the conditional use permit application and may be only part of a larger parcel.
1. Structures shall be set back from adjoining residential-zoned property, property or streets sufficient to:
 - (a) Contain on-site substantially all ice-fall or debris from tower failure;
 - (b) Preserve the privacy of adjoining residential-zoned property. The site is of sufficient size to comply with this standard if:

- i. Accessory structures comply with the setback standards in the zoning district;
 - ii. The tower base is set back from adjoining residential-zoned property, public property or a street by a distance equal to fifty (50) percent of the height of the tower up to one-hundred (100) feet, plus one foot for each foot over one-hundred (100) feet in height, unless the tower is designed for collocation of at least two additional carriers in which case the setbacks for structures in the zoning district where the tower is located shall be complied with, or the distance between the tower base and guy wire anchors, whichever is greater;
 - iii. The tower is set back from adjoining land in other districts by the rear yard setback required in the adjoining district;
 - iv. Guy wire anchors are set back at least twenty-five (25) feet from an adjoining residential-zoned property public property or a street; and
 - v. Guy wire anchors are set back at least the rear yard setback from adjoining land in other districts.
 2. Set back requirements for towers shall be measured from the center of the tower to the property line of the parcel on which it is located. The tower shall be set back from other on-and off-site towers and supporting structures far enough so one tower will not strike another tower or support structure if a tower or support structure fails.
 3. The tower shall have the least practicable adverse visual effect on the environment.
 4. Existing on-site trees and shrubs shall be preserved to the maximum extent practicable.
 5. Traffic associated with the facility shall not adversely affect adjoining streets. Vehicular access shall be limited to a major street if the site adjoins both a major and local street.
 6. Adequate off street parking shall be provided to accommodate workers, employees, invitees, and others who may be on location on account of the location of the tower.
 7. The applicant shall demonstrate that the planned equipment cannot be accommodated on an existing or approved tower or location.
- E. **Application contents.** An application for approval of a conditional use permit for a new tower shall include the following in addition to the application requirements of *Subsection 314.3*:
1. A site plan drawn to scale and identifying the site boundary; tower(s); guy wire anchors; existing and proposed structures; vehicular parking and access; existing vegetation to be retained, removed, or replaced; and uses, structures, and land use designations on the site and adjoining parcels;

2. A plan drawn to scale showing proposed landscaping, including species type, size, spacing and other features; and
 3. Evidence that the planned transmission facilities cannot be accommodated on an existing or approved tower and that the planned tower cannot be accommodated on an existing or approved tower site. The Commission may consider expert testimony to determine whether other towers or sites could accommodate the planned facilities and whether fees and costs associated with the use of an existing or planned tower or site is reasonable.
- F. **Conflict with FCC or FAA regulations.** In the event there is a conflict between these regulations and Federal Communications Commission (FCC) or Federal Aviation Administration (FAA) regulations, the FCC or FAA regulations shall govern.

Section 609 Telecommunications Facilities

609.1 Telecommunication Towers.

- A. **Federal Jurisdiction.** The Federal Communications Commission (FCC) has exclusive jurisdiction over:
1. The regulation of the environmental effects of radio frequency emissions from telecommunications facilities.
 2. The regulation of radio signal interference among users of the radio frequency spectrum.
- B. **Purposes.** The general purpose of this Section is to regulate the placement, construction and modification of towers and telecommunications facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in Branson West. More specifically, the purposes are:
1. To direct the location of towers and telecommunication facilities in the City;
 2. To protect residential areas and land uses from potential adverse impacts of towers and telecommunications facilities;
 3. To minimize adverse visual impacts of towers and telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
 4. To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
 5. To avoid potential damage to adjacent properties caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed.
 6. To the greatest extent feasible, ensure that towers and telecommunications facilities are compatible with surrounding land uses.
 7. To the greatest extent feasible, ensure that proposed towers and telecommunications facilities are designed in harmony with natural settings and in a manner consistent with current development patterns.

