

ORDINANCE NO. 984

AN ORDINANCE OF THE CITY OF WESTWOOD, KANSAS AMENDING AND/OR ADOPTING THE FOLLOWING ARTICLES AND SECTIONS OF THE WESTWOOD ZONING ORDINANCE WHICH IS INCORPORATED BY REFERENCE WITHIN THE WESTWOOD CITY CODE BY CHAPTER 16, AS AMENDED BY ORDINANCE 960, ARTICLE 1, SECTIONS 1.6.4, 1.6.5, 1.6.6, 1.6.13, 1.6.15, 1.6.17, 1.6.19, 1.6.29, and 1.6.32; ARTICLE 2, SECTIONS 2.1, 2.3, and 2.3.566; ARTICLE 3, SECTION 3.3; ARTICLE 4, SECTIONS 4.2.1, 4.2.6, 4.2.9, and 4.3.1; ARTICLE 5, SECTIONS 5.1.1, 5.2.1, and 5.3.4; ARTICLE 6, SECTIONS 6.3.2 and 6.4.2; ARTICLE 8, SECTIONS 8.1.1, 8.1.2, 8.1.4.025, 8.1.4.045, and 8.1.4.050; and, ARTICLE 10.

WHEREAS, on August 28, 2017, the Planning Commission of the City of Westwood conducted a public hearing to consider amendments to the Zoning Ordinance of the City of Westwood;

WHEREAS, following the public hearing by the Planning Commission on August 28, 2017, the Planning Commission provided a unanimous recommendation to the governing body that the following Articles and Sections of the City's Zoning Ordinance be amended or adopted as hereinafter provided: Chapter 16, Article 1, Sections 1.6.4, 1.6.5, 1.6.6, 1.6.13, 1.6.15, 1.6.17, 1.6.19, 1.6.29, and 1.6.32; Article 2, Sections 2.1, 2.3, and 2.3.566; Article 3, Section 3.3; Article 4, Sections 4.2.1, 4.2.6, 4.2.9, and 4.3.1; Article 5, Sections 5.1.1, 5.2.1, and 5.3.4; Article 6, Sections 6.3.2 and 6.4.2; Article 8, Sections 8.1.1, 8.1.2, 8.1.4.025, 8.1.4.045, and 8.1.4.050; and, Article 10 in its entirety;

WHEREAS, the Governing Body has determined to accept the recommendation of the Planning Commission and has determined to amend the Zoning Ordinance of the City as hereinafter provided;

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

SECTION 1. That Article 1, Section 1.6.4 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.4 Pre-application Conference.

A pre-application conference with City staff may, at the discretion of the Mayor or Building Official, may be required prior to submission of any application for a rezoning request, special use permit, preliminary development plan or site plan. The purpose of this conference shall be to: acquaint the applicant with the procedural requirements of this title; provide for an exchange of information regarding the proposed development plan and applicable elements of this title, the city's Comprehensive Plan and other development requirements; advise the applicant of any public sources of information that may aid the application; identify policies and regulations that create opportunities or pose significant restraints for the proposed development; review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences; and permit staff input into the general design of the project. Specific requirements and provisions related to the proposed development, building, and standards

for Communication Facilities for Wireless Services are contained within Article Ten of the Zoning Ordinance.

SECTION 2. That Article 1, Section 1.6.5 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.5 Submission of Technical Studies.

a. City staff may require applicants for rezoning requests, special use permits, preliminary development plans, site plans or plats to submit such technical studies as may be necessary to enable the Planning Commission or Governing Body to evaluate the application. The determination of the need and requirement for technical studies shall be made in a reasonable and nondiscriminatory manner. Technical studies reasonably required for applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be subject to the applicable provisions of state and federal law and regulations. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydro-geologic studies, flood studies, environmental impact assessments, noise studies, market studies, or economic impact reports. The persons or firms preparing the studies shall be subject to the approval of city staff. The costs of all studies shall be borne by the applicant. Any decision of City staff to require any such study or to disapprove the persons or firms selected by the applicant to perform the study may be appealed to the Planning Commission. The decision of the Planning Commission on any such appeal shall be final, subject to the applicable provisions of state and federal law and regulations.

b. Notwithstanding the fact that City staff did not require submission of any technical studies in support of the application, either the Planning Commission or the Governing Body may require the submission of such studies prior to taking action on the application. The determination of the need and requirement for technical studies shall be made in a reasonable and nondiscriminatory manner and shall be subject to the applicable provisions of state and federal law and regulations. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the studies be performed. Any decision of the Planning Commission or the Governing Body to require that studies be performed or to disapprove the persons or firms selected by the applicant to perform the studies shall be final.

SECTION 3. That Article 1, Section 1.6.6 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.6 When an Application is Deemed Complete.

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted subject to the provisions of this chapter; provided that, requirements and provisions related to applications for and the definitions, proposed development, and building standards for Communication Facilities for Wireless Services contained within Article Ten of the Zoning Ordinance.

