

(Chapter enacted through Ordinance No. 06-425, passed December 5, 2006.)

CHAPTER 1136
Wireless Communication Facilities

1136.01	Purpose and Objectives.	1136.09	Standards for facilities.
1136.02	Definitions.	1136.10	Permit to be granted.
1136.03	Conditional use permit required.	1136.11	Effect of granting permit.
1136.04	Applications for conditional use permit.	1136.12	Continuing obligations of holder of permit.
1136.05	General contents of application.	1136.13	Required insurance.
1136.06	Technical certifications.	1136.14	Fees and deposit.
1136.07	Required demonstrations.	1136.15	Removal of facility.
1136.08	Review of application.	1136.16	Assurance of removal.

1136.01 PURPOSE AND OBJECTIVES.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this chapter, the City hereby adopts an overall policy with respect to a conditional use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (a) Implementing an application process for person(s) seeking a conditional use permit for wireless telecommunications facilities;
- (b) Establishing a policy for examining an application for and issuing a conditional use permit for wireless telecommunications facilities that is both fair and consistent;
- (c) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;
- (d) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities.
- (e) Making available to residents an appropriate level of wireless communication services while employing the least visually and physically intrusive means that are not technologically or commercially impracticable under the facts and circumstances.

1136.02 DEFINITIONS.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

- (a) “Wireless Telecommunication Accessory Facility or Structure” means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- (b) “Commercial Impracticability” or “Commercially Impracticable” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
- (c) “Completed Application” means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
- (d) “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- (e) “FCC” means the Federal Communications Commission, or its duly designated and authorized successor agency.
- (f) “Height” means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.
- (g) “NIER” means non-ionizing electromagnetic radiation.
- (h) Propagation study means a report showing the transmission characteristics of the proposed Wireless Telecommunications Facility which includes such information as the City shall require.
- (i) “Personal Wireless Facility” means a “Wireless Telecommunications Facility” used in the provision of “Personal Wireless Services.”
- (j) “Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS” shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- (k) “Telecommunication Site.” See definition for “Wireless Telecommunications Facilities.”
- (l) “Conditional Use Permit” means the official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the City.
- (m) “State” means the State of Ohio.
- (n) “Stealth” or “Stealth Technology” means to employ methods to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities by using the least visually and

physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

- (o) “Telecommunications” means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- (p) “Telecommunications Structure” means a structure used in the provision of services described in the definition of “Wireless Telecommunications Facilities.”
- (q) “Wireless Telecommunications Facility” includes a “Telecommunications Structure”, “Telecommunications Site” and “Personal Wireless Facility” and means a structure, facility or location designed, or intended to be used as, or used to support antennas or other devices for transmitting or receiving wireless signals. A “Wireless Telecommunications Facility” includes, without limit, antennas and towers of all types and kinds and structures, whether installed on or in existing structures such as a multi-story building, church steeple, silo, water tower, sign or other structures, or constructed free standing, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC. “Wireless Communication Facility” does not include structures used exclusively for the City's fire or police or exclusively for private, noncommercial radio and television reception, private citizen's bands, amateur radio and other similar noncommercial telecommunications where the height of the facility is below the height limits set forth in this chapter.

1136.03 CONDITIONAL USE PERMIT REQUIRED.

- (a) No wireless telecommunications facility shall be constructed within the City unless and until a conditional use permit shall have been issued authorizing such construction unless the City Manager or designee has issued a written determination that the proposed Wireless Telecommunications Facility has no appreciable impact under subsection (c) below.
- (b) Any wireless communication facility lawfully constructed within the City prior to the adoption of this ordinance, is a non-conforming use, unless and until a conditional use permit shall have been issued with respect to such wireless communication facility.
- (c) If the City Manager determines, based on a written request (application), that due to the size, location and similar characteristics and due to the operating characteristics of the proposed facility, the proposed facility will have no appreciable visual or other impact upon the neighborhood in which it is to be located and no detrimental effect on existing telecommunication broadcasting and receiving, the City Manager may issue a written determination to that effect. The application for a determination of no appreciable impact shall be accompanied by such information as the City Manager may require to evaluate the impact of the proposed wireless telecommunications facility. The City Manager may require the applicant for a determination of no appreciable impact to provide all or a portion of the information specified in Sections 1136.05 and 1136.06 of this Chapter. An application for a determination of no appreciable impact shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the

information. Such a determination shall not be made with respect to a proposed new tower.