8. To create a licensing process that allows the City to more efficiently administer this Section.

C. **Applicability.**

1. All towers, antenna support structures and telecommunications facilities, any portion of which are located within the City are subject to this Ordinance. All towers within the City at the effective date of this Ordinance, or that are annexed at a later date, shall be registered with the City Clerk within sixty (60) days from the effective date thereof together with the height, width and location thereof and a registration fee established by the Board of Aldermen. Failure to register an existing tower shall raise a presumption that said tower was not a legal nonconforming use on the date of passage of this Ordinance. However, this Ordinance shall not apply to tower structures used, or to be used, solely for services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission or to towers and antennas used for private telecommunications services when the equipment is located on the premises of the entity using said private telecommunication service, or the towers and antennas, support structure or masts are located on the primary business premises of a provider of communications services if used to monitor the provider's services and the equipment used by the broadcaster, private telecommunicator or provider is in compliance with any federal, state or local laws.
2. Except as provided in this Ordinance, any current legal use being made of an existing tower or antenna support structure on the Effective Date of this Ordinance (herein "Non-conforming Structures") shall be allowed to continue, even if in conflict with the terms of this Ordinance.

609.2 **Definitions.** For the purposes of this Section, the following terms, phrases, words, and their derivations shall have the meaning given herein:

Act. The federal *Communications Act of 1934* as amended by the *Telecommunications Act of 1996* and as may, from time to time, be amended.

Antenna Support Structure. Any building or other structure other than a tower that can be used for location of wireless telecommunications facilities.

Applicant. Any person that applies for a Tower License pursuant to this Ordinance.

Application. The process by which an applicant submits a request and indicates a desire to be granted a License to construct, own or operate a tower within the City. An application includes all written documentation made by an applicant to the City concerning such a request.

City. The City of Branson West, a municipal corporation, in the State of Missouri.

Communications or Telecommunications. The transmission, between or among points as specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received, by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

FCC. The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Licensee. Any person who has lawfully obtained a Tower License pursuant to *Subsection 608.5*.

Person. Any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit.

Site. The actual location of a tower and may be only part of a larger parcel or premise.

Stealth. Any towers or telecommunications facilities that are designed to blend into the surrounding environment.

Telecommunications Facilities. Any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the wireless transmission or reception of wireless telecommunications as authorized by the FCC which a person seeks to locate or has installed upon a tower or antenna support structure. However, the term telecommunications facilities shall not include:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned and used for industrial or commercial purposes;
2. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.
3. Any satellite earth station in excess of two (2) meters in diameter which is utilized for the reception of broadcast television, video or radio signals and which is an ancillary use to a structure on the premises of the holder of the broadcast license.

Tower. A self-supporting lattice, guyed or monopole structure constructed from grade which supports wireless telecommunications facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC. The term tower does not include: utility poles that are utilized for the support of electrical, telephone, cable television, or other similar cables and wires; are located on public rights-of-ways or easements for that purpose; and are a part of a system of such poles throughout the City of Branson West, Missouri.

609.3 Permitted, Conditional and Accessory Uses.

- A. **Generally.** The allowable use of towers and placement of telecommunications facilities as either permitted uses or conditional uses in the several zoning districts shall be as set forth herein and in *Article V, Zoning District Regulations*. Multiple locations may be approved in one application process.
- B. Wireless Facilities and Telecommunications Towers shall be of the following types:

Types	
I	Wireless facilities and antennas mounted on buildings or other structures, including existing towers, public buildings and structures, school buildings and structures, and churches.
II	Cell towers of a stealth design that are not greater than sixty (60) feet in height, located on the same premise or parcel as public buildings and structures, school buildings and facilities, church buildings and noncommercial, not-for-profit residential neighborhood facilities and approved by ordinance.
III	Cell towers of a monopole or stealth design that are less than one hundred (100) feet in height.
IV	Cell towers of a monopole or stealth design that are more than one hundred (100) feet in height.
V	Cell towers not of monopole or stealth design, one hundred (100) feet or taller and not able to collocate additional facilities.

In no event shall a Licensee be required to allow collocation of facilities if to do so would result in technical interference with the delivery of Licensee's service. Failure to permit collocation or joint use on a tower which has been built in accordance with setbacks and special conditions permitted for towers designed for collocation may result in any enforcement action as permitted in this Ordinance.