SECTION 4. That Article 1, Section 1.6.13 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.13 Consideration of Text Amendments, Rezoning Requests, and Special Use Permits – Process.

a. Public Hearing Required. Consideration of zoning text amendments, rezoning requests, and special use permits shall require a public hearing before the Planning Commission following publication notice as provided in **1.6.8** through **1.6.11**. Applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be processed within the applicable timeframes set forth in Article Ten, Section 10.4.C.

b. Action by Planning Commission. A vote either for or against a zoning text amendment, rezoning request, or special use permit by a majority of all of the Planning Commissioners present and voting shall constitute a recommendation of the Planning Commission. If a motion for or against the zoning text amendment, rezoning request, or special use permit fails to receive a majority vote of the Planning Commission, the Planning Commission may entertain a new motion. A tie vote of the Planning Commission on any motion shall be deemed to be a failure of the Planning Commission to make a recommendation. The Planning Commission's recommendation to approve or disapprove shall be submitted to the Governing Body for action, accompanied by an accurate written summary of the hearing proceedings. A recommendation to approve a zoning text amendment shall be submitted in the form of an ordinance.

c. Governing Body Action upon Planning Commission Recommendation of a Zoning Text Amendment, Rezoning Request, or Special Use Permit. The Governing Body may (1) approve such recommendations by the adoption of the same by ordinance or resolution; (2) override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the Governing Body; or (3) return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

d. Applications returned to Planning Commission. Upon receipt of an application returned by the Governing Body, the Planning Commission may resubmit its original recommendation giving the reasons therefor or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after the receipt of the Governing Body's report, the Governing Body may consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

e. Reconsideration by Governing Body. Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body, by a simple majority thereof, may take such action as it deems appropriate, including approval, disapproval or amendment of the application and adoption as amended, or the Governing Body may return the same to the Planning Commission for further consideration. Unless the Governing Body returns the application to the Planning Commission for further consideration or

continues its consideration of the matter to another date, the Governing Body's action on the application shall constitute a final decision.

f. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, time limits and requirements of Article Ten of the Westwood Zoning Ordinance.

SECTION 5. That Article 1, Section 1.6.15 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.15 Consideration of Appeals.

- a. Appeals from the decision of any official administering the provisions of this ordinance shall be filed with the City Clerk within 30 days from the date of the decision by the officer whose decision is being appealed. A copy of the notice of appeal shall also be served upon the officer whose decision is being appealed. Thereafter, the officer whose decision is being appealed shall prepare and transmit to the Secretary of the Board of Zoning Appeals a complete record of all proceedings relating to the appeal.
- b. Consideration of appeals by the Board of Zoning Appeals shall be at a public hearing, following publication notice as provided by Section **1.6.8**.
- c. 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).

SECTION 6. That Article 1, Section 1.6.17 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.17 Criteria for Considering Applications.

In considering any application for rezoning request, conditional use permit, or special use permit, the Planning Commission and the Governing Body may give consideration to the criteria stated below, to the extent they are pertinent to the particular application; provided that, any denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services 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 as defined and required by Article Ten of the Westwood Zoning Ordinance and applicable law. In addition, the Planning Commission and Governing Body may consider other factors which may be relevant to a particular application.

- a. The conformance of the proposed use to the city's Comprehensive Plan and other adopted planning policies.
- b. The character of the neighborhood including, but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space, and floor-to-area ratio (commercial and industrial).
- c. The zonings and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zonings and uses.

- d. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
- e. The length of time the property has remained vacant as zoned.
- f. The extent to which approval of the application would detrimentally affect nearby properties.
- g. The extent to which the proposed use would substantially harm the value of nearby properties.
- h. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
- i. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm.
- j. The economic impact of the proposed use on the community.
- k. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
- l. The recommendation of professional staff.

SECTION 7. That Article 1, Section 1.6.19 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.19 Special Use Permit Applications – Submission Requirements.

The Planning Commission shall adopt a document outlining submission requirements for special use permit applications. This document shall require a site plan, a legal description, adequate information to provide notice to surrounding property owners, and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to Section **1.6.5**. The Building Official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, requirements and timeframes set forth in Article Ten of the Westwood Zoning Ordinance.

SECTION 8. That Article 1, Section 1.6.29 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.29 Written Findings.

Unless otherwise specifically provided in this title, written findings are not required for a final decision on any application; provided that, in the event of a denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services, 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. However, any decision may be expressly made subject to the subsequent adoption of written findings and, in such cases, the decision shall not be considered final until such findings are adopted. When an appeal of any quasi-judicial decision has been filed in the District Court of Johnson County pursuant of K.S.A. 12-760 or 60-2101(d) in cases where written findings have not

been adopted, written findings shall be adopted by the approving authority within 45 days of service of the appeal on the City and thereafter shall be certified to the District Court as part of the administrative record. The 45-day time period for adoption and certification of findings may be extended with the permission of the District Court.

SECTION 9. That Article 1, Section 1.6.32 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6.32 Appeals of Final Decisions.

Except where this title provides for an appeal to another quasi-judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this title desiring to appeal said decision shall file the appeal in the District Court of Johnson County within 30 days of the making of the decision; 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).

SECTION 10. That Article 2, Section 2.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

2.1 Intent

For the purpose of interpreting this Ordinance, certain terms, words, concepts, and ideas used herein shall be interpreted or defined as follows, unless more specifically described, limited or qualified within a specific Article, Section or standard of this Ordinance.

SECTION 11. That Article 2, Section 2.3 of the Westwood Zoning Ordinance is hereby amended, to add Section 2.3.566 to read as follows:

2.3 Definitions

2.3.566 Satellite Dish: any circular or semi-circular dish-shaped receiving antenna used to receive signals transmitted from satellites, generally for highly specialized industrial communications or for receiving television signals from a satellite. This definition does not apply to antennas regulated pursuant to Article Ten of the Westwood Zoning Ordinance.

