

**Proposed Text Amendment to
ARTICLE VIII A
WIRELESS FACILITIES**

8A.1 Purpose and Intent.

- a. The unique character, landscapes, and scenic vistas of Hailey are among its most valuable assets. Preserving and promoting those assets are essential to the long-range social and economic well being of the City and its inhabitants. Protecting these assets requires sensitive placement and design of wireless communication facilities so that these facilities remain in scale and harmony with the existing character of the community.
- b. This Ordinance is intended to provide reasonable standards and procedures for the development of PWSFs and WCFs that will serve citizens, the traveling public, and others within the City in order to:
 1. Preserve the character, viability and property values of areas which are in close proximity to PWSFs or WCFs by minimizing the adverse impacts of such facilities and protecting the public safety through careful location, siting, design and screening thereof;
 2. Protect the health, safety and welfare of persons living or working in the area surrounding such PWSFs or WCFs from possible adverse impacts (within the confines of the Federal Telecommunications Act of 1996) relating to the placement, construction or modification of such facilities;
 3. Provide development that is compatible in appearance with allowed uses of the underlying zoning district in which such facilities are placed;
 4. Promote the public welfare by facilitating the City's permitting process to encourage fair and meaningful competition among providers of wireless facilities and, to the greatest extent possible, extend to all Hailey citizens high quality wireless communication services at reasonable costs;
 5. Encourage the use of existing structures for PWSFs or WCFs where appropriate;
 6. Encourage PWSFs or WCFs that have the least impact on, and the greatest compatibility with, the character of the community, surrounding land uses and the general public health, safety and welfare;
 7. Encourage the joint use and clustering of antenna sites and structures, when practical, to help reduce the number of such facilities which may be required in the future to service the needs of customers, thereby averting the unnecessary proliferation of facilities on private and public property;
 8. Provide necessary public safety radio communication infrastructure to ensure the health, safety and general welfare of the public.

8A.2. Definitions

For the purposes of this Ordinance, the following terms shall have the meaning ascribed to them below:

Acoustical engineer. A professional engineer with demonstrated education, accreditation, and experience to perform and certify noise measurements.

Antenna. Any exterior apparatus designed for telephonic, radio or television communications

through the sending and/or receiving of electromagnetic waves including equipment attached to a tower or building for the purpose of providing personal wireless services. Antennas include the following types:

- a. *Omni-Directional (or "Whip") Antenna.* Receives and transmits signals in a three hundred sixty (360) degree pattern, and which is up to fifteen (15) feet in height and up to four inches in diameter;
- b. *Directional (or "Panel") Antenna.* Receives and transmits signals in a directional pattern typically encompassing an arc of one hundred twenty (120) degrees;
- c. *Parabolic (or "Dish") Antenna.* A bowl shaped device that receives and transmits signals in a specific directional pattern;
- d. *Ancillary Antenna.* An antenna that is less than twelve (12) inches in its largest dimension and that is not directly used to provide personal wireless communication services. An example would be a global positioning satellite antenna (GPS);
- e. *Other.* All other transmitting or receiving equipment not specifically described in this Ordinance, which most closely resembles such equipment.

Antenna Array An antenna array is one or more whips, panels, dishes, or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antennas (whips), directional antennas (panels), and parabolic antennas (dishes). The antenna array does not include the mount as defined herein.

Applicant. A person or entity who submits an application under this Ordinance for a PWSF or WCF Master Plan and/or a Wireless Permit and shall include both the owner of the real property upon which the PWSF or WCF is proposed for location and the owner of the proposed PWSF or WCF, which shall be a Licensed Carrier or government agency operating a public safety communication center.

AGL (above ground level). The actual height of the PWSF or WCF from the ground to the highest point of the mount or the antenna, whichever is higher.

Building. Any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which;

- a. Is permanently affixed to the land; and
- b. Has one or more floors and a roof.

Camouflage. A way of painting and mounting a PWSF or WCF that requires minimal changes to the host structure in order to accommodate the facility.

Carrier. A company licensed by the Federal Communications Commission (FCC) that provides wireless services. A tower builder is not a carrier.

City. The City of Hailey, Idaho.

Cellular. A mobile telephone service operation in the 800 MHz spectrum.

Co-applicant. Any person and/or entity joining with an applicant in an application for a permit for a PWSF or WCF, including the owner(s) of the PWSF or WCF, owner(s) of the subject property, and any proposed tenant(s) for the PWSF or WCF.

Co-location. The use of a single support system on the ground by more than one carrier (vertical co-location) and/or several support systems on an existing building or structure by more than one carrier.

Commercial Mobile Radio Services (CMRS). Per Section 704 of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video.

Commission. The Hailey Planning and Zoning Commission.

Conceal. To enclose a PWSF or WCF within a natural or man-made feature, resulting in the facility being either invisible or made part of the feature enclosing it.

Design. The appearance of PWSFs or WCFs such as their materials colors and shape.

Disguise. To design a PWSF or WCF to appear to be something other than a PWSF or WCF.

EIA. The Electronic Industries Association.

Elevation. The measurement of height above sea level. Also AMSL, or above mean sea level.

Enhanced Specialized Mobile Radio (ESMR). Private land mobile radio with telephone services.

Equipment Enclosure/Equipment Shelter. An enclosed structure within which are housed the equipment for the PWSF or WCF such as batteries and electrical equipment.

FAA. The Federal Aviation Administration.

Facade attached antenna. Any antenna directly attached or affixed to the elevation of a building, tank, tower, or other structure.

FCC. The Federal Communications Commission.

Freestanding tower. A tower not physically attached to a building or structure. The tower is attached to the ground by a foundation.

Fully automated WCF. A site where no on-site personnel are required for the daily operation of the PWSF or WCF.

Guyed Tower. A monopole or lattice tower that is anchored to the ground or to another surface by diagonal cables.

Height. The distance measured from ground level to the highest point of a PWSF or WCF, including the antenna array. For purposes of measuring height, all antennas or other attachments mounted on a structure shall be included in the measurements to determine overall (i.e. combined) height.

Lattice tower. A type of mount that is usually ground-mounted and self-supporting with multiple legs and cross bracing of structural steel.

Licensed carrier. A company authorized by the FCC to construct and operate a wireless service

or government agency operating a public safety communication center.

In addition, any carrier operating under the Federal Communications Commission Regulations, Part 15 (Unlicensed Carriers) is, for purposes of this Article, a “licensed carrier.” A licensed carrier must be either the applicant or the co-applicant for every PWSF or WCF application.

Location. The area where a PWSF or WCF is located or proposed to be located.

Mitigation. The reduction or elimination of visual impacts by the use of one or more methods:

- a. Concealment
- b. Camouflage
- c. Disguise

Modification. The changing of any portion of a PWSF or WCF from its description in a previously approved permit issued by the City. The FCC definitions for “modification” are different than local governmental rules.

Monopole. The shape of mount that is self-supporting with a single shaft of wood, steel or concrete and antennas at the top and/or along the shaft.

Mount. The structure or surface upon which antennas are mounted, e.g.:

- a. Roof-mounted. Mounted on the roof of a building.
- b. Side-mounted. Mounted on the side of a building.
- c. Ground-mounted. Mounted on the ground.
- d. Structure-mounted. Mounted on a structure other than a building.

Non-automated. A WCF with on-site personnel.

Non-residential structure. A building or structure not constructed for residential purposes or as an accessory structure for residential purposes, not including non-conforming uses.

Permit. Unless otherwise identified in this Article, a permit shall refer to any City required permit for a PWSF or WCF.

