

**12.1 PURPOSE**

The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards for the development of telecommunication facilities and installation of antennas. The regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of Ashley as set forth within the goals, objectives and policies of the Ashley Comprehensive Plan; while at the same time not unduly restricting the development of needed telecommunications facilities and important amateur radio installations and encouraging managed development of telecommunications infrastructure to insure Ashley's role in the evolution of technology. It is also the stated intent of this Chapter to provide a public forum to insure a balance between public concerns and private interest in establishing telecommunication and related facilities.

It is furthermore intended that, to all extent permitted by law, the Town shall apply these regulations to specifically accomplish the following:

- A. Protect the visual character of the Town from the potential adverse effects of telecommunication facility development and minor antenna installation;
- B. Insure against the creation of visual blight;
- C. Retain local responsibility for and control over the use of public rights-of-way to protect citizens and enhance the quality of their lives.
- D. Protect the residents of Ashley from the possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation);
- E. Protect the environmental resources of Ashley;
- F. Insure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided to serve the business community;
- G. Create and preserve telecommunication facilities that will serve as an important and effective part of Ashley's emergency response network;
- H. Simplify and shorten the process for obtaining necessary permits for telecommunication facilities while at the same time protecting the legitimate interests of Ashley citizens; and,
- I. Provide for the charging of reasonable, competitively neutral, non-discriminatory fees for use of the public right-of-way by telecommunication providers.

**12.2 DEFINITIONS**

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them in this Section 2.2 of this Ordinance.

**12.3 GENERAL REQUIREMENTS**

The following requirements shall be met for all Telecommunications Facilities in any zoning district:

- A. Any applicable Comprehensive Plan Goals, Objectives, Programs and Policies, Specific Plan, PUD Standards, Design Guidelines, and the permit requirements of any agencies which have jurisdiction over the project;

- B. All the requirements established by the other chapters of the Ashley Municipal Code and Ashley Zoning Ordinance that are not in conflict with the requirements contained in this chapter;
- C. Any applicable Airport land use compatibility criteria/policies and Federal Aviation Administration regulations;
- D. Any applicable easements or similar restrictions on the subject property, including adopted PUD standards;
- E. Facilities and minor antennas cannot be located in any required yard setback area of the zoning district in which it is located with the exception of possible encroachment of the antenna array into airspace over said setback;
- F. All setbacks shall be measured from the base of the tower or structure closest to the applicable property line or structure;
- G. All commercial telecommunication facilities and minor antenna shall comply at all times with all FCC rules, regulations, and standards;
- H. All telecommunication facilities shall maintain in place a security program, when determined necessary by and subject to the review and approval of the Police Chief that will prevent unauthorized access and vandalism; and
- I. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- J. All telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications originating or terminating in the Town of Ashley shall register with the Town pursuant to Section 12.4 of this Ordinance.

#### 12.4 REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS

- A. Registration Required. All telecommunications carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the Town of Ashley, or outside the corporate limits from telecommunications facilities within the Town, shall register with the Town pursuant to this Section on forms to be provided by the Zoning Administrator or designated agent, which shall include the following:
  - 1. The identity and legal status of the registrant, including any affiliates.
  - 2. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
  - 3. A narrative and map description of registrant's existing or proposed telecommunications facilities within the Town of Ashley.
  - 4. A description of the telecommunications services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the Town.
  - 5. Information sufficient to determine that the applicant has applied for and receiving any certificate of authority required by the State of Indiana to provide telecommunications services or facilities within the Town.

6. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission (FCC) to provide telecommunications services or facilities within the Town.
  7. Such other information as the Plan Commission may reasonably require.
- B. Registration fee. Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee as set forth in the Official Fee Schedule of Ashley.
- C. Purpose of Registration. The purpose of registration under this Section is to:
1. Provide the Town with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the Town, or that own or operate telecommunication facilities with the Town;
  2. Assist the Town in enforcement of this Chapter;
  3. Assist the Town in the collection and enforcement of any license fees or charges that may be due the Town; and assist the Town in monitoring compliance with local, State and Federal laws.
- D. Amendment. Each registrant shall inform the Town, within sixty (60) days of any change of the information set forth in Section 12.4.

## 12.5 AGREEMENT

No approval granted hereunder shall be effective until the applicant and the Town have executed a written agreement setting forth the particular terms and provisions under which the approval to occupy and use public ways of the Town will be granted.

## 12.6 NONEXCLUSIVE GRANT

No approval granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Town for delivery of telecommunications services or any other purposes.

## 12.7 RIGHTS GRANTED

No approval granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed approval only to use and occupy the public ways for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title.