- (d) A conditional Use Permit shall not be required for location of a Wireless Telecommunication facility in the City's rights of way. Such facilities must conform to the City's ordinances rules and procedures governing the rights of way. (Ord. No. 12-8. Passed 1-17-12.)

1136.04 APPLICATIONS FOR CONDITIONAL USE PERMIT.

- (a) Applications for a conditional use permit shall be submitted to the Department of Community Development on such forms as the City Manager shall prescribe.
- (b) An application for a conditional use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the City, any false or misleading statement in the application may result in denial of the application without further consideration or opportunity for correction.
- (c) Applications not meeting the requirements stated herein or that are otherwise incomplete may be rejected by the City.

1136.05 GENERAL CONTENTS OF APPLICATION.

All applications for a conditional use permit with respect to a wireless communication facility shall contain the following:

- (a) Conditional Use Application (Section 1172.05);
- (b) Co-location of a wireless telecommunications facility on existing structure
 - (1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily and essentially within the City. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
 - (2) A plot plan shall indicate all building and land uses within two hundred (200) feet of the proposed facility. Aerial photos and/or renderings may augment the plot plan.
 - (3) The location of the nearest residential structure;
 - (4) The location, size and height of all proposed and existing antennae and all appurtenant structures;
 - (5) The number, type and design of the tower(s) and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users. The applicant shall list the location of every tower, building, or structure within a reasonably proximity that could support the proposed antenna;
 - (6) A description of the proposed antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (7) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the antenna may be seen;
 - (8) Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the City, as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to

the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at a pre-application meeting, if requested by the applicant.

- (c) Telecommunications Structures: In addition to the general contents for co-location set forth in subsection (b) above, an applicant for a new telecommunication structure shall also submit,
 - (1) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - (2) A comprehensive report inventorying existing towers and other suitable structures within 4 miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable;
 - (3) The make, model and manufacturer of the tower and antenna(s);
 - (4) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
 - (5) Proof of the availability of the insurance required under Section 1136.13 and the removal bond required under Section 1136.15.
- (d) If applicant petitions recognition of no appreciable impact under Section 1136.03(c), then please submit a statement of no appreciable impact directed to City Manager.
- (e) Technical Certification data according to Section 1136.06 below.
- (f) Statement of demonstration of necessity according to conditions set forth in Section 1136.07 below.

1136.06 TECHNICAL CERTIFICATIONS.

All applications for a conditional use permit with respect to a wireless communication facility shall contain, the following, each certified by an engineer or other professional licensed as appropriate to that item:

- (a) A topographic and geomorphologic study and analysis taking into account the subsurface and substrata, and the proposed drainage plan, assuring the stability of the proposed wireless telecommunications facilities on the proposed site.
- (b) The frequency, modulation and class of service of radio or other transmitting equipment;
- (c) The actual intended transmission and the maximum effective radiated power of the antenna(s);
- (d) The direction of maximum lobes and associated radiation of the antenna(s);
- (e) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- (f) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices;
- (g) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

1136.07 REQUIRED DEMONSTRATIONS.

The application shall contain demonstrations that the granting of the application will further the objectives stated in Section 1136.01 above. Such demonstrations shall include:

- (a) A demonstration the need for the wireless telecommunications facility to provide service primarily and essentially within the City. Such demonstration shall include

propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;