SECTION 12. That Article 3, Section 3.3 of the Westwood Zoning Ordinance is hereby amended to read as follows:

3.3 Uses Prohibited

A. Unless a project is subject to a valid building permit, no open excavation, no partially constructed structure, and no building or structure so damaged as to become unfit for use or habitation, shall be permitted, maintained or remain in such condition within the City for a period of more than six months, except by special permission of the Governing Body.

B. No building material, construction equipment, machinery, or refuse shall be stored, maintained, or kept in the open on any lot, tract, or parcel within residential (R-1) district, other than during actual construction operations on said premises or related premises. In unusual cases, the Governing Body may waive this requirement for a limited time.

C. No building or premises now standing in the City, nor any building hereafter erected therein, shall be used or occupied for any of the following purposes:

1. junkyard or junk storage room;
2. tourist cabin or trailer camp;
3. slaughterhouse, commercial poultry dressing or processing establishment where such is primary and not incidental to some authorized use;
4. except as provided elsewhere in the Zoning Ordinance of the City of Westwood, Kansas, lodging house, duplex, row house, or multi-family dwelling, except that group homes shall be allowed;
5. auto wholesale and retail.

D. No above-ground construction or planting shall be permitted in any public street, sidewalk or right-of-way, except for traffic and public safety signs, plantings less than 24 inches in height, and hydrants or pedestals less than 30 inches in height and having a width or depth not more than 12 inches; provided that, communication facilities for wireless services may be permitted by application and approval subject to the provisions of Article Ten of Westwood Zoning Ordinance.

E. No poles, towers, conduits, or lines for any purpose, including for the purpose of transmission of electricity, data, cable television, voice signals, electronic mail, telecommunications, or other purposes shall be permitted or constructed above ground; provided that, communication facilities for wireless services may be permitted by application and approval subject to the provisions of Article Ten of Westwood Zoning Ordinance.

F. Portable storage units, dumpsters, portable toilets, Portable On Demand Storage units ("PODS"), storage trailers, and other impermanent storage or other facilities are prohibited unless a permit is first obtained. Such a permit shall be for a maximum period of 30 days or as may be required pursuant to any valid building permit. Such permit may be renewable upon a showing of reasonable necessity or as set out in any building permit.

SECTION 13. That Article 4, Section 4.2.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

4.2 Uses Permitted with Conditions

4.2.1 Intent

Certain uses exist which may be constructed, continued and/or expanded, provided they meet certain mitigating conditions specific to their design and/or operation and to protect the public health, safety and welfare. Such conditions ensure compatibility among other building types so that different uses may be located in proximity to one another without adverse effects to either.

Each use shall be permitted in compliance with all conditions listed for the use in this article. A special use permit may be required as identified in Article 8 of this Ordinance for each use permitted with the following conditions. Applications for communication facilities for wireless services and for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Westwood Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of

communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

SECTION 14. That Article 4, Section 4.2.6 of the Westwood Zoning Ordinance is hereby amended to read as follows:

4.2.6 Communication Facilities

- A. Communication facilities are subject to the application, review, building, and performance standards of Article Ten of the Westwood Zoning Ordinance.
- B. Communication Facilities, limited to the following:
 - 1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
 - 2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
 - 3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.

SECTION 15. That Article 4, Section 4.2. of the Westwood Zoning Ordinance is hereby amended, to add Section 4.2.9 to read as follows:

4.2.9 Essential Utility Structures

Utility structures may only be installed in a utility easement; provided that, utility structures may be located within the public right-of-way subject to the approval of the Public Works Director and, if applicable, located behind any sidewalk. Other locations for utility structures may be allowed pursuant to the issuance of a special use permit as provided in Westwood Zoning Ordinance Article 8.

- A. When placing utility structures, priority will be sought in the following order:
 - 1. Properties with non-residential uses.
 - 2. Thoroughfare easements.
 - 3. Rear yards.
 - 4. Street side yards on a corner lot behind the front yard setback.
- B. No newly-constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties.
- C. The structure is limited to sixty six (66) inches in height above average grade and shall be limited to a footprint of no larger than twenty (20) square feet in area.
- D. Utility structures shall comply with all noise limitations and requirements established by the City.

- E. Landscaping shall be provided for all utility structures with a footprint greater than two (2) square feet, where necessary to substantially screen the utility structure from public view and the view of adjacent landowners. Where landscaping is required for screening, a landscaping plan signed by a registered landscape architect shall be submitted with an application for a right-of-way permit, and, if approved, installed as part of the work performed in accordance with the right-of-way permit.
- F. Any utility structure that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of the utility structure shall remove the structure and return the site to its original condition.

SECTION 16. That Article 4, Section 4.3.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

4.3 Single-Family Residential

4.3.1 Uses Permitted by Right

In the R-1 District, no building or premises shall be used and no building or structure shall be hereinafter erected or altered unless otherwise provided in this ordinance, except for the following uses:

- A. Single-family dwellings and appurtenances incident thereto;
- B. Public parks or playgrounds, churches on lots of one acre or more, public or parochial school, city halls and police stations;
- C. Group homes;
- D. Accessory uses as provided herein;
- E. Essential utility services subject to the limitations provided herein; or,
- F. Communication Facilities, limited to the following:
 - 1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
 - 2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
 - 3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.
 - 4. Communication facilities, *e.g.* Towers, Base Stations and Antennas, are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance.
 - 5. Communication facilities with conditions as provided herein or as otherwise deemed necessary by the approval authority to protect the public health, safety or welfare.