Person. Any person, corporation, partnership, joint venture, trust or other entity.

Personal Wireless Service Facility (PWSF). Facility for the provision of personal wireless services, as defined by Section 704 of the Telecommunications Act of 1996. A PWSF is any unstaffed facility for the transmission and/or reception of personal wireless services, usually consisting of an antenna array, transmission cables, equipment shelter and a mount.

Personal Wireless Services. Any personal wireless service defined in the Federal Communications Act which includes FCC licensed commercial wireless telecommunications services, including without limitation, cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging as well as unlicensed wire services and common carrier wireless exchange access services. Personal Wireless Services are not public utilities as that definition is found in City Ordinances or utilities not defined by City Ordinances.

Photo simulation. Computer generated photographs or renderings combining existing subject

adjacent property conditions and improvements with proposed improvements.

Public safety communication equipment. Radio transmitters, antennas, mount and ancillary equipment used to receive and transmit essential public safety radio communications using VHF, UHF, 700 and 800 MHZ frequencies.

Public safety communication center. A call taking and dispatch center whose primary function is to receive and transmit public safety emergency radio and telephone communications.

Radio Frequency (RF) Engineer. Someone with a background in electrical engineering or microwave engineering who specializes in the study of radio frequencies.

Radio Frequency Radiation (RFR). The actual beam or radio waves sent and received by a PWSF or WCF. A signal contains RF emissions.

Residential Development. A building utilized exclusively for short or long term residential purposes.

Right-of-Way. All public streets, alleys, right-of-ways, property, and utility easements, now and hereafter owned by the City of Hailey or other public entity.

Riparian Setback. The setback required by City Ordinances from the mean high water mark along the banks of the Big Wood River or other waterways within the City.

Security Barrier. A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

Separation. The distance between one carrier's antenna array and another carrier's antenna array.

Service area. Contained areas within which a wireless communication facility is able to transmit clear signals, generally circular in form.

Site. That portion of a subject property where a PWSF or WCF is to be placed. Any acceptable location may have several potential sites within it.

Siting. The method and form of placement of PWSFs or WCFs on a specific area of a subject property.

Specialized Mobile Radio (SMR). A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for data, delivery vans, truckers or taxis within a small, definable geographic area.

Standards. Rules or measures by which acceptability is determined. PWSFs and WCFs are measured by standards measuring visibility or safety. Wireless planning tends to regulate PWSFs and WCFs on three levels: location (or where the PWSF or WCF site can go), siting (or how the PWSF or WCF is placed within its setting), and design (or what the PWSF or WCF looks like).

Street pole. A street light, traffic control signal, telephone, electric or cable television pole located in a developed public street or alley right-of-way or other City owned property.

Structure. A constructed element in the landscape, including buildings, but specifically used to

include towers, poles and other non-habitable structures.

Support structure. The structure to which an antenna and other necessary associated hardware is attached. Support structures include, but are not limited to, the following:

- a. Non-residential structure;
- b. Monopole - a single pole sunk into the ground and/or attached to a foundation;
- c. Street pole - a telephone, electric or cable television pole located in a developed street right-of-way.

Tower. A mast, pole, monopole, or other structure designed and primarily used to support antennas and/or other WCF equipment.

Waterway. A channel, natural or man-made, which water runs through.

Whip Antenna. See "Omni-Directional Antenna".

Wireless Communication Facility (WCF). Those facilities that are non-personal wireless service facilities (PWSFs), by definition of the Telecommunications Act of 1996, but that are also subject to this Article due to their height above ground level. Any antenna, including mount and/or equipment support structure over thirty-five (35) feet AGL that is not a PWSF shall be considered a WCF and regulated by this Article.

Wireless Permit. A permit issued by the City of Hailey to allow the construction and operation of a PWSF or WCF within the Hailey City limits.

8A.3 Applicability:

8A.3.1 Permits Required.

It shall be unlawful to commence construction or placement of any PWSF or WCF without having first obtained a valid written Wireless Permit pursuant to this Article, and as set forth in Section 8A.4, a Conditional Use Permit pursuant to Hailey Zoning Ordinance Article XI.

- a. Building Permit. It shall be unlawful to commence construction on any new PWSF or WCF, or to modify, alter or add on to an existing PWSF or WCF, without having first obtained a valid written Building Permit as required under the International Building Code as adopted by Hailey Ordinance.
- b. Any Conditional Use Permit issued for a PWSF or WCF shall subscribe to procedures set forth in this Article and in Article XI of the City of Hailey Zoning Ordinance, and:
 1. Where non-conflicting differences between this Article and Article XI exist, this Article shall be additive to and supportive of Article XI.
 2. Where this Article and Article XI contain conflicting provisions, the more restrictive requirements shall apply.

8A.3.2 Pre-existing Personal Wireless Service Facilities or Wireless Communications Facilities.

- a. A PWSF or WCF for which a permit has been issued prior to the effective date of this Article shall be deemed a permitted use, subject to the conditions of that permit.
- b. All unpermitted PWSFs or WCFs shall be brought into compliance with this Article. Unpermitted PWSFs or WCFs will be subject to abatement.

- c. Where any unpermitted PWSF or WCF to be attached to a mount approved for another use or PWSF or WCF, the unpermitted PWSF or WCF must apply for a separate permit, even when (i) sharing a legal mount, (ii) already in operation, and/or (iii) duly licensed by the Federal Communications Commission. The issuance of permit renewals or other new permits for such facilities shall be in accordance with the provisions of this Article.
- d. Damaged or destroyed facilities may be rebuilt and all such facilities may be replaced by facilities of the same height at the same location, provided that lattice towers are encouraged to be changed to mounts of lower visual impact.
- e. Any carrier with at least one pre-existing PWSF or WCF in the City of Hailey that is out of compliance with the City of Hailey building and zoning requirements, prior to the adoption of this Article, shall not be eligible for any new approvals of PWSFs or WCFs by the City until each pre-existing PWSF or WCF owned by that carrier is brought into compliance with this Article.

8A.3.3 Unpermitted Facilities, Mounts or Equipment Ineligible for Co-location.

- a. No issuance of any permit under this Article shall occur for a request to co-locate, attach, or share an existing PWSF or WCF site, mount or facility, when such existing site, mount or facility is found to have one or more PWSFs or WCFs without permits and/or any structure, mount or facility is found to lack one or more building or any other permits required by the City, or is otherwise in violation of City ordinance or state or federal law.
- b. Any application by a wireless carrier or other entity shall not be accepted by the City of Hailey if that wireless carrier has a pre-existing PWSF or WCF on, or the other entity owns or leases, a mount, rooftop or tower, on which there is any unpermitted PWSF or WCF until that PWSF or WCF is brought into compliance with this Article.

8A.3.4 Exempt Communication Facilities.

- a. The requirements imposed by this Article shall not apply to antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, multichannel multipoint distribution providers (MMDS), or television broadcast stations (TVBS) provided that all of the following conditions are met:
 1. The antenna measures thirty-nine (39) inches (one meter) or less in diameter;
 2. A dish that measures greater than thirty-nine (39) inches in diameter (one meter) that is completely enclosed;
 3. The antenna is attached to a freestanding tower measuring less than twelve (12) feet in height.
- b. The requirements of this Ordinance shall not apply to amateur radio facilities owned and operated by a federally licensed amateur radio operator or used exclusively as non-commercial, receive only antennas. However, such facilities may not co-locate a PWSF or WCF unless a Wireless Permit is obtained under this Article.