- C. **Same Tower Type.** A tower which is modified to accommodate the collocation of additional telecommunications facilities shall be of the same tower type as the existing tower. However, a different type of tower may be permitted by the approval of the City if it is demonstrated that permitting a different tower type will not exceed the height permitted in *Subsection 609.3.B*, and will permit the collocation of more carriers than could be accomplished by the modification of the same tower type as the existing tower.
- D. **Movement of Tower.** No towers shall be relocated without going through the appropriate permitting and licensing procedure.
- E. **Appeal Process.** Any applicant who is denied a tower application, or who is determined by the City to be in violation of this Section shall have the right of a hearing before an administrative hearing examiner appointed by the mayor, and mutually agreeable to the applicant or tower owner. The Hearing Examiner shall set the hearing date no later than twenty (20) days following the denial of an application, or the determination of a violation, and shall consider, in addition to a determination of whether or not a violation exists or the application was improperly denied, the question of the technical or economic feasibility of compliance with this Section. In the event the Hearing Examiner finds that the tower was constructed in accordance with setback and other provisions relating to towers designed for collocation, and said tower is not being made available for joint use or collocation as indicated at the time of application, the Hearing Examiner shall order utilities disconnected until such time as the tower is used jointly for collocation as originally stated in the application. The Hearing Examiner's final decision shall be subject to review pursuant to Chapter 536, RSMo. Any appeal under said Chapter shall be filed within thirty days (30) from the date of the Hearing Examiner's decision. Enforcement of the decision of the Hearing Examiner may be stayed by the posting of a supersedes bond in an amount determined by the Hearing Examiner to be sufficient under the facts of the case to protect the interests of the public and any third party in the matter whose rights would be adversely affected by such a stay as demonstrated during any hearing on a request for said bond.

609.4 Construction Standards.

- A. Setbacks.
 - 1. All towers shall be set back a distance equal to:
 - (a) Fifty (50) percent of the height of the tower up to one-hundred (100) feet, plus one (1) foot for each foot over one-hundred (100) feet in height; or
 - (b) The distance between the tower base and guy wire anchors, whichever is greater, with the guy wire anchors set back at least twenty-five (25) feet from adjoining residential districts, public property or a street or at least the rear yard setback from adjoining land in other districts, unless the tower is designed for collocation.
 - (c) In the event a tower is capable of being used for collocation for at least two additional carriers, the setbacks for structures in the zoning district

where the tower is located shall be complied with for the tower base and any guy wire anchors.

2. Set back requirements for towers shall be measured from the center of the tower to the property line of the parcel on which it is located.

B. **Structural Requirements.** All towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the City's Building Code, any applicable state and federal laws, and other standards outlined in the City Code. A building permit must be obtained before construction may begin.

C. **Separation or Buffer Requirements.**

1. Towers shall be separated from the types of areas and comply with the minimum standards established in the table set forth below unless: (1) constructed on the same site as another tower designed for the same purpose, (2) the second tower is permitted by the zoning district, and (3) the height of the second tower does not exceed the height permitted in the zoning district where the tower is to be located:

Designated Area	Separation Distance
Single-family or two-family residential units in a residential district ¹	300 feet. If the Tower ¹ is of a stealth design or is designed for collocation of an additional carrier, then the separation distance may be reduced to 100% of the height of the tower.
Vacant single-family or two-family residentially zoned land which is either platted or has preliminary subdivision plat approval which is not expired	300 feet. If the Tower ¹ is of a stealth design or is designed for collocation of an additional carrier, then the separation distance may be reduced to 100% of the height of the tower.
Vacant unplatted residentially zoned land and residential units in non-residential zoned districts ¹	200 Feet or 100% of tower, ² whichever is greater
Existing multi-family residential units greater than two-family units	100 feet or 100% height of tower, whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

¹Includes modular homes and mobile homes used for living purposes.

Separation from a unit for purposes of this table is to be measured from the edge of the building or structure itself.

²Separation measured from the center of the tower to closest building setback line.

2. The minimum tower separation distances above listed shall be calculated and applied irrespective of City and County jurisdictional boundaries.

3. Measurement of tower separation distances for the purpose of compliance with this Section shall be measured from the center of a tower to the closest point of a designated area as specified in the above table.

4. Separation distances from other uses set forth in this Subsection may be reduced for towers designed for the collocation of telecommunications facilities of other carriers by obtaining a conditional use permit which will require demonstrating that the separation distances will:
- (a) have the effect of preventing service to an area of the City, or;
 - (b) constitute a barrier to entry into the market place by the applicant, or;
 - (c) will constitute a technical or economic hardship on the applicant.