SECTION 17. That Article 5, Section 5.1.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

5.1 Commercial Districts — General Requirements

5.1.1 Intent

Zoning serves the City in that it maintains property values, stabilizes neighborhoods, provides uniform regulations, provides safe and efficient traffic movement, and promotes aesthetics and architectural harmony. It is the intent of the City to promote high design standards and safety in its land use policies and ordinances.

- A. Consistent with the City's Comprehensive Plan, the goals of these Commercial District Ordinances are as follows:
 - 1. to be able to accommodate the types of uses desired by the citizens of Westwood, including, but not limited to, retail, dining, and office services;
 - 2. to improve the overall cohesiveness of the commercial areas of the City;
 - 3. to enable future development to improve the look and character of the City;
 - 4. to protect the public health, safety and welfare;
 - 5. to accommodate the needs of future expansion and improvements.
- B. Several issues are paramount in achieving the goals indicated in the City's Comprehensive Plan, relating to the continued redevelopment of the Commercial districts. They are as follows:
 - 1. creating or improving proper commercial buffering from adjacent residential properties;
 - 2. solving parking and driveway problems to accommodate both vehicles and pedestrians properly;
 - 3. creating consistent sight lines to commercial buildings, thereby strengthening City cohesiveness;
 - 4. providing better access to commercial areas for both pedestrians and vehicles;
 - 5. creating the proper image on the side streets that serve as gateways into the residential neighborhoods adjacent to the commercial corridors; and
 - 6. accommodating a variety of property uses in a small, densely built area.

SECTION 18. That Article 5, Section 5.2.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

5.2 C-O Commercial — Office

5.2.1 Office and Commercial District (C-O) Use Regulations

In the office and professional district, no building, structure, land, or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

- A. Office buildings to be used only for the administrative function of businesses, companies, corporations, or social or philanthropic organizations or societies.
- B. Other offices including, but not limited to, the following:
 - 1. accountants
 - 2. architects
 - 3. banks
 - 4. brokers

5. engineers
 6. dentists
 7. lawyers
 8. insurance offices
 9. physicians, osteopaths, chiropractors, psychologists, mental health counselors, or other physical or mental health care professionals
 10. real estate
 11. advertising, public relations, and graphic arts
 12. financial planning, stock brokerage, and securities businesses
 13. computer programming, and technology services
 14. massage therapists
- C. Customary accessory uses; provided that, accessory uses related to Communication Facilities for Wireless Services are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance.
- D. No merchandise shall be handled or displayed, nor equipment, material, or vehicle used for transportation to and from a building in this district.
- E. Communication Facilities limited to the following:
1. Antennas, as defined in Section 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
 2. Small Cell or Distributed Array Facilities, as defined in Section 10.2, on utility poles or street lights in the public right-of-way.
 3. Communication facilities are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance.

SECTION 19. That Article 5, Section 5.3.4 of the Westwood Zoning Ordinance is hereby amended to read as follows:

5.3 C-1 Commercial — Mixed-Use

5.3.4 Uses Permitted with Conditions

The following uses are permitted in C-1 Districts:

- A. Commercial uses exceeding 30,000 gross square feet
- B. Customary home occupations
- C. Commercial child care
- D. Hotels and/or convention facilities exceeding 50 rooms and 30,000 gross square feet of convention floor area
- E. Office uses exceeding 30,000 gross square feet
- F. Parking decks
- G. Restaurants with outdoor seating
- H. Service stations
- I. Commercial uses which allow patrons to remain in their automobiles while receiving goods and services.
- J. Communication Facilities limited to the following:

1. Antennas, as defined in Section 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
2. Small Cell or Distributed Array Facilities on utility poles or street lights in the public right-of-way.
3. Communication facilities are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance.

SECTION 20. That Article 6, Section 6.3.2 of the Westwood Zoning Ordinance is hereby amended to read as follows:

6.3 Planned Residential Cluster Development (PRCD) District

6.3.2 Permitted Uses

No building, structure, land, area or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, remodeled, moved or altered except for one or more of the following uses:

- a. Single-Family dwellings
- b. Townhouse dwellings
- c. Group homes;
- d. Accessory structures;
- e. Accessory uses as provided in Section 4.2.2, 4.2.6, 4.2.7, 4.3.12, and 4.3.13; or
- f. Communication Facilities as defined in 10.2, limited to:
 1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in such districts.
 2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
 3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.

SECTION 21. That Article 6, Section 6.4.2 of the Westwood Zoning Ordinance is hereby amended to read as follows:

6.4 Planned Multi-Family Residential (PMFR)

6.4.2 Permitted Uses

No building, structure, land, or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

- a. Residential buildings containing one to eight dwelling units;
- b. Senior Adult Independent Living Dwellings;
- c. Community Living Facility;
- d. Assisted Living, Skilled Nursing, Continuing Care Retirement Facilities;

- e. Accessory structures;
- g. Accessory uses as provided in 4.2.6, 4.2.7, 4.3.12, and 4.3.13; or
- h. Communication Facilities as defined in 10.2, limited to:
 1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in such districts.
 2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
 3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.