8A.3.5 Relationship to Other Ordinances. This Article shall supercede any conflicting requirements contained in the City of Hailey Zoning Ordinance Regulations regarding the siting and permitting of PWSFs or WCFs, except as otherwise specifically provided for in this Article.

8A.3.6 Jurisdiction. This Article shall apply only in the incorporated area of the City of Hailey and where adopted pursuant to the Hailey/Blaine County Area of City Impact Ordinance.

8A.4 Zoning District Regulations, General Prohibitions and Restrictions.

- a. The placement, use or modification of any wireless communication facility at any location within the City of Hailey is subject to the provisions of this Article.
- b. Limited Business District, Business District, Light Industrial District, Technological Industry District, Service Commercial Industrial District, and the Airport District.
 - 1. PWSFs or WCFs attached to street poles shall be a permitted use in the aforementioned zoning districts upon issuance of a Wireless Permit in accordance with the provisions of this Article.
 - 2. All other PWSFs or WCFs, excluding freestanding towers, shall be permitted as an accessory use in the aforementioned zoning districts of Hailey upon issuance of a Wireless Permit in accordance with the provisions of this Article.
 - 3. Freestanding towers and monopoles, excluding lattice towers, shall be a conditional use within these zoning districts of Hailey upon issuance of a Wireless Permit and a Conditional Use Permit in accordance with this Article and Hailey Zoning Ordinance Article XI.
- c. Recreational Green Belt District, Limited Residential District, General Residential District, and Transitional District.
 - 1. PWSFs or WCFs shall be permitted only as a conditional use in the aforementioned zoning districts of Hailey upon issuance of both a Wireless Permit in accordance with this Article and Conditional Use Permit in accordance with this Article and Hailey Zoning Ordinance Article XI.
 - 2. Freestanding towers and monopoles shall be prohibited in these zoning districts of Hailey.
- d. Prohibitions. The following are prohibited within the City:
 - 1. Lattice towers larger than two (2) feet by two (2) feet;
 - 2. WCFs and PWSFs that interfere with City and public safety communication systems and/or area television or radio broadcast.
- e. Restrictions. In all zoning districts within Hailey, no guy wire or other support wires shall be used in connection with antenna, antenna array or its support structure except when used to anchor the antenna, antenna array or support structure to an existing building to which such antenna, antenna array or support structure is attached.

8A.5 Location and Facility Type Standards and Priorities.

8A.5.1 Location Selection Criteria.

- a. PWSFs or WCFs shall be located on a Master Development Plan as set forth in Section 8A.6.2 of this Article;
- b. Applications shall be considered based on preferred siting criteria as set forth below in order of priority:
 - 1. City owned property due to the City's ability to control and monitor Ordinance compliance;
 - 2. Public service facility when public safety communication equipment is part of a public safety communication center.
 - 3. Co-location on existing buildings, structures, and towers in the zoning districts set forth in Section 8A.4.b above. In presenting another site, the applicant shall have the burden of proving that there are no such feasible existing structures upon which to locate;
 - 4. Street poles;
 - 5. Existing buildings and structures, excluding freestanding towers and monopoles, located on residentially zoned land, as set forth in Section 8A.4.c above;

6. In areas where the existing topography, vegetation, buildings and other structures provide the greatest amount of screening;
7. Other locations consistent with the provisions of this Ordinance;
8. Location of PWSFs or WCFs within floodplain areas, wetlands, hillside areas above twenty five percent (25%) slope, avalanche prone areas, areas where the FAA requires lighting on the facility, and areas for which the FCC requires an Environmental Assessment under the National Environmental Policy Act (NEPA) are to be avoided.

8A.5.2 Co-Location Requirement. Co-location is considered to be the least intrusive and visually unobtrusive installation method because the equipment is attached to an existing structure. No new tower shall be permitted unless the applicant demonstrates a good faith effort to co-locate on an existing facility including good faith efforts to negotiate lease rights, and there is no reasonable alternative location, site, or design **except as provided herein below**. The applicant shall submit clear and convincing evidence that:

- a. No suitable existing towers or structures are located within the City or immediate geographic area;
- b. Existing towers or structures are not sufficiently designed to meet the applicant's master development plan;
- c. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment;
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna;
- e. The fees, costs, or contractual provisions required by the owner of the proposed co-location site in order to share an existing tower or structure or to adapt an existing tower or structure for share are prohibitive;
- f. Costs exceeding new tower development and construction are presumed (rebuttably) to be prohibitive;
- g. No other reasonable alternative exists to the applicant's proposed PWSF or WCF.

In addition, no new tower shall be permitted unless the applicant provides a written statement to the City that the applicant shall make a good faith effort to allow other wireless carriers to co-locate antennas on the proposed tower where technically and economically feasible. This provision shall not apply to lattice towers.

Public safety communication equipment that is part of a public safety communication center is not subject to the collocation requirement.

8A.6 Application and Hearing Procedures.

8A.6.1 Permit Granting Authority.

- a. The Hailey Planning Administrator shall be the granting authority for Wireless Permits not requiring a Conditional Use Permit, subject to final approval or denial by the Planning and Zoning Commission on its consent agenda. Such approval or denial shall specify the ordinance and standards used in evaluating the application; the reasons for the approval or denial; and the actions, if any, that the applicant could take to obtain a permit. An applicant who is denied or aggrieved by a decision may appeal such decision

as set forth in Section 8A.15.1 of this Article. The Planning Administrator may attach reasonable conditions to the approval of an application including, but not limited to, those that will minimize adverse impact on adjacent properties or public ways, and/or assure the PWSF or WCF is constructed and/or maintained in accordance with this Article and the Hailey Zoning Ordinance.

- b. The Planning Administrator shall also have the authority to approve or deny all PWSF or WCF Master Development Plans.
- c. The Commission shall have the authority to approve or deny all Conditional Use Permit applications for PWSFs or WCFs, which shall be jointly processed with Wireless Permit applications in accordance with the procedures for Conditional Use Permits set forth in the Hailey Zoning Ordinance Article XI.
- d. Prior to issuance of any Wireless Permit for a facility to be located on a street pole, or otherwise within the public right-of-way, an encroachment permit or right-of-way use agreement must be obtained by the applicant for the PWSF or WCF from the City and/or, where applicable, the Idaho Transportation Department (ITD). Any PWSF or WCF to be otherwise located on City owned property shall also enter into a lease agreement with the City subject to authorization by the City Council.

8A.6.2 Master Development Plan.

- a. An applicant for a Wireless Permit must obtain approval of a Master Development Plan by the Hailey Planning Administrator and pursuant to this Article prior to or concurrently with the processing of any Wireless Permit application. A Master Development Plan shall be submitted by each company seeking placement of a PWSF or WCF within the City.
- b. The Planning Administrator may waive the processing of a Master Development Plan if the applicant demonstrates by clear and convincing evidence that a network of PWSFs or WCFs will not be required of the owner/operator of the proposed PWSF or WCF.
- c. The Master Development Plan shall illustrate a carrier's expected network of PWSFs or WCFs within and adjacent to the City. It shall forecast five years in advance the approximate locations of future facilities and the areas of service, but is not required to detail the specific siting or type of facility (e.g., pole, roof, building attached). Future amendments to each company's Master Development Plan shall be submitted and reviewed by the Planning Administrator prior to approval of additional PWSF or WCF facility locations.
- d. If a PWSF or WCF is placed without a Master Development Plan, the applicant shall file for and receive approval of a Plan prior to the filing of an application for another PWSF or WCF.

8A.6.3 Master Development Plan Filing Requirements.