Additionally the applicant must demonstrate that: (1) the location, shape, appearance or nature of use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located, and that landscaping techniques will be used to screen the tower from any adjacent residential use; and (2) the proposed tower will accommodate at least two additional carriers of various telecommunications services.

The Board of Aldermen shall consider information presented by the applicant and determine if a special exception would conflict with the purposes of this Section, would create a blight on adjacent property, or interfere with adjacent uses, within the separation area. If the tower requires a use permit, then said showing shall be made to the Planning and Zoning Commission and Board of Aldermen as a part of the conditional use permit process.

5. Proposed towers must meet the following minimum separation requirements from towers existing at the time a License is granted unless constructed for the purpose of providing collocation capacity on the same site as another tower designed for the same purpose, the second tower is permitted by the zoning district, and the height of the second tower does not exceed the height permitted in the zoning district where the tower is to be located. However, an exception from separation distances between towers may be obtained from the Board of Aldermen if the applicant can demonstrate that such an exception is necessary for the engineering design of the system the tower is to be a part of, or that no other option is available to provide coverage for the service area. An exception to the separation requirements shall be approved or denied by ordinance.

Proposed Towers Types	Existing Tower Types			
	Lattice or Guyed 150 ft. in height or greater	Lattice or Guyed less than 150 ft in height	Monopole towers 75 ft in height or greater	Monopole towers less than 75 ft in height
Lattice	3,000 ft	2,500 ft	1,500 ft	750 ft
Guyed	3,000 ft	2,500 ft	1,500 ft	750 ft
Monopole 75 ft in height or greater	1,500 ft	1,500 ft	1,500 ft	750 ft
Monopole less than 75 ft in height	750 ft	750 ft	750 ft	750 ft

For the purpose of this subsection, the separation distances shall be measured by drawing or following a straight line between the center of the existing tower and the center of the proposed tower.

- D. **Method of Determining Tower Height.** The height of the tower shall be measured as follows: the vertical distance between the highest point of the tower and the natural grade below this point.
- E. **Illumination.** Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). At time of construction of a tower dual mode lighting shall be requested from the FAA in cases where there are residential uses located within a distance from the proposed tower that is equal to three (3) times the proposed height of the tower.
- F. **Finished Color and Tower Markings.** Towers not requiring FAA painting or marking shall have either a galvanized steel finish or be painted an off-white, light gray, silver or white finish. No commercial signs or advertising shall be allowed on any towers or telecommunications facilities.
- G. **Fencing and Screening.** Fences must be constructed around or upon parcels containing towers, antenna support structures or telecommunications facilities and shall be constructed in accordance with this Article.
- H. **Bufferyard and Landscape.** All landscaping on parcels containing towers, antenna support structures or telecommunications facilities shall be in accordance with the applicable bufferyard requirements in the zoning district where the tower, antenna support structure or telecommunications facilities are located. Existing vegetation shall be maintained to the extent possible. However, the City may require additional landscaping if to do so would make the tower, antenna support structure or telecommunications facility more reasonably compatible with the surrounding area. All vegetation used in the landscaping shall be located outside any fenced area.
- I. **Security.** All towers must be secured to protect against trespass or unauthorized use of the property, tower or telecommunications facilities.
1. If high voltage is necessary for the operation of a tower or telecommunications facilities and it is presented in a ground grid or in the tower, warning signs shall be permanently attached to the exterior side of the perimeter fence and located every twenty (25) feet. The signs shall display in bold letters at least eight (8) inches high the following: "HIGH VOLTAGE: DANGER."
 2. Identification tags or signs shall be posted on all communications towers and telecommunications facilities in accordance with FCC and OSHA requirements. The tags shall include the FCC tower registration number, the latitude and longitude of the tower, and the name, address, and telephone number of the tower owner. The identification tags shall be posted on the perimeter fence and shall be constructed of durable materials.
- J. **Access.** All parcels upon which towers are located must provide adequate on-site parking. Traffic associated with the facility shall not adversely affect traffic on adjacent streets.
- K. **Interference With Public Safety Radio Services.** In order to ensure that the City's public safety radio services will be free from objectionable technical interference, all applicants requesting a permit to site a tower or telecommunications facilities shall agree:
1. To demonstrate compliance with good engineering practices;
 2. To provide the City a copy of all intermodulation studies submitted to the FCC;