SECTION 22. That Article 8, Section 8.1.1 of the Westwood Zoning Ordinance is hereby amended to read as follows:

Article Eight: Special Use Permits

8.1 Special Use Permits

8.1.1 Special Uses

Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to assure the compatibility of the use with surrounding uses and protect the public health, safety and welfare. It is the intent of this Chapter to allow for such uses by the granting of a special use permit, subject to the same procedures applicable to a rezoning set forth in Section 1.6. Communication facilities and communication facilities for wireless services are subject to the application, location, building and design standards of Article Ten of the Zoning Ordinance.

SECTION 23. That Article 8, Section 8.1.2 of the Westwood Zoning Ordinance is hereby amended to read as follows:

8.1.2 Special Uses Designated

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one (1) or more of the following special uses, subject to approval of a special use permit by the Governing Body and subject to the development and performance standards set forth in Section 8.1.4:

- a. Amusement centers and arcades;
- b. Clubs and drinking establishments - bar or night club;
- c. Community living facility;
- d. Communications facilities and antennas;
- e. Daycare homes, group daycare homes, childcare centers, preschools, and Mother's Day Out programs;
- f. Hospitals;
- g. Off-street parking lots/structures of a temporary or permanent nature
- h. Public utility services or public service corporations - buildings, structures, and premises;

- i. Radio and television towers;
- j. Communication Facilities (Towers, Base Stations, Antennas, and the like);
- k. Testing and research facilities, and laboratories;
- l. Temporary use of land for commercial or industrial purposes.

SECTION 24. That Article 8, Section 8.1.4.025 of the Westwood Zoning Ordinance is hereby amended to read as follows:

8.1.4.025 Communications Facilities (including Towers, Base Stations and Antennas)

- a. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.
- b. Each application for a Special Use Permit shall follow the process set forth and submit the information listed in Article Ten, Section 10.5.
- c. A Special Use Permit for Communications Facilities shall be subject to the performance standards Article Ten, Section 10.7.
- d. A Special Use Permit for Communication Facilities shall be for a term of not less than (10) years.
- e. A denial of a Special Use Permit for Communication Facilities shall comply with the provisions and requirements set forth in Article Ten, Section 10.8.

SECTION 25. That Article 8, Section 8.1.4.045 of the Westwood Zoning Ordinance is hereby amended to read as follows:

8.1.4.045 Public Utility Services or Public Service Corporations - Buildings, Structures, and Premises

- a. Outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.
- b. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years; provided that, a special use permit for Communication Facilities for Wireless services shall be for a term of not less than (10) years.
- c. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Zoning Ordinance and Section 8.1.4.025 of this Article, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.
- d. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

SECTION 26. That Article 8, Section 8.1.4.050 of the Westwood Zoning Ordinance is hereby amended to read as follows:

8.1.4.050 Radio and Television Towers

- a. The property owner must provide maintenance and inspection reports for towers and all supporting structures, guys, and attachments. Such reports shall follow the guideline and checklist set forth in TIA-EIA-222-F, Annex E
- b. The property owner shall maintain \$1,000,000/\$2,000,000 aggregate Commercial General Liability insurance on each tower or in the alternative the applicant shall maintain \$2,000,000/\$4,000,000 aggregate Commercial General Liability insurance for any casualty occurring with respect to either tower
- c. The property owner shall provide a Certificate of Insurance, with a 30-day notice in the event of cancellation, to the City Clerk, evidencing that it has obtained the requisite liability insurance.
- d. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years; provided that, a special use permit for Communication Facilities for Wireless services shall be for a term of not less than (10) years.
- e. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

SECTION 27. That the Westwood Zoning Ordinance is hereby amended, to add Article 10 in its entirety, including all Sections and Subsections contained therein, to read as follows:

ARTICLE TEN: COMMUNICATION FACILITIES FOR WIRELESS SERVICES

10.1 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 Article 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.

10.2 Definitions

For purpose of this Article, and where consistent with the context of a specific Section or Subsection thereof, the defined terms, phrases, words and abbreviations and their derivations shall have the meanings given in this Article.

Accessory Facility means an accessory facility, building, structure or equipment serving or 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 (6) 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 (6) cubic feet; and,
2. Primary equipment enclosures that are no larger than seventeen (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 meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch 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.

Applicant means any person or entity that is engaged in the business of providing Wireless Services or the wireless infrastructure required for Wireless Services and that submits an Application pursuant to this Article.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive approval for a Communications Facility.

Approval Authority means the Building Official for all Applications pursuant to Zoning Ordinance 10.4, subsection A, and means the Governing Body for all Applications pursuant to Zoning Ordinance 10.4, subsection B.

Base Station means a station that includes a structure that currently supports or houses an Antenna, transceiver, coaxial cables, power cables or other 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; and it does not include any structure that, at the time the relevant Application is filed with the City, does not support or house equipment described in this paragraph or that was not previously approved under the applicable zoning or siting process. (A non-tower support structure – for example, a building, church steeple, water tower, sign, street light, utility pole or other non-tower structure that can be used as a support structure for Antennas or the functional equivalent of such.)

Collocation means the mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for Wireless Service.

Communications Facility means a structure, facility, or location designed, or intended to be used as, or used to support Antennas or other Transmission Equipment used in Wireless Services. This includes without limit, Towers of all types, and Base Stations, including but not limited to buildings, church steeples, water towers, signs, or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related Accessory Facilities associated with the Site. It is a structure and facility intended for transmitting and/or receiving, 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.