The Planning Administrator, prior to processing a Master Development Plan application, must determine a Plan application to be complete. The Planning Administrator shall determine an application complete when the application contains the information described below. The following shall be included with an application for Master Development Plan approval:

8A.6.3.1 Application. The application form shall include at a minimum:

- a. Name, address, and telephone number of the applicant, any co-applicants as well as any agents for the applicant and co-applicants. The applicant or co-applicant shall be a licensed carrier;

- b. Name, address and telephone number of the licensed carrier;
- c. Original signatures for the applicant and all co-applicants applying for Master Development Plan approval. If the applicant or co-applicant will be represented by an agent, the original signature authorizing the agent to represent the applicant and/or co-applicant;
- d. Master Development Plan application fee as set by City Ordinance;
- e. Map. A map encompassing the City and surrounding area within one mile drawn to scale of no less than one inch equals five hundred (500) feet, specifying the following:
 - 1. Location of proposed PWSFs or WCFs;
 - 2. Service area of each PWSF or WCF;
 - 3. Street names of major streets and streets adjacent to identified WCF locations;
 - 4. All existing PWSFs or WCFs, operated by the applicant;;
 - 5. Separation distance between proposed and existing PWSFs or WCFs measured in feet;
 - 6. Existing watercourses and natural features that restrict the placement of PWSFs or WCFs or the associated service areas; and
 - 7. North arrow, scale, and legend;
 - 8. Information demonstrating compliance with the standards of this Ordinance.

8A.6.3.2 Pre-Application.

- a. Meeting. Prior to submission of a Wireless Permit application under this Article, the applicant will meet with the Planning Administrator to discuss the proposed PWSF or WCF in general terms, its compliance with the carrier's Master Development Plan and to clarify the filing requirements. The Planning Administrator shall meet with an applicant within twenty-one (21) days following a written request submitted to the Hailey Planning Department.
- b. Pre-Application Filing Requirements. The applicant shall submit sufficient preliminary architectural and/or engineering drawings to inform the Planning Administrator of the location and siting of the proposed facility, as well as its scale and overall design. If unable to co-locate, evidence thereof shall be submitted for review and approval by the Planning Administrator.

8A.6.3.3 PWSF or WCF Application Filing Requirements.

A Wireless Permit is required prior to the installation or modification of any new or existing PWSF or WCF. An application for a Wireless Permit must be determined to be complete by the City prior to processing. The Planning Administrator shall determine an application complete when the application contains the information described below. The following shall be included with an application for a Wireless Permit:

- a. Wireless Application Form. The application shall include at a minimum:
 - 1. Name, address, and telephone number of the applicant and any co-applicants, as well as any agents for the applicant and co-applicants. The applicant or co-applicant shall be a licensed carrier;
 - 2. Name, address and telephone number of the property owner(s);
 - 3. Original signatures for the applicant and all co-applicants applying for a Wireless Permit. If the applicant or co-applicant will be represented by an agent, the original signature authorizing the agent to represent the applicant and/or co-applicant;
 - 4. A complete legal description of the subject property;

5. Wireless Permit application fee as set by City Ordinance.
- b. Site Plan. A site plan drawn to scale of no less than one inch equals twenty (20) feet, specifying the following:
 1. Location, type and height of the proposed PWSF or WCF, support structures, security barrier and other components with setbacks;
 2. On-site structures, land uses and zoning;
 3. Circulation. Adjacent roadways, ingress and egress from such roadways, parking and pedestrian circulation and access;
 4. Fences, signs, exterior lighting pursuant to Article VIII B of this Ordinance and storm drainage;
 5. Property lines with dimensions, adjacent land uses, structures and zoning;
 6. Existing watercourses, utility lines, easements, deed restrictions and other built or natural features restricting the use of the subject property;
 7. A grading, fill and drainage plan for the site;
 8. North arrow, scale and legend, and topographic map of property prior to any proposed improvements, grading or fill with contours at two-foot intervals;
 9. Information demonstrating compliance with the standards of this Article;
 10. The City, at its discretion, may waive any of the above site plan requirements for PWSFs or WCFs attached to existing structures.
- c. Landscape and/or Screening Plan. A landscape plan drawn to scale of no less than one inch equals twenty (20) feet, specifying the following:
 1. Existing and proposed landscaping indicating size, location and species of vegetation;
 2. Indication of existing vegetation to be removed or retained;
 3. Information demonstrating compliance with the screening standards of this Article; and
 4. The landscape plan may be waived when the PWSF or WCF is to be attached to a building and the equipment is located within the building.
- d. Elevation drawings or “before and after” photographs/drawings simulating and specifying the location and height of the antennas, supports structure, equipment enclosure(s) and other accessory uses, fences and signs;
- e. Elevations of all sides of any proposed above ground equipment enclosures;
- f. A map indicating the service area of the facility;
- g. A map indicating locations and service areas of other PWSF or WCF sites operated by the applicant in the City and within one mile of the City’s corporate limits;
- h. Six copies of all plans and maps that exceed eleven (11) by seventeen (17) inches in size;
- i. Six copies of photo simulations of the proposed PWSF or WCF from adjacent residential properties and public rights-of-way at varying distances;
- j. A description of the support structure or building upon which the PWSF or WCF is proposed to be located, and the technical reasons for the design and configuration of the PWSF or WCF;
- k. Written documentation demonstrating a good faith effort in locating facilities in accordance with the Location Selection Criteria set forth in Section 8A.5.1 above;
- l. Evidence as specified in the Co-location Requirements, Section 8A.5.2 above;
- m. Written Description. A written description of how the proposed PWSF or WCF fits within the master development plan;
- n. Signed and notarized statement by the applicant indicating:
 1. Certification by a qualified radio frequency engineer that the antenna usage shall not interfere with other adjacent or neighboring transmission or reception functions;
 2. That the applicant, if proposing a new freestanding tower, shall make a good

- faith effort to allow other wireless carriers to co-locate antennas on the proposed tower where technically and economically feasible;
3. That the applicant agrees to remove the PWSF or WCF and equipment within ninety (90) days after the site's use is discontinued;
 4. That any lease agreement with a landholder specifies that if the provider fails to remove the PWFS or WCF and equipment within ninety (90) days of its discontinued use, the responsibility for removal belongs to the landholder;
 5. That a Memorandum of Lease shall be recorded with the Office of the Blaine County Recorder, Hailey, Idaho.
 - o. The applicant shall provide the following additional information:
 1. Names and addresses of all property owners or purchasers of record within three-hundred (300) feet of the external boundaries of the land being considered;
 2. Copy of Form 600 on file with the FCC; or FCC license (Radio Authorization Form);
 3. A complete right-of-way encroachment permit application if the PWSF or WCF is to be located within a public right-of-way;
 4. A list of all hazardous substances (as defined by CERCLA), chemicals, petroleum products, batteries, and similar items or substances, which will be used or stored on the PWSF or WCF site;
 5. A list of all types of materials, including the finishes and colors thereof, used in construction of, and which will be visible on, the exterior of the PWSF or WCF;
 6. Certification that the proposed PWSF or WCF complies with all applicable FCC guidelines, and a RFR report (Radio Frequency Radiation) for the proposed PWSF or WCF prepared by a qualified RF engineer;
 7. FAA Aeronautical Survey indicating any required lighting of the proposed PWSF or WCF, and all available alternative lighting and/or painting which will also meet that requirement. The City shall have the ability to condition permit approval on an alternative location, site or design which will not require such painting or lighting, or shall require the least intrusive lighting and/or painting allowed by the FAA where there is no other alternative location, site or design is available. If lighting is required, the City will authorize only solid red lights, and no strobe or flashing lights will be allowed, unless no other alternative is permitted by the FAA, and no other alternative location, site or design are available. Prior to the issuance of a building permit, any required FAA Permit for the proposed facility, including exact geographic coordinates, shall be submitted;
 8. FAA Form 7460-1, "Notice of Proposed Construction or Alteration", where required;
 9. A narrative statement describing two alternative proposals examined by the applicant for the PWSF or WCF facility in terms of location, siting, height, and/or design. Each alternative must comply with the provisions of this Article and be equally or less intrusive than the proposal submitted for approval. If the statement does not describe appropriate alternatives, the City may retain a private expert, at the applicant's cost, under Section 8A.12 of this Article, to develop or review such alternative proposals. The City shall not further process the Wireless Permit application until such alternatives have been submitted, and the time frame for processing the application shall be tolled until thirty (30) days after such submittal. If no alternatives are provided, an application will be deemed incomplete;
 10. Conditional Use Permit application, and Wireless Conditional Use Permit fee as

set by City Ordinance, when necessary;

11. Copy of Lease Agreement, when applicable.

8A.6.4 Review and Public Hearing.