3. Not to induce objectionable technical interference to the City's public safety radio services;
4. To comply with FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI);
5. In the case of co-location of telecommunications facilities either in the same location or on the same tower as the City's, to not cause or permit to be caused by its transmissions or other activities on the premises, objectionable technical inference of any kind whatsoever to the broadcasting transmission, reception, or electromagnetic communications of the City;
6. To pay for any studies requested by the City to determine if the applicant's telecommunications facilities are causing objectionable technical interference;
7. Upon notification by the City, if the operations of the applicant are causing objectionable technical interference, to immediately undertake all steps necessary to determine the cause of and eliminate such interference at the cost of the applicant. If said interference continues for a period in excess of forty-eight (48) hours after notice from the City, the City shall have the right to cause the applicant to cease operating the equipment that is causing the objectionable technical interference or to reduce the power sufficiently to mitigate the objectionable technical interference until the condition causing said interference has abated.

L. Certifications and Inspections.

1. All towers shall be certified by a structural engineer to be structurally sound and in conformance with the requirements of the City building code and all other construction standards set forth by the City's Code and federal and state law. For new monopole towers, such certification shall be submitted with an application pursuant to *Section 609.5.D* and every ten (10) years thereafter; for existing monopole towers, or new lattice or guyed towers, such certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every ten (10) years thereafter. The tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is or has been jeopardized.
2. The City and its agents shall have authority to enter onto the property upon which a tower is located, between the inspections and certifications required above, to inspect the tower for the purpose of determining whether it complies with the City's building code and all other construction standards provided by the City's Code and federal and state law.
3. The City reserves the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the City shall be borne by the tower owner.

M. **Maintenance.**

1. Licensees shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Licensees shall install and maintain towers, telecommunications facilities, wire, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that will not interfere with the use of other property.
3. All towers, telecommunications facilities and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.

N. **Drainage.** All parcels upon which towers approved by the City are located, must provide adequate measures to protect against drainage or storm water runoff problems both on-site and off-site.

O. **Stealth Design.** All Licensees shall make every reasonable effort to design and construct new towers and telecommunications facilities to blend into the character and environment of the area in which they are located, including the use of camouflage techniques, path array antennas and side mounting antennas unless such use shall create a hazard for the traveling public or it is not technically feasible to use such design and collocate other facilities on the tower.

609.5 Licensing Requirement

A. **License Required.** No person may own or operate a tower, or place wireless telecommunications facilities on a tower, without first obtaining from the City a License to do so pursuant to this Section (herein referred to as "Tower License" or "license"). This requirement applies both to new towers and to existing towers or Non-conforming Structures on the date of passage of this Ordinance. Unless otherwise expressly provided elsewhere in this Section, the License required by this Section is in addition to all other applicable provisions of the zoning district and requirements for a building permit to construct the tower itself. A License may be denied if the applicant is not in compliance with any other provision of the *Branson West Zoning Regulations* regarding the use or provision of towers, telecommunications services or public property, health or safety. The license required under this Section shall not be in lieu of a license to conduct business in the City of Branson West, Missouri. Owners of existing towers and facilities on such towers shall have six (6) months from passage of this Section to obtain a license as required by this Subsection. A license shall be for a term of not more than five (5) years. A renewal must be made in compliance with this *Subsection 609.5.A* and an applicant must demonstrate an existing tower or telecommunications facilities are needed and reasonable alternatives will not meet their needs for continued service capability.

B. **Applications for Towers.** The following applications shall be submitted for the construction and operation of a tower:

1. **License Application.** Prior to the construction of any tower, a License application and fee shall be submitted to the City Clerk. This is an initial license application fee and an additional fee shall be due from the applicant should the City's actual costs of review of the application exceed the fee. The City reserves the right to employ an outside consultant to review any application. All tower license applications shall include the following information and documentation:

- (a) The name, address, and telephone number of the applicant. If the applicant is not the owner of the parcel of land upon which the tower is situated, the written consent of the owner, and the name, address, telephone number of the owner, shall be evidenced in the application. The application shall also contain an affirmative statement indicating that both the owner and applicant are aware of and agree to comply with the provision of *Subsection 609.8* regarding abandonment.
- (b) A statement of whether or not the applicant will be developing the tower for its own use or for the use of others.
 - (1) If for applicant's use, the following is required:
 - i. A description of the use.
 - ii. A description of the network the proposed tower will be part of.
 - iii. A description of the technological design proposed and description of alternatives.
 - iv. Evidence of drive-by tests or other studies relating to the proposed tower which support location on the proposed property.
 - v. Construction date or schedule.
- (c) The legal description, parcel identification number, and address of the parcel of land upon which the tower is to be situated.
- (d) The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures which are capable of providing a location to construct the telecommunications facilities that are planned to be housed or located on the tower within a three-thousand (3,000) foot radius of the proposed new tower site, including City-owned property.
- (e) Written documentation that the applicant made diligent, but unsuccessful efforts for permission to install or collocate the applicant's telecommunications facilities on City-owned towers or useable antenna support structures or made diligent, but unsuccessful efforts to install or collocate the applicant's telecommunications facilities on towers or useable antenna support structures owned by other persons.
- (f) Written documentation containing the following information:
 - (1) Whether the applicant's telecommunications facilities are technically capable of being installed or collocated on another person's tower or useable antenna support structure.
 - (2) If the applicant asserts that its telecommunications facilities are economically or technically infeasible of being installed or collocated on another person's tower or useable antenna support structure, a written statement from the applicant setting forth the

reason(s) why such installation or collocation is technically or economically infeasible. "Technically infeasible" for the purpose of this subsection means that the collocation or installation of applicant's telecommunications facilities on another person's tower or useable antenna support structure would not comply with sound engineering principles, would materially degrade or unreasonably impair the tower or useable antenna support structure's current or planned use, or interfere operationally with applicant's planned use. "Economic infeasibility" for purposes of this Section shall mean that the cost of collocation is not a reasonable business decision from an economic standpoint when all factors are considered.

- (3) If the tower is designed to accommodate one or more additional carriers or capacity for the location of telecommunications facilities other than that of the applicant and, if so, the application shall designate the nature, quality and location of the collocation that will be accommodated.
- (4) An affidavit submitted with written technical evidence from a radio frequency engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another persons' tower or usable antenna support structure located within the search area and must be located at the proposed site in order to avoid prohibiting or effectively prohibiting the provision of personal wireless service by the applicant.
- (5) Written technical evidence from a structural engineer that the proposed structure meets the standards set forth in this Section and the applicable requirements of the Building Code of the City.
- (6) A certification submitted with written technical evidence from a qualified agent of the applicant that the proposed site of the tower or telecommunications facilities does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- (7) Written technical documentation of any Federal Aviation Administration (FAA) approvals and lighting requirements and, if applicable, documentation of approval or denial of dual mode lighting as provided in this Section and a statement whether an FAA "Determination of No Hazard to Aviation" is required by 47 C.F.R. part 17 of the tower. If such a determination is required, no building permit for the tower shall be issued until a copy of the determination is filed with the City.
- (g) A map of the City and the first half-mile of all bordering communities showing the design of the applicant's entire existing or proposed wireless telecommunications network. Such map shall, at minimum, indicate the exact location of all proposed or existing tower and antenna sites, their dimensions, specifications, and signal area coverage.

- (h) A site plan drawn to scale specifying the location of Tower(s), its planned height, guy anchors (if any), transmission building(s), all telecommunications facilities, accessories, parking access plans, landscaping plans (specifying size, spacing and plant material proposed), fences and zoning designation of adjacent land.
- (i) The identity of all adjacent property owners.
- (j) A bond or irrevocable letter of credit in an amount determined by the City to ensure that, should the tower be abandoned pursuant to this Section, removal of said tower will be guaranteed, and to insure the tower and property are maintained.
- (k) An applicant shall only be required to maintain one (1) maintenance bond and one removal bond pursuant to subparagraph (j) for all of the applicant's towers in the City; provided, however, the applicant must maintain the initial level of such bonds if drawn upon by the City for any reason.
- (l) Proof of general liability insurance for claims for injury or death and property damage in an amount approved by the City, but not less than \$300,000.00 per occurrence for personal injury and \$300,000.00 per occurrence for property damage with the City listed as an additional insured.
- (m) An acknowledgment that, by signing a permit application, the applicant agrees to indemnify and hold harmless the City consistent with indemnification language in the application.
- (n) The tower and/or landowner shall promptly notify the City by certified or registered mail of the sale, transfer, or assignment of any tower or telecommunications facility. Each sublease shall be conditioned upon the sublease obtaining the necessary approvals for the subject facility or site from the City prior to siting such facility.