Eligible Facilities Request means any request for Modification of an Existing Tower or Base Station that does not Substantially Change (see definition) 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.

Eligible Support Structure means any Tower or Base Station, provided that it is Existing at the time the relevant Application is filed.

Existing means the following: a constructed Tower or Base Station is Existing if it 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, is Existing for purposes of this definition.

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 Building Official 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 Replacement of an Existing Communications Facility that exists on a previously approved Site, utility easement, or an approved Special Use Permit area, with a new facility of comparable proportions and of comparable height or such other height that would not constitute a Substantial Change to an Existing structure to support Communications Facilities or accommodate Collocation. A Replacement includes any associated removal of the pre-Existing Communications Facilities. A Replacement Tower shall be within fifteen (15) feet, as measured horizontally along the ground, of an Existing Tower, and the Existing Tower shall be removed within thirty (30) days from the installation of the Replacement Tower. The Building Official may approve a separation greater than fifteen (15) feet.

Site means, for Towers other than Towers 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 Eligible Support Structures, 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 the least visually and physically intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and generally in the same area as the requested location of a Communications Facility. Specifically, this means ensuring that all Antenna arrays, cables, and other Accessory Facilities used for providing the Wireless Service are not obtrusive or noticeably visible from adjacent properties or adjacent right-of-ways. Any Accessory Facilities mounted onto a Tower or structure shall not project greater than one (1) 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. 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 Building Official may determine if a Communications Facility or component of a Communications Facility is designed to be Stealth or utilizes Stealth Technology.

Substantial Change means a Modification that substantially changes the physical dimensions of an Eligible Support Structure (Tower or Base Station) by any of the following criteria:

A. Height

1. For Towers not in the public rights-of-way, an increase in the height of the Tower by more than ten percent (10%) or by the height of one additional Antenna array

with separation from the nearest Existing Antenna not to exceed twenty (20) feet, whichever is greater.

2. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), an increase in the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater.
3. 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, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act (Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96).

B. Width/Girth

1. For Towers not in the public rights-of-way, adding an appurtenance to the body of the Tower that protrudes from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater.
2. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

C. New equipment cabinets

1. For any Eligible Support Structure, the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets.
2. For Towers in the public rights-of-way and Base Stations, the installation of any new equipment cabinets on the ground if there are no pre-Existing ground cabinets associated with the structure, or else 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 Eligible Support Structure.

F. Not complying with conditions associated with the siting approval of the construction or Modification of the Eligible Support Structure or Base Station equipment, provided that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections A through D herein.

Transmission Equipment means equipment that facilitates transmission for any FCC-licensed or authorized Wireless Service, including, but not limited to, radio transceivers, Antennas, coaxial

or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their Accessory Facilities, including structures that are constructed for Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul, and the associated Site.

- A. ***Monopole*** means a Tower consisting of a single pole, constructed without guy wires and ground anchors.
- B. ***Lattice Tower*** means a guyed or self-supporting three or four sided, open, steel frame structure used to support Antennas and Transmission Equipment.

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.

10.3 Overall Policy

In order to ensure that the placement, construction, and Modification of Communications Facilities protect 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 integrate the appearance of Communications Facilities with many architectural and nature themes throughout the City 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.

10.4 Application Approval Authority

A. **Administrative Approval.** The Building Official may approve Applications for Communications Facilities for the following:

1. The 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. (See C1 for timeframe.)
2. New Small Cell/DAS Facilities on an Existing Tower, utility pole or street light in the public right-of-way. This provision is also applicable when the Existing Tower, utility pole or street light is replaced by a Tower, utility pole or street light that is not a Substantial Change from the original. (See C1 for timeframe.)
3. New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station that does not incur a Substantial Change to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable building, design, and performance standards. (See C1 for timeframe.)
4. New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station that incurs a Substantial Change to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable building, design, and performance standards. (See C2 for timeframe.)
5. New Tower permitted by right in the underlying zoning district that meets applicable building, design, and performance standards. (See C3 for timeframe.)
6. New Tower or utility pole for Small Cell/DAS Facilities in the public right-of-way, subject to the issuance of a Right-of-Way Permit pursuant to Westwood City Code Chapter XIII – Public Rights-of-Way. (See C3 for timeframe.)

B. **Special Use Permit Approval** – A Special Use Permit (SUP) reviewed by the Planning Commission and approved by the Governing Body is required for Applications for Communications Facilities for the following:

1. A Substantial Change to an Existing Tower or Base Station that is not permitted by right in the underlying zoning district. (See C2 for timeframe.)
2. Any other Application for placement, installation or construction of Transmission Equipment that does not constitute an Eligible Facilities Request. (See C2 for timeframe.)
3. New Tower that is not permitted by right in the underlying zoning district. (See C3 for timeframe.)

C. **Application Timeframe**

1. A final decision shall be issued for Applications under subsections A1, A2, and A3 within sixty (60) calendar days.

2. A final decision shall be issued for Applications under subsections A4, B1 and B2 within ninety (90) calendar days.
3. A final decision shall be issued for Applications under subsections A5, A6 or B3 within one hundred fifty (150) calendar days.
4. The timeframes set forth in subsections C1-C3 begin to run when a completed Application is filed following the pre-application conference. The applicable timeframe may be tolled by mutual agreement or in cases where the City determines that the Application is incomplete. To toll the timeframe for incompleteness, the City may provide written notice to the Applicant within thirty (30) days of receipt of the Application, clearly and 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 ten (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.