- a. The Planning Administrator shall review each application for a Wireless Permit, and within thirty (30) days of the date of the submission, shall either certify that the application is complete or, notify the applicant of the deficiencies in the application. An application is not complete unless and until all the required information and items set forth in this Article have been submitted to the City by the applicant. The applicant shall have thirty (30) days from the date of notification of an incomplete application to file the completed application. If the applicant fails or refuses to file the completed application within this time, the application shall be deemed withdrawn and thereafter a new application shall be filed by the applicant, subject to new application fees.
- b. The Planning Administrator shall certify whether a Wireless Permit application shall require a Conditional Use Permit based upon the location, siting, and type of PWSF or WCF presented in the application and as set forth in this Article.
- c. In the event that the Planning Administrator certifies that a Conditional Use Permit is not required:
 1. The Planning Administrator shall mail notice of the application to property owners or purchasers of record within three hundred feet of the external boundaries of the proposed site and shall request written comment from such owners or purchasers of record.
 2. The Planning Administrator shall consider such application for a Wireless Permit, and shall issue or deny, or issue with conditions, the application. All denials shall be supported by written findings, subject to final approval by the Commission consent agenda.
 3. The application shall then be approved or denied on the next available Commission consent agenda.
 4. The applicant shall have a right to appeal any decision of the Commission to the Hailey City Council.
- d. In the event that the Planning Administrator certifies that a Conditional Use Permit is required,
 1. The Planning and Zoning Commission shall conduct at least one public hearing that addresses both the application for a Wireless Permit and the accompanying Conditional Use Permit. The applicant and all interested persons shall have an opportunity to be heard. The public hearing shall be noticed in the following manner:
 2. Publication. At least fifteen (15) days prior to the public hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the City. Notice may also be made available to other newspapers, radio, and television stations serving the City for use as public service announcements.
 3. Posting. Notice shall be posted on the premises where the PWSF or WCF is proposed not less than one week prior to the public hearing.
 4. Mailing. Notice shall be mailed to property owners or purchasers of record within three hundred (300) feet of the external boundaries of the land being considered at least fifteen (15) days prior to the public hearing.
 5. Commission Action. The Commission shall hear the application for a Wireless Permit as set forth in section 8A.6.4.4 in conjunction with the required

application for a Conditional Use Permit. Following the public hearing the Commission shall approve, deny, or approve with conditions the application for a Wireless Permit and corresponding Conditional Use Permit. All decisions of the Commission shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, explains the rationale for the decision and is based upon substantial evidence in the written record as required by state and federal law.

8A.6.5 Permit Form, Annual Reports, and Renewal.

- a. Upon approval, the City shall issue the applicant a Wireless Permit in written form stating the exact PWSF or WCF approved and the conditions, if any, of said permit.
- b. As a condition of each Wireless Permit, the applicant shall file with the City on each anniversary date of the issuance of the permit an Annual Report containing the following information:
 1. Name of permittee, landowner;
 2. Any co-location added to the site or removed from the site within the preceding year;
 3. Any modifications to the site in the preceding year, including change of ownership;
 4. Updated list of hazardous substances as set forth in Section 8A.6.3.3.o.5 of this Article together with a plan of the site showing the exact location of each such substance and means of access in case of an emergency;
 5. Date of the last physical inspection of the site by the permittee and any carrier on the site;
 6. The name and telephone number of contact person in case of emergency at the site and for any required maintenance of the site.
 7. Annual renewal fee as set by City Ordinance.
- c. The permit shall be automatically renewed annually upon the filing of an annual report and renewal fee as set by City Ordinance. Failure to file an Annual Report shall result in the expiration of the Wireless Permit. Expiration occurs one year after the due date of the Annual Report. A new application, together with all applicable fees, shall be required to reinstate the permit.
- d. Where an application is also required as set forth in this Article, the City shall issue the applicant a Conditional Use Permit in written form stating the exact PWSF or WCF and the conditions of said permit. Such permit shall be subject to the terms and conditions set forth in Hailey Zoning Ordinance Article XI, as well as any supplementary conditions set forth in this Article.

8A.7 Standards and Criteria.

8A.7.1 Applicability.

The standards identified in the subsections below shall apply to all Wireless Permits and all PWSFs or WCFs constructed or located in the City, unless otherwise herein specified. Such standards shall also be considered in the issuance of a Conditional Use Permit pursuant to this Article and Hailey Zoning Ordinance Article XI. The applicant for a Wireless Permit has the burden of demonstrating compliance with these standards.

8A.7.2 Height.

PWSFs or WCFs shall not exceed forty (40) feet AGL or the maximum permissible height of the

zoning district where it is sited, whichever is lower, with the exception of facade and roof-attached PWSFs or WCFs **or public safety communication equipment** as described below:

- a. Roof attached PWSFs or WCFs shall not exceed five (5) feet above the highest portion of the roof membrane, or continuous parapet wall. The antenna and support system for whip antennas shall not exceed ten (10) feet above the highest portion of that roof, including parapet walls.
- b. Facade attached PWSFs or WCFs shall not exceed five (5) feet above the facade to which it is attached.
- c. If the height of the building is in excess of the maximum height allowed within the zone and was legally established, then the combined height of the building and antenna shall not exceed the maximum height allowed by such approval, unless determined to be suitably camouflaged.
- d. Street pole attached PWSFs or WCFs may only extend six (6) feet above the existing street pole. A maximum extension of ten (10) feet from the top of the street pole, may be permitted pursuant to standards provided in Section 8A.7.9 of this Ordinance, if a utility disturbance can be clearly demonstrated.
- e. **Public safety communication equipment located in the SC1 district and on the same property as a public service facility shall not exceed seventy five (75) feet AGL.**

8A.7.3 Setbacks.