- (b) In the case of a new tower, a demonstration that the proposed facility has been sited and designed so as to employ the least visually and physically intrusive means that are not commercially impracticable under the facts and circumstances. Such report must include evidence that fair and thorough consideration was given to the following:
 - (1) Sharing an existing tower or other facility with another provider,
 - (2) Locating the facility atop or within an existing structure,
 - (3) Locating the facility upon publicly owned land,
 - (4) Making any new tower accessible to co-location of additional antennas of other providers,
 - (5) Locating the facility so as to minimize the impact upon the following types of Zoning Districts in the following order:
 - (A) Historical Districts,
 - (B) Single Family Residential Districts,
 - (C) Multi-Family Residential Districts,
 - (D) Commercial Districts,
 - (E) Manufacturing and Industrial Districts,
 - (6) Minimizing the height of towers and other structures,
 - (7) Employing camouflage or other stealth technology.
- (c) A demonstration of the ability of any proposed new tower to accommodate future demand for at least five additional commercial applications, such as future co-locations, without causing interference. This requirement may be waived, provided that the applicant demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
 - (1) The foreseeable number of FCC licenses available for the area;
 - (2) The kind of wireless telecommunications facilities site and structure proposed.
- (d) Agreements between providers limiting or prohibiting co-location shall not be accepted as a valid basis for a claim of commercial impracticability or hardship. An assertion that the proposed site is the only site under option or lease shall not be accepted as a valid basis for a claim of commercial impracticability or hardship.

1136.08 REVIEW OF APPLICATION.

(a) The City Manager shall designate such persons as the City Manager deems appropriate to review, analyze, and evaluate applications and supporting materials. The City Manager may, at his discretion, delegate or designate other official agencies of the City or consultants employed by the City to accept, review, analyze, evaluate and make recommendations with respect to granting or not granting, recertifying or not recertifying or revoking conditional use permits for wireless telecommunications facilities.

(b) If after review of the "Zone of Visibility Map" submitted under Section .05 (b)(7) above, the City determines that the proposed facility is likely to have adverse visual or aesthetic impact, the City may require the applicant to perform a balloon test at the applicant's expense, described as follows:

- (1) The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a 3-foot in diameter brightly colored balloon at the maximum height of the proposed new tower.

- (2) The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the City.
- (3) The applicant shall inform the City, in writing, of the dates and times of the test, at least 14 days in advance.
- (4) The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

1136.06 STANDARDS FOR FACILITIES.

A conditional use permit for a wireless communication facility will be granted only when the facility complies with the following standards:

- (a) The base and all related facilities and structures of the proposed wireless telecommunications facilities will be effectively screened from view.
- (b) All utilities at the site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- (c) Access roads, turn-around space and parking have been provided to assure adequate emergency and service access.
- (d) Maximum use of existing roads, whether public or private, shall be made to the extent practicable.
- (e) Road construction shall minimize ground disturbance and the cutting of vegetation.
- (f) Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- (g) Any new tower to be constructed on the site shall be no higher than necessary, and in no case, higher than one hundred ninety feet (190) above existing grade.
- (h) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- (i) Towers shall be galvanized and painted with a rust-preventive paint of a noncontrasting gray or similar color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.
- (j) All wireless telecommunications facilities and antennas shall be fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (1) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - (2) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- (k) Wireless telecommunications facilities shall contain a sign no larger than 4 square feet located near the base of the tower in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s), as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign

shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

- (l) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from any residential property line a minimum of a distance equal to the height of the proposed tower or wireless telecommunications facility structure plus 50% of the height of the tower or structure.
- (m) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from any nonresidential property line a minimum of a distance equal to the height of the proposed tower or wireless telecommunications facility structure plus 25% of the height of the tower or structure.

1136.10 PERMIT TO BE GRANTED.

A conditional-use permit with respect to a wireless telecommunications facility shall be granted when

- (a) All of the following criteria (1) through (4) are met:
 - (1) The City reasonably determines that granting the application will serve the objectives set forth in Section 1136.01 above;
 - (2) The City reasonably determines that the applicant has clearly and convincingly demonstrated the matters required by Section 1136.07 above;
 - (3) The application shows compliance with the standards set forth in Section 1136.09 above; and
 - (4) The application demonstrates compliance with other applicable provisions of the Zoning Code.
- (b) Or, if the conditional use permit application is for the modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station and involves a collocation of new transmission equipment or removal of transmission equipment or replacement of transmission equipment, then a conditional-use permit shall be granted for the collocation, removal, and/or replacement.
(Ord. 12-176. Passed 06-05-12.)