D. Small Cell and DAS Facilities – Consolidated Application and Exemption

1. Consolidated Application – Pursuant to Kansas Statute, an Applicant may file one consolidated Application for a Small Cell Network up to twenty five (25) individual Small Cell Facilities of a substantially similar design. Notwithstanding, the City may require a separate Application for any Small Cell Facilities that are not of a substantially similar design.
2. Exemption – 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.

10.5 Application Process and Requirements

- A. **Pre-Application Conference** – A pre-application conference is required before filing an Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility, unless waived by the Building Official. The purpose of the pre-application conference is to ensure the Applicant understands all requirements, to establish a tentative timeline, and to determine the Approval Authority for the Application. The pre-application conference should address issues that will expedite the review and approval process. Pre-application conferences for Small Cell/DAS Facilities in the public right-of-way will be conducted with the City's Director of Public Works.
- B. **Application Fee** – At the time an Application is filed for a Communications Facility, the Applicant will pay a non-refundable Application fee as determined in the current

version of the Governing Body resolution establishing applicable fees; provided, the Application fee shall be subject to any applicable statutory maximum. An Application shall not be deemed submitted unless the applicable fee is paid.

C. Application Requirements – 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 Building Official:

1. A site plan or preliminary development plan, and if applicable, any other Special Use Permit submission requirements set forth in Westwood City Code, Chapter 16 – Zoning Ordinance, as amended, and specifically as amended by Ordinance 960, Section 1.6 and the subsections thereto, Section 8.1 and the subsections thereto, or as otherwise required by or provided for within the City’s Zoning Ordinance.
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 Equipment, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. The Applicant shall note all specific colors and materials shall 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 Building Official, 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 Westwood City Code, Chapter 16 – Zoning Ordinance and the City’s Manual of Infrastructure

Standards. 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. All lighting will meet any requirement of the Westwood City Code, Chapter 16 – Zoning Ordinance.
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 Facility and the cumulative effect of all Communications Facilities on the Site comply with all FCC standards, including but not limited to, certifying that all facilities meet all provisions and regulations for radio frequency (RF) emissions or exposure, and that anticipated levels of electromagnetic radiation to be generated by all facilities on the Site, including the effective radiated power (ERP) of the 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 in the right-of-way shall provide notice by first class mail, postage prepaid, to the owners of record of all property within two hundred (200) feet of the proposed location. The notice shall provide: (1) a City-issued case number (if available); (2) a description of the proposed facility; (3) the location of the proposed facility; (4) a plan sheet showing the proposed location and the facility improvements; and (5) the Applicant's contact information and a statement that the owner shall have twenty (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. Any other information to satisfy the performance standards set forth for the applicable zoning district as required by Westwood City Code, Chapter 16 – Zoning Ordinance and the City’s Manual of Infrastructure Standards or that, as determined by the Building Official, 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 Building Official.
2. The Building Official 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 Building Official and may vary with the scope and complexity of the Application; the scope will be determined following the pre- application conference. 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.

10.6 Location of Communications Facilities

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, commercial buildings, water towers, utility poles and street lights) whereby the new Communications Facilities can be architecturally integrated or otherwise camouflaged in a Stealth manner in order to minimize the intrusion upon the public and adjacent properties. If and when a new Tower or new Base Station is installed for Communications Facilities, said new Tower or new Base Station should be located and designed in a manner to minimize the intrusion upon the public and adjacent properties, and when possible, to be architecturally integrated or camouflaged in a Stealth manner with surrounding structures.

10.7 Building and Design Standards for Communications Facilities

A. Height

1. **Towers** – The maximum height which may be approved for a Tower is one hundred fifty (150) feet, which includes any Transmission Equipment on top of the Tower. A lightning rod, ten (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 Article and the Zoning Ordinance, in no case shall Towers or Antennas exceed the following:
 - a. One hundred fifty (150) feet in the commercial zoning districts;

- b. One hundred thirty (130) feet in the commercial overlay zoning districts;
 - c. One hundred (100) feet in all residential districts;
 - d. No more than 20 feet above the top of a building when mounted on the roof or include a stealth on-building design in the commercial or commercial overlay districts.
2. **Towers in Right-of-Way** – The maximum height which may be approved for a Tower and related Transmission Equipment in the public right-of-way is: fifty (50) feet along an arterial thoroughfare street; forty (40) feet along a collector street; and twenty (20) feet along a local street as defined within Westwood City Code Chapter XIII – Public Rights-of-Way.
 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 of 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. Furthermore, 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.
3. **Antennas**
 - a. **Design on Towers** – Antenna bridges and platforms on Towers are not allowed. Antennas on Towers may be:
 - (i) Internal;
 - (ii) A panel of slim-line design mounted parallel with the Tower;
 - (iii) A design deemed by the Approval Authority to be less obtrusive or Stealth than the designs described above; or,
 - (iv) 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:
- (i) Antennas may be installed on any existing building or structure (such as a water Tower but excluding single-family residences and accessory uses) three (3) stories in height or greater but no less than thirty five (35) feet provided that the additional Antennas shall add no more than twenty (20) feet to the height of said existing structure.
 - (ii) Antennas which are architecturally compatible to the building architecture may locate on non-residential buildings less than three (3) stories or thirty five (35) feet in height.
 - (iii) Antennas and/or Accessory Facilities installed or located in a Commercial Overlay District shall comply with the applicable architectural, building, design, screening and similar standards established for the particular Commercial Overlay District.
 - (iv) 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.
 - (v) Accessory Facilities for Antennas may be permitted on the roof so long as they are screened from view so long as they are screened, constructed, and colored in conformity with and to otherwise match the structure to which they are attached; provided that, ground mounted Accessory Facilities shall otherwise fully comply with the provisions of this Section.
- 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 so as 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 so as 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 in the commercial zoning districts, Commercial Overlay Districts, and Planned Business Districts (CP-1) set forth in the City Zoning Ordinance shall meet the setback requirements for other types of