All PWSFs or WCFs, except those mounted on street poles, shall comply with the building setback provisions of the zoning district in which the PWSF or WCF is located or the requirements of this subsection, whichever is greater. At a minimum, the following setbacks shall be observed **except as provided herein below**:

- a. Street Pole Attached. No setback when constructed within the public right-of-way and under the provisions of Section 8A.7.9 of this Article;
- b. Facade Attached. The maximum projection shall be eighteen (18) inches. The location of a PWSF or WCF on the wall of a legal non-conforming structure is permitted. However, the PWSF or WCF shall not be located on an exterior wall in a manner that will increase the degree of nonconformity. Additional standards for antennas attached to the facade of structures are listed in Section 8A.7.9 of this Article;
- c. Roof attached PWSFs or WCFs shall be set back from the edge of the building a distance equal to the height of the antenna and support system as measured from the roof membrane;
- d. Freestanding Tower. Setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Towers shall be set back from all property lines one hundred twenty five (125) percent of the height of the tower as measured from ground level. In addition, no buildings (other than those utilized exclusively for the PWSF or WCF) shall be constructed within this setback to protect against damage to persons or property due to collapse of the structure and/or due to falling debris or ice from the structure;
- e. Equipment enclosure. Underground vaults or above ground structures shall comply with all setback and other requirements of the underlying zoning district in which the real property is located;
- f. No freestanding PWSFs or WCFs or equipment enclosures shall be located between the face of a structure and a public street, bikeway, park or residential development, except for approved facade-attached PWSFs or WCFs located on existing or new permitted structures in accordance with this Article.

Exception. Public safety communication equipment operating in conjunction with a public safety

communication center shall only be subject to the typical setback requirement established for the zoning district.

8A.7.4 Design Standards.

The following design criteria shall be met by each application for Wireless Permit approval.

a. Architectural Compatibility.

1. All facilities shall be designed to minimize the visual impact to the greatest extent feasible, considering technological requirements, by means of placement, screening and camouflage to be compatible with existing architectural elements and building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible, as well as the smallest possible equipment enclosure.
2. Equipment enclosures of PWSFs or WCFs shall be placed in underground vaults or within buildings where possible. All other equipment enclosures shall be designed consistent with the requirements of this Article. The equipment enclosure shall be constructed so as to minimize its visual impact. Landscape planting shall be installed and maintained to completely obscure the visibility of the equipment enclosure from the developed street and adjacent properties. Sight distance clearance shall be maintained for the equipment enclosure and associated landscape pursuant to the requirements of this Article and other applicable Ordinances and standards of the City. Any above ground equipment enclosure greater than 90 cubic feet in size shall be subject to Design Review pursuant to Article VI-A of this Ordinance.

b. Landscaping or Screening Standards.

The following standards shall apply to all PWSFs or WCFs except as provided herein below (if the antenna is facade or roof mounted, and other equipment is located inside the existing building, landscaping shall not be required):

1. Support structures and equipment enclosures shall be installed so as to maintain and blend with existing landscaping on-site, including trees, foliage and shrubs, whether or not utilized for screening;
2. Additional landscaping and screening shall be installed to visually screen the support structures and above ground equipment enclosures. Landscaping and screening shall consist of a combination of trees, foliage and shrubs of dense spacing in one of the following designs:
 - (i) A screening wall or fence and a five (5) foot wide landscape planter located in front of the wall or fence;
 - (ii) A ten (10) foot wide landscape planter; or
 - (iii) Any combination of existing vegetation, topography, decorative walls/fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping described above.
3. No PWSF or WCF shall be at a height (see definition) greater than ten (10) feet above the average height of the trees within the landscape screening buffer described above except as provided hereinbelow.
4. Upon completion, the permittee(s) of the facility shall be jointly and severally responsible for the continued maintenance and replacement of all required landscaping and screening materials.

When a PWSF or WCF is located in the Service Commercial Industrial District (SC1) where landscape screening is not part of the natural or man-made environment, the City may consider the location of the PWSF or WCF in context of the surrounding

topography, vegetation, buildings or other structures in lieu of landscape screening.

- c. Color and Materials Standards.
 - 1. PWSFs or WCFs located on buildings, walls, or roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the PWSF or WCF.
 - 2. To the extent any PWSFs or WCFs extend above the height of the vegetation immediately surrounding it, they shall be painted in a nonreflective light gray, light blue or other hue, which blends with the skyline and horizon.
- d. Facility Lighting and Signage Standards.
 - 1. Facility lighting shall be designed so as to meet but not exceed minimum requirements for security, safety and/or FAA regulations. Lighting of antennas or support structures shall be prohibited unless required by the FAA and no other alternatives are available. In all instances, the lighting shall be designed so as to avoid glare and minimize illumination on adjacent properties. No strobe or flashing lights shall be permitted unless no other lighting can meet FAA regulations and the applicant provides written confirmation from the FAA that the specific WCF under review cannot meet its regulations by the use of any other alternative other than such lighting. Lighting shall also comply with any applicable City lighting standards.
 - 2. Signs shall be limited to those needed to identify the telephone number(s) to contact in an emergency, public safety warnings, certifications or other required seals. These signs shall also comply with the requirements of the City's sign regulations.
 - 3. All facility lighting shall comply with the standards as set forth in Article VIII B of this Ordinance.

8A.7.5 Parking Standards.

- a. If the freestanding PWSF or WCF is fully automated, one off-street parking space shall be provided for maintenance workers.
- b. Non-automated PWSFs or WCFs shall provide documentation regarding the provision of adequate off-street parking. Parking will be sufficient to accommodate the maximum number of employees at any one time.

8A.7.6 Access Standards.

In addition to ingress and egress requirements of the International Building Code and the International Fire Code, access to and from PWSFs or WCFs, and equipment shall be regulated as follows:

- a. No PWSF or WCF or equipment shall be located in a required parking, maneuvering or vehicle/pedestrian circulation area such that it interferes with, or in any way impairs, the intent or functionality of the original design.
- b. The PWSF or WCF shall be secured from access by the general public but access for emergency services must be ensured. Access roads shall comply with Fire Department and other City standards for emergency vehicular access.

8A.7.7 Scenic Landscapes and Vistas Standards.

- a. Freestanding PWSFs or WCFs shall not be located within open areas that are visible from public roads, recreational areas, or residential development. As specified in

Subsection 8A.7.4.a.1 above, PWSFs or WCFs shall be installed to blend with existing landscaping and structures.

- b. Any PWSF or WCF that is located within three hundred (300) feet of a scenic vista, scenic landscape or scenic road as designated by the City, in addition to height regulations specified in Section 8A.7.2 above, shall not exceed the height of vegetation at the proposed location. If the facility is located further than three hundred (300) feet from the scenic vista, scenic landscape, or scenic road, said Section 8A.7.2 shall apply exclusively.

8A.7.8 Environmental Standards.

- a. PWSFs or WCFs shall not be located in floodways and wetlands. PWSFs or WCFs shall also be avoided whenever possible in floodplains and disturbance to floodplain areas shall be minimized.
- b. PWSFs or WCFs shall not be located in riparian setbacks along watercourses.
- c. PWSFs or WCFs shall avoid locating in avalanche prone areas, as determined by site-specific studies on a case-by-case basis as part of the PWSF or WCF approval process. Evidence shall be submitted to demonstrate that no location outside an avalanche prone area can accommodate the applicant's proposed antenna as specified in the co-location requirement section above, Section 8A.5.2. PWSFs or WCFs located within avalanche prone areas shall provide proof of FCC acceptance of the proposed location.
- d. No hazardous waste shall be discharged on the site of any PWSF or WCF. If any hazardous materials are to be used on-site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred ten per cent (110%) of the volume of the hazardous materials stored or used on-site.
- e. Storm water run-off shall be contained on-site.
- f. PWSFs or WCFs locating within the floodplain shall comply with the additional placement standards set forth in the Hailey Floodplain Ordinance and provide written proof of FCC acceptance of the proposed location.
- g. Above ground equipment for PWSFs or WCFs, exclusive of roof and facade attached PWSFs or WCFs, shall not generate noise in excess of fifty (50) decibels (db) at the property line.
- h. Roof or facade attached equipment for PWSFs or WCFs shall not generate noise in excess of fifty (50) db at ground level at the base of the structure closest to the antenna.
- i. The noise standards of this Article require measurements by a qualified acoustical engineer.