1136.11 EFFECT OF GRANTING PERMIT.

A permit granted under Section 1136.10 above shall entitle the holder to construct a wireless telecommunication facility upon the issuance of a building permit obtained from the Chief Building Official, and to operate the facility for a period of five (5) years from the date of issuance, subject to compliance with the provisions of Section 1136.12 below.

1136.12 CONTINUING OBLIGATIONS OF HOLDER OF PERMIT.

The holder of a permit granted under Section 1136.10 above shall:

- (a) Maintain the facility in continuous operation. "Continuous operation" means that the facility has not been inactive for a period in excess of sixty (60) consecutive calendar days, unless such inactivity has been caused by an Act of God, or force majeure, and repair or reconstruction has commenced within such sixty (60) day period;
- (b) Operate and maintain the facility in accordance with the terms of the application, and any applicable license issued by the FCC;
- (c) Maintain in full force and effect the liability and other insurance required under the terms of Section 1136.13;

- (d) Negotiate in good faith for the shared use of any tower by other wireless service providers in the future, and shall:
 - (1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (2) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (e) Failure to abide by the conditions outlined above may be grounds for revocation of the conditional use permit for the facility.

1136.13 REQUIRED INSURANCE.

(a) A holder of a conditional use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the conditional use permit in amounts as set forth below:

- (1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence; \$2,000,000 aggregate;

(b) The Commercial General Liability insurance policy shall specifically include the City and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.

(c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

(d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days prior written notice in advance of the cancellation of the insurance.

(e) Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance that such policies are to renew or replace.

(f) Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the granting of the conditional use permit, the holder of the conditional use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

1136.14 FEES AND DEPOSIT.

(a) At the time that a person submits an application for a conditional use permit for a new tower, such person shall pay a non-refundable application fee of \$5,000.00 to the City. If the application is for a conditional use permit for co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, the non-refundable fee shall be \$2,000.00. At the time that a person submits an application for a determination of no appreciable impact, such person shall pay a non-refundable fee of \$1,000.00 to the City.

(b) No application fee is required in order to rectify a conditional use permit for wireless telecommunications facilities, unless there has been a visible modification of the wireless telecommunications facility since the date of the issuance of the existing conditional use permit for which the conditions of the conditional use permit have not previously been modified. In the case of any modification, the fees provided in division (a) shall apply.

(c) In addition to the non-refundable application fee set forth in subsection (a) above, as required, an applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the City in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City for services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the City, replenish the escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the City before any further action or consideration is taken on the application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
(Ord. No. 12-8. Passed 1-17-12.)

1136.15 REMOVAL OF FACILITY.

The City may require that a telecommunication facility be removed upon the occurrence of any of the following events:

- (a) The facility was not constructed in accordance with any applicable permit,
- (b) The facility has deteriorated from lack of maintenance or other cause so that it has become a danger to public safety,
- (c) More than ninety days have elapsed since the expiration of the facility's conditional use permit and no application for renewal is pending,
- (d) The facility has been inactive for a period of at least ninety (90) consecutive calendar days,
- (e) The holder of the conditional use permit has not fulfilled the holder's continuing obligations under Section 1136.12 above.

1136.16 ASSURANCE OF REMOVAL.

(a) In order to assure the prompt removal of a wireless communication facility when required by the City in accordance with Section 1136.15 above, the City shall require the holder of a conditional use permit to maintain in full force and effect a removal bond. A removal bond shall:

- (1) Be written by a surety company authorized to do business in the State;
- (2) Be in an amount sufficient to pay the cost of removal of the facility, and not less than \$75,000;
- (3) Provide that upon written notice from the City Manager to the surety company and the holder that the City has caused the removal of the facility, the surety shall pay to the order of the City the City's cost of removal of the facility, up to and including the maximum amount of the bond.

(b) In the event that the bond required under subsection (a) above is unavailable or insufficient to pay the City's cost of removal, the City may issue an assessment in the amount of its removal costs against the parcel or parcels of real estate upon which the facility was located, in accordance with law.