commercial structures of a similar size that are allowed by right in the zoning district(s) in which the facilities are located. In the event the proposed Communications Facilities will exceed the height allowed for other types of commercial structures in the district in which the facilities are located, the Communications Facilities shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.

2. Communications Facilities in residential zoning districts, Planned Residential Cluster Development zoning districts, and Planned Multi-Family Residential zoning districts shall meet the greater of the maximum setback requirements for the applicable zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.
 3. In addition to the above setback requirements set forth in subsection C. 1. of this section regarding commercial and commercial overlay districts, Towers shall have a minimum setback of 200 feet from any surrounding property which is shown as residential, unless such Tower: (1) does not exceed the height requirement for other types of commercial structures in the district in which the Tower is located; (2) is a utility pole or street light or a Monopole similar in size thereof; or (3) is designed as an architecturally compatible element in terms of material, design and height to the Existing or proposed use of the Site.
 4. Small Cell/DAS Facilities on utility poles or street lights shall not be subject to the setback requirements in subsections C1-C3 above; provided that, such Small Cell/DAS Facilities on utility poles or street lights placed within the right-of-way shall comply with the City's requirements and permits for the use of the public right-of-way as set forth with Westwood City Code Chapter XIII – Public Rights-of-Way and in the City's Manual of Infrastructure Standards.
 5. All Towers, Antennas, and Accessory Structures, shall meet the required setbacks of the applicable zoning district. In addition to complying with the district regulations, the Tower and Antenna shall be set back from the property lines a distance equal to the height of the Tower or Antenna; provided that, the City or Approval Authority shall not impose nor shall this provision be interpreted to require a greater setback or fall-zone requirement for a Tower, Antenna, or Communication Facility than for other types of commercial structures of a similar size. A lesser setback may be approved with the Special Use Permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the Tower, Antenna, or Communication Facility is within the radius of the setback.
- 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. Where there is no primary use other than the Communications Facility, the Accessory Facility and the building materials for the Accessory Facility shall be subject to the review and approval of the applicable Approval Authority.

- 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 Westwood City Code, Chapter 16 – Zoning Ordinance, Article X, Section 10.9.
- F. **Parking Areas and Drives** – All parking areas and drives associated with a Communications Facility shall comply with Westwood City Code, Chapter 16 – Zoning Ordinance, Article X, Section 10.9; 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. **Screening** – Accessory Facilities located at the base of a Tower or Base Station shall be screened from view with a solid screen wall a minimum of six (6) feet in height. 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, and shall be subject to the review and approval of the applicable Approval Authority. 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 right-of-way and any other nearby property.
- H. **Landscaping** – A landscape plan shall be required in accordance with the provisions of the Westwood City Code, Chapter 16 – Zoning Ordinance for the applicable zoning district and use. The landscape plan shall be sealed by a professional landscape architect, unless waived by the applicable Approval Authority. A continuous landscaped area shall be provided around the perimeter of the accessory building or screening wall; and utility boxes will comply with any applicable utility box screening requirement. All plant materials are subject to the Westwood City Code, Chapter 16 – Zoning Ordinance for the applicable zoning district and use 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 may be provided if the lighting is shielded so that: no light is directed towards adjacent

properties or rights-of-ways; the lighting avoids illuminating the Tower; and the lighting meets any 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 thirty (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 twenty-four (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 check list 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 (6) 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 twelve (12) months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within ninety (90) days of a receipt of notice from the City. If such facility is not removed within said ninety (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.

10.8 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 the City's Land Development 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 Article 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 the Westwood City Code, Chapter 16 – Zoning Ordinance, Article Ten, Section 10.4.

- 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.

10.9 Emergencies and Disasters

In the event of a declared emergency or disaster, the City Administrator, or his or her designee, or the Building Official may authorize any temporary Towers, Base Stations, Transmission Equipment or Accessory Equipment necessary to temporarily restore Wireless Services.

10.10 Interpretation and Severability

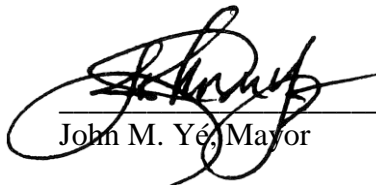
The provisions of this Article shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating Communications Facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Article, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Article 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 28. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED by the Governing Body this 21st day of September, 2017.

APPROVED by the Mayor this 21st day of September, 2017.




John M. Yé, Mayor

ATTEST:


Frederick L. Sherman, City Clerk

APPROVED AS TO FORM:


Ryan B. Denk, City Attorney