Within forty-five (45) days after a License application for a tower location is filed with the City Clerk, the Planning and Zoning Commission shall determine whether the applicant meets all the requirements of this Section; and, accordingly, shall recommend approval or denial of the application. The forty-five (45) day limit may be extended should the City find it requires additional information or additional study and the applicant agrees to said continuance. The application shall be presented to the Board of Aldermen following Planning and Zoning Commission recommendation. If the application is approved, the City Clerk shall issue the license.

2. **Conditional Use Permit Application.** If the zoning district in which the tower is proposed to be located requires a Conditional Use Permit, a Conditional Use Permit application shall be submitted to the City.

The Commission shall hold a public hearing on the proposed conditional use and shall transmit its findings and recommendations to the Board of Aldermen. The Board of Aldermen may grant Conditional Use permit for a tower, upon the applicant's demonstration to the satisfaction of the City that:

- (a) The tower is to be located on a premise or parcel where public buildings, facilities or structures, school buildings or facilities, church buildings or a

noncommercial, not-for-profit residential neighborhood facilities are located; and

- (b) The tower height will not exceed sixty (60) feet; and
- (c) The stealth design blends into the surrounding area and the structures existing on the premise where the tower is to be located; and
- (d) The site plan minimizes the impact of the presence of the tower on adjacent uses; and
- (e) If there is to be more than one tower on a premise, the presence of more than one tower structure (if more than one is to be built) on the same site or premise is a part of the overall stealth design to be utilized on the premise such as, but not limited to, a series of light standards utilized as tower structures; and
- (f) A request for reduction of the separation requirements for towers not located on the same premises is necessary for providing service to an area of the city, the separation requirements constitute a barrier to entry into the market place by the applicant, or will constitute a technical or economic hardship on the applicant; and
- (g) Any light or noise from the tower will not violate light and Performance Standards of the *Branson West Zoning Regulations* or other codes of the City; and
- (h) The landscaping plan minimizes the impact of the tower location on the appearance of the premise or site on which the tower is to be located.

3. **Applications for Wireless Facilities on Towers.** No person shall construct or maintain a wireless facility on a tower without first obtaining a license from the City for such wireless facilities. An application shall include the name and address of the applicant, a statement by a qualified engineer or other professional that the addition of such wireless facilities meets all conditions of the City Code, the location of the tower and the location on the tower itself where the wireless facilities will be located, the location on the site for any supporting equipment and utility for said wireless facility, and the approximate length of time the applicant plans to use the tower to locate its wireless facilities. The fee for this license shall be renewable every five (5) years in accordance with *Subsection 609.5.F*.

C. **Inspections.** By applying for a Permit or Use for a tower location, an applicant grants the City authority to enter onto its property to inspect the tower for the purpose of determining whether it complies with the applicable state law and all other construction standards provided by the Code City and, federal law. The City reserves the right to conduct such inspections at any time.

D. **Filing Requirement.** A Licensee shall certify in writing that its tower is structurally sound and conforms to the requirements of the applicable state law and all other construction standards set forth by the City Code, federal and state law every five years by filing, by January 1st of every fifth year following the date of the grant of its Tower License a sworn statement by the Licensee or his representative to that effect. Together with this statement, every Licensee shall provide a certificate of liability insurance for no less than \$300,000.00 coverage for injury to persons or and an additional \$300,000.00 coverage for property as a result of any tower failure or malfunction or defect which lists the City as

an additional insured. Licensee shall list City as a party who must be notified should this insurance be canceled or discontinued for any reason thirty (30) days before the expiration of coverage.

- E. **Discontinuance of Use.** In the event the licensed use of a tower is discontinued by the Licensee, the Licensee shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.
- F. **License Renewal Fee.** On or by January 1st of every fifth year following the granting of an initial Tower or Wireless Telecommunications Facilities License for a new or existing tower or facilities placed on a new or existing tower, each Licensee shall submit a License Renewal Fee. In no event shall a license be revoked or considered expired for failure to pay the fee unless the licensee has received at least thirty (30) days written notice of the proposed action.