8A.7.9 Street Pole and Facade Attached Standards. Street pole and facade attached PWSFs or WCFs shall meet the following conditions and criteria in addition to the other standards identified in this section:

- a. Facade Attached PWSFs or WCFs. Equipment enclosures shall be located within the structure in which the WCF is placed or located underground if site conditions permit. Otherwise, equipment enclosures shall comply with the design standards listed in Subsection 8A.7.4 of this Article.
- b. Street Pole Attached PWSFs or WCFs. Only one PWSF or WCF shall be permitted on any one street pole. Surface area of an antenna shall not exceed four (4) square feet. The antenna shall be either fully concealed within the street pole or camouflaged to appear to be an integrated part of the street pole. An antenna not flush mounted on the side of the street pole shall be centered on the top of the street pole to which it is attached;

- horizontal projection shall not exceed twelve (12) inches beyond the outer diameter of the pole, and camouflaged or disguised.
- c. Utility Separation. In the event that a utility located upon the street pole requires vertical separation between its utility facilities and the antenna so attached, the antenna may be raised by a support system to accommodate the separation requirement to an elevation not exceeding an additional ten (10) feet or the required separation, whichever is less. Any such support shall not be greater in diameter than the existing street pole and shall be designed to blend into the colors and textures of the existing street pole.
 - d. Pole Replacement. Existing street poles may be replaced with a new street pole of the same height, dimensions, and appearance as the existing street pole. An antenna located upon the new street pole shall meet the standards for attaching an antenna to an existing street pole, as set forth above.
 - e. Horizontal Separation. For PWSFs or WCFs located within developed streets, there shall be a minimum horizontal separation of three hundred (300) feet between the PWSFs or WCFs of a single licensed carrier and a minimum horizontal separation of one hundred (100) feet between the PWSFs or WCFs of any other licensed carrier.
 - f. An encroachment permit or right-of-way permit shall be obtained from the City, or where applicable, ITD by the applicant, after staff review of the Wireless Permit application and prior to its issuance.
 - g. In the event the utilities located on a street pole are relocated underground, the PWSF or WCF shall be relocated to another location pursuant to the requirements of this Article.

8A.7.10 Review of Alternatives.

- a. In reviewing the alternatives submitted with regard to an application under Section 8A.6.3.3.o.11 of this Article, the City shall compare the PWSF or WCF proposed in the application with the alternatives submitted. Comparisons shall be made between (a) the location selection criteria set forth in Section 8A.5.1, (b) the co-location requirement set forth in Section 8A.5.2, and (c) the standards and criteria set forth in Section 8A.7, in order to determine which best meets those standards, criteria and priorities and which is the least intrusive on the values set forth in the intent and purpose set forth in this Article.

8A.8 Safety Requirements.

- a. Federal Requirements. All PWSFs or WCFs shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the PWSFs or WCFs governed by this Article shall bring such PWSFs or WCFs into compliance with the revised standards and regulations. Failure to bring PWSFs or WCFs into compliance with such revised standards and regulations shall constitute grounds for revocation of the Wireless Permit and removal of the PWSF or WCF at the owners' expense.
- b. Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas shall not be negatively affected by support structure failure, falling ice or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

8A.9 Maintenance Requirements.

- a. Each permittee shall maintain its PWSF or WCF in a good and safe condition, preserving the original appearance and concealment, disguise or screening elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment and maintenance of landscaping. If the permittee fails to maintain the facility, the City may undertake the maintenance at the expense of the permittee or terminate the permit, at its sole option.
- b. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the EIA, as amended from time to time. If, upon inspection, the City concludes that the tower fails to comply with such codes or standards and constitutes a danger to person or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days constitutes grounds for revocation of the Wireless Permit and removal of the PWSF or WCF at the owner's expense.

8A.10 Modification of PWSFs or WCFs

- a. **New Permit.** Any proposed change or addition to any PWSF or WCF shall require the issuance of a new Wireless Permit, pursuant to the requirements of this Ordinance. This provision shall not apply to routine maintenance of a PWSF or WCF, to the replacement of any portion of the PWSF or WCF with identical equipment, or to a change in ownership.
- b. **Facility Upgrade.** At the time of modification or upgrade of facilities, existing equipment shall be replaced with equipment of equal or greater technical capacity and reduced in size so as to reduce visual impact.
- c. **Existing Uses.** Any PWSF or WCF lawfully existing on the effective date of this Article shall be allowed to continue operation as it presently exists, subject to Section 8A.3.2 of this Article. Routine maintenance and repair shall be permitted. However, any construction involving the replacement of support structure apparatus, antennas or any exterior alteration of the PWSF or WCF, or any component thereof, shall comply with all the requirements of this Ordinance. Emergency service PWSFs or WCFs may obtain a waiver from the Commission in order to preserve the public health and safety. In order to receive a waiver, the Commission must determine that the modifications cannot comply with this Article without an extreme burden to the citizens of Hailey. The waiver shall be noticed by the Commission under the public hearing notice requirements identified in Section 8A.6.4.d of this Article.

8A.11 Abandonment or Discontinuation of Use.

- a. Construction or activation of a PWSF or WCF shall commence within ninety (90) days of approval of the Wireless Permit or the permit shall be null and void ab initio. Due to weather conditions or other extenuating circumstances beyond the control of the applicant, an additional ninety (90) day extension may be granted by the approving body as accepted by said approval body. Requests and approvals of extensions shall be made in writing and prior to the expiration of the time period sought to be extended.
- b. At such time that a licensed carrier plans to abandon or discontinue operation of a PWSF or WCF, such carrier shall notify the City by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a

- licensed carrier fails to give such notice, the PWSF or WCF shall be considered abandoned upon such discontinuation of operations.
- c. Upon abandonment or discontinuation of use, the carrier shall physically remove the PWSF or WCF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited, to:
 1. Removal of antennas, support structures, equipment enclosures and security barriers from the subject property;
 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
 3. Restoring the location of the PWSF or WCF to its natural condition, except that any landscaping and grading shall remain in the after-condition. Minor modification for integration with other landscaping or site design will be permitted and approved by staff.
 - d. If a carrier fails to remove a PWSF or WCF in accordance with this section, the City may cause the facility to be removed and the owner of the land where the facility is located shall pay all expenses of removal.
 - e. In the event that more than one provider is using the PWSF or WCF, the PWSF or WCF shall not be considered abandoned until all such users cease using the structure as provided in this Article.

8A.12 Recovery of City Costs and Special Review Fees.

The wireless communication providers use various methodologies and analysis tools, including geological based computer software, to determine the specific technical parameters of personal wireless services and low power mobile radio facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, there may be need for expert review by a third party of the technical data submitted by the applicant. Such technical review shall be paid for by the applicant as a Special Review Fee. The applicant shall pay the City the estimated cost of the expert review prior to further processing of the application by the City. If additional costs are incurred, the applicant shall pay those prior to issuance of the Wireless Permit. If all of the estimated fees are not used by the City to pay the expert, the remainder of said fees shall be refunded to the applicant by the City at the time of issuance of the Wireless Permit. The selection of the third party expert shall be at the City's sole discretion. Based on the results of the third party review, the City may require changes to the application for the PWSF or WCF that comply with the recommendations of the expert and this Article. The expert review of the technical submission shall address the following:

- a. The accuracy and completeness of any of the information submitted;
- b. The applicability of analysis techniques and methodologies;
- c. Review or development of alternative PWSF or WCF proposals under Section 8A.7.10 of this Article.
- d. The validity of conclusions reached; and
- e. Any specific technical issues designated by the City.