609.6 **Revocation of License.** The City may at any time revoke a Tower License for failure to comply with the provisions of this Ordinance or any other City code or state or federal law. To properly revoke a Tower License, the City must comply with the procedures set forth below:

- A. The City clerk shall provide Licensee with written notice of all causes for revocation and the intent to revoke and shall allow Licensee sixty (60) days subsequent to receipt of the notice in which to correct the violations or to provide adequate assurance of performance in compliance with this Ordinance. Together with the notice required herein, the City clerk shall provide Licensee with written findings of fact which are the basis of the revocation.
- B. The City shall provide the Licensee with the right to a public hearing before the Hearing Examiner appointed for that purpose by the Mayor and mutually agreed to by the parties, which public hearing shall follow the sixty (60) day notice required herein. All interested parties shall be allowed an opportunity to be heard at the public hearing and present evidence.
- C. After the public hearing, the Hearing Examiner shall, within thirty (30) days after the public hearing date, issue a written order setting forth his findings of fact and conclusions of law forming the basis for his decision.
- D. Upon written determination by the Hearing Examiner to revoke a License, the Licensee may appeal the decision to a court of competent jurisdiction pursuant to *Chapter 536, RSMo*. The Hearing Examiner may provide for a supersedeas bond in an amount deemed by said examiner to be sufficient to protect the interests of the public, and such third parties whose interests were identified during any hearing on such a request to post a bond, to permit the stay of enforcement of any revocation or enforcement action by the City.
- E. Upon satisfactory correction by Licensee of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.
- F. Upon Licensee's failure to correct a violation as found by the Hearing Examiner, the Mayor or his designee may issue an order to disconnect utilities to said tower to any utility company providing same unless a supersedeas bond in an amount determined by the Hearing Examiner under *Subsection 608.6.D*. As long as said bond is in full force and effect, and an appeal is pending under *Chapter 536, RSMo*, no order to disconnect utilities shall be made. Said order shall not be issued prior to thirty (30) days from the date of the Hearing Examiner's written determination. Said order shall be served upon the chief executive officer thereof, together with the Licensee at the last known address, and have attached to it the findings of the Hearing Examiner.

609.7 **Transfer of License.** A tower License may not be sold, transferred, leased or assigned to any other person, without the consent of the City, such consent not to be unreasonably withheld.

609.8 **Abandonment of Tower.**

- A. In the event the use of any tower has been discontinued for a period of one (1) year, or in the event that a Licensee has taken no action within ninety (90) days after the revocation of a Tower License pursuant to *Subsection 609.6* to appeal the decision of the Hearing Examiner or to remedy or correct the violations resulting in the revocation, such tower shall be deemed abandoned.
- B. The City shall provide the tower owner three (3) months notice and an opportunity to be heard before a Hearing Examiner appointed by the City Administrator for the purpose, and agreeable to the tower owner if he/she may be located, before initiating such action. After such notice has been provided, the City shall have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the then fair market value, to approve the sale of the tower to a third party or in the alternative, order the demolition of the tower and all appurtenances.
- C. The City shall provide the tower owner with the right to a public hearing before the Hearing Examiner, which public hearing shall follow the three (3) month notice required in *Subsection 609.8.B*. All interested parties shall be allowed an opportunity to be heard at the public hearing.
- D. After a public hearing is held pursuant to this Section, the Hearing Examiner may order the forfeiture to the City or demolition of the tower. The City may draw upon any maintenance bond or performance bond or letter of credit as provided in *Subsection 609.5.B.1(k)* to pay for all expenses necessary to acquire or demolish the tower. The tower owner may stay such a draw or enforcement of an order of abandonment if he/she posts a supersedeas bond in an amount set by the Hearing Examiner sufficient to protect the interests of the public. However, in no event shall the removal of a tower which is determined to create a danger to the public or adjacent property be stayed due to the filing of such a bond.

609.9 **Location of Towers on City-Owned Property.** The City may authorize any person to locate a tower, antenna support structure or telecommunications facilities on publicly-owned property, subject to the application process set forth in *Subsection 609.5.B*, and subject to the terms and conditions of any lease agreement executed between the City and such person.