8A.13 Revocation or Termination of Permit.

A permit issued pursuant to this Article may be revoked for the following reasons:

- a. Construction, operation, or modification of a PWSF or WCF at an unauthorized location;
- b. Construction, operation, or modification of a PWSF or WCF in violation of any of the terms and conditions of this Article or the conditions attached to the Wireless Permit or, where applicable, Conditional Use Permit;

- c. Construction, operation, or modification of a PWSF or WCF in violation of any of the terms and conditions of the International Building Code or any other applicable Ordinance of the City or of any applicable state or federal law;
- d. Misrepresentation or lack of candor by or on behalf of an applicant, permittee or wireless communication provider in any application, including a written or oral statement upon which the City relies in making the decision to grant, review or amend any permit pursuant to this Article;
- e. Abandonment of the WCF or PWSF as set forth in this Article;
- f. Failure to promptly cure a violation of the terms or conditions of the Wireless Permit or, where applicable, Conditional Use Permit;
- g. Failure to file an Annual Report within thirty (30) days of anniversary date;
- h. Failure to maintain as set forth in Section 8A.9.

8A.14 Notice, Duty to Cure and Revocation of Wireless Permit.

- a. Notice. In the event the City believes that grounds exist for revocation of a permit, the permittee shall be given written notice, by certified mail, personal service or substituted service, of the apparent violation or non-compliance. Such notice shall provide a short and concise statement of the nature and general facts of the violation or non-compliance, and shall provide the permittee a reasonable period of time, not exceeding thirty (30) calendar days, to furnish evidence:
 - 1. That corrective action has remedied the violation or non-compliance;
 - 2. That rebuts the alleged violation or non-compliance; and/or
 - 3. That it would be in the public interest to impose some penalty or sanction less than revocation.
- b. Hearing. In the event that a permittee fails to provide evidence reasonably satisfactory to the City as provided in subsection (a) of this Section, the City shall refer the apparent violation or non-compliance for a hearing before the Hailey City Council.
- c. The City shall provide the permittee at least ten (10) days notice of the scheduled hearing date in writing. The notice should provide explicit ground of the alleged non-compliance or violation and any documents used to support the allegations. The notice should also include a statement that informs the permittee of his right to a hearing before the City Council;
- d. Notifying the permittee by certified mail, personal service or substituted service of the ground for said hearing at the permittee's last known address of record shall be deemed adequate notice. Failure of a permittee to actually receive a notice sent or served shall not invalidate the proceeding;
- e. Following notice to the permittee, a public hearing concerning the matter shall be conducted at which time the permittee shall be given a reasonable opportunity to be heard concerning the matter. At the hearing, the Planning Administrator shall present evidence regarding the alleged violation or non-compliance, and the permittee shall be given the opportunity to rebut such allegations. Both the City and the permittee may present evidence and witnesses and are entitled to cross-examine witnesses.
- f. Within ten (10) calendar days of the completion of the hearing, the Council shall issue a written decision revoking the Wireless Permit or imposing such lesser sanctions as may be deemed appropriate under the circumstances.
- g. In making its decision, the Council shall apply the following factors:
 - 1. Whether the permittee has violated the requirements of this Article and any other applicable City, state or local standards;
 - 2. Whether the violation or non-compliance presents a threat to the public health, safety or welfare;

3. Whether the misconduct was egregious;
4. Whether substantial harm resulted;
5. Whether the violation was intentional;
6. Whether there is a history of prior violations of the same or other requirements;
7. Whether there is a history of overall compliance;
8. Whether the violation was voluntarily disclosed, admitted or cured;
9. Denial or revocation of a Conditional Use Permit as required pursuant to this Article and in accordance with Hailey Zoning Ordinance Article XI;
10. Denial or violation of a Building Permit pursuant to Hailey Ordinance, or any other violation of City, state or federal law; and
11. Other factors determined relevant by the City based upon the specific facts of the case.

8A.14.1 Emergency Suspension. In addition to the remedies set forth above, the City shall have the authority, upon written recommendation of the Planning Administrator, to temporarily and immediately suspend any Wireless Permit issued pursuant to this Article where violation poses an imminent threat to the public health, safety and welfare by:

- a. Notifying the applicant by certified mail, personal service, or substituted service of the ground for said suspension and of the permittee's opportunity to appeal said denial to the City Council. The notification shall be sent to the permittee's last known address of record;
- b. The suspension notice should include explicit grounds for the suspension and any documents used to support and justify the suspension. The notice should also include a statement that informs the permittee of his right to a hearing before the City Council to appeal the suspension;
- c. The permittee, upon receiving notice of the suspension, may appeal said suspension by making application to the City for a hearing before the City Council within ten (10) days of receipt of the above notice;
- d. Failure of a person to actually receive notice sent or served shall not invalidate the suspension;
- e. The hearing, if requested shall follow the procedures set forth in Section 8A.14.e above. If the City Council determines that suspension is proper, the effective date of the suspension shall be the date that notice was sent to or served upon the permittee by the City;
- f. Following a temporary suspension as set forth herein, the City Council may also revoke or suspend a Permit as outlined in Section 8A.14 above.

8A.15 Appeals.

8A.15.1 Appeal from decision of the Planning and Zoning Commission.

- a. Any person aggrieved by the decision of the Commission may appeal the Commission's decision to the Hailey City Council ("Council") by filing a written Notice of Appeal with the City Clerk within twenty (20) days of the Commission's final decision. The Notice of Appeal shall state the date and the substance of the decision appealed from and state the grounds for the appeal. If no Notice of Appeal is so filed, the decision of the Commission shall be final and not subject to further appeal or review.
- b. Within ten (10) days after the filing of the Notice of Appeal, the appellant may order a transcript of the proceedings to be prepared and the estimated cost of the transcript shall be paid by the appellant prior to ordering the transcript. The actual cost of the transcript

shall be paid for by the appellant in full before the transcript may be forwarded to the Council. Within twenty (20) days after receipt of the transcript, the Administrator shall serve to the appellant and the Council (1) copy of the transcript and the record of the appeal including all applications, minutes and other documents and exhibits pertinent to the appeal together with the Administrator's certificate stating that the documents listed comprise the complete record of the proceedings under appeal.

- c. At a regular Council meeting, the Council shall hold a hearing on the appeal within thirty (30) days of the Administrator's certification of the transcript and record on appeal. The appeal shall be based and heard solely upon the record before the Commission. Each party may not present more than fifteen (15) minutes of oral argument to the Council. The Council shall enter an order within thirty (30) days after the hearing affirming, reversing, or modifying the Commission's decision. The order shall contain a statement of the reasons for the Council's decision.

8A.15.2 Denial, Revocation or Appeal of Conditional Use Permits. Any denial or revocation of a Conditional Use Permit required pursuant to this Article, and all appeals related thereto, shall follow the procedures set forth in Hailey Zoning Ordinance Article XI.

8A.16 Enforcement and Penalties.

A person who violates any provision of this Article shall be guilty of a misdemeanor punishable by a fine not to exceed Three Hundred Dollars (\$300.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment. Each day that a violation of this Article occurs shall be deemed a separate offense. In addition, the City may seek to enforce this Article by appropriate civil remedies and/or revocation of a permit issued hereunder. Any violation of Hailey Zoning Ordinance Article VI regarding Conditional Use Permits shall be considered a separate and concurrent violation and penalties shall be assessed as set forth in Article VI.