## 12.8 EXEMPT FACILITIES - BASIC REQUIREMENTS

Exempt facilities defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any residential zoning district, except recognized Historic Districts, where such antennas are permitted under this title, without benefit of a building permit or other entitlement process, so long as all the following conditions are met:

- A. The antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;
- B. In a residential zone, no more than one (1) support structure for licensed amateur radio operator, satellite dish eight feet (8') or less in diameter, is allowed on the parcel;
- C. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

## 12.9 MINI FACILITIES - BASIC REQUIREMENTS

Mini facilities defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any residential, commercial or industrial zoning district where such antennas are permitted under this title, upon the issuance of a building permit which has received site plan approval by the Zoning Administrator or designated agent, so long as all the following conditions are met:

- A. In a commercial or industrial zone, no more than three (3) antenna, satellite dish eight feet (8') or less in diameter; where adequate screening, at the discretion of the Zoning Administrator or designated agent, is provided; and the telecommunication facilities are solely for the use of the project site tenants - location subject to the discretionary review and approval of the Zoning Administrator or designated agent.
- B. Replacement of pre-existing telecommunication facilities, installed under a prior approval under this Chapter which is being proposed for replacement by equipment of identical or a smaller size, at the discretion of the Zoning Administrator or designated agent.
- C. In a residential zone, where more than one (1) but no more than three (3) antenna or satellite dishes (3' or less in diameter) are proposed.
- D. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

## 12.10 MINOR FACILITIES - BASIC REQUIREMENTS

Minor facilities as defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any commercial or industrial zoning district where such antennas are permitted under this title, upon the issuance of a minor conditional use permit, so long as all the following conditions are met:

- A. The minor antenna use involved is accessory to the primary use of the property which is not a telecommunications facility.
- B. The combined effective radiated power radiated by all the antenna present on the parcel is less than 1500 watts.
- C. The combined NIER levels produced by all the antenna present on the parcel does not exceed the NIER standard established in Section 12.28 of this Chapter.
- D. The antenna is not situated between the primary building on the parcel and any public or private street adjoining the parcel, so as to create a negative visual impact.
- E. The antenna is located outside all yard and street setbacks specified in the zoning district in which the antenna is to be located and no closer than twenty feet (20') to any property line.

- F. None of the guy wires employed are anchored within the area in front of the primary structure on the parcel.
- G. No portion of the antenna array extends beyond the property lines or into the area in front of the primary building on the parcel, so as to create a negative visual impact.
- H. At least ten feet (10') of horizontal clearance exists between the antenna and any power lines, unless more clearance is required to meet CPUC standards.
- I. All towers, masts and booms are made of a noncombustible material and all hardware such as brackets, turnbuckles, clips, and similar type equipment subject to rust or corrosion has been protected either by galvanizing or sheradizing after forming.
- J. The materials employed are not unnecessarily bright, shiny or reflective and are of a color and type that blends with the surroundings to the greatest extent possible.
- K. The installation is in compliance with the manufacturer's structural specifications and the requirements of the Ashley Building Code.
- L. The height of the facility shall include the height of any structure upon which it is placed, unless otherwise defined within this Chapter.
- M. No more than two (2) satellite dishes are allowed on the parcel, one of which may be over three feet (3') in diameter, but no larger than eight feet (8') in diameter, with adequate screening, at the discretion of the Zoning Administrator or designated agent;
- N. Any ground mounted satellite dish with a diameter greater than four feet (4') that is situated less than five (5) times its actual diameter from adjoining property lines has screening treatments located along the antenna's non-reception window axes and low-level landscape treatments along its reception window axes.
- O. Any roof mounted panel antenna with a face area greater than three and one-half (3 1/2) square feet shall be located so as to be effectively unnoticeable.
- P. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- Q. The facility is located more than seventy-five feet (75') from any residential dwelling unit, unless recognized as an exempt facility as set forth in Section 2.2 of this Ordinance.
- R. No trees larger than twenty inches (20") in diameter measured at four and one-half feet (4 1/2') high on the tree would have to be removed.
- S. Any new building(s), structure(s), control panel(s), etc. shall be effectively screened from view from off-site.
- T. The site has an average cross slope of 10% or less.
- U. All utility lines to the facility from public or private streets shall be underground.
- V. If located within a recognized Historic District, or on a structure recognized as a Historic landmark, that adequate screening has been provided.
- W. The general criteria set forth in this Chapter are met.

### 12.11 MINOR FACILITIES - REFERRAL

The Zoning Administrator or designated agent may refer a conditional use permit for a minor telecommunications facility that meets all of the above standards if he/she determines, in his/her sole discretion, that the public interest would be furthered by having the Planning Commission review the matter. In such case and the case of any proposed facility that fails to meet one or more of the standards listed above, a use permit approved by the Planning Commission shall be required to construct the facility in question.

### 12.12 APPLICATION REQUIREMENTS

The following are the minimum criteria applicable to all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance. In the event that a project is subject to discretionary and/or environmental review, mitigation measures or other conditions may also be necessary. All Telecommunications Facilities shall comply with the following:

- A. The Zoning Administrator or designated agent shall establish and maintain a list of information that must accompany every application for the installation of a telecommunications facility. Said information may include, but shall not be limited to, completed supplemental project information forms, a specific maximum requested gross cross-sectional area, or silhouette, of the facility; service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages, visual impact analysis, NIER (non-ionizing electromagnetic radiation) exposure studies, title reports identifying legal access, security considerations, lists of other nearby telecommunication facilities known to the Town, master plan for all related facilities within the Town limits of Ashley and within one-quarter (1/4) mile therefrom; and facility design alternatives to the proposal and deposits for peer review, if deemed necessary by the Zoning Administrator or designated agent. The Zoning Administrator or designated agent may release an applicant from having to provide one or more of the pieces of information on this list upon a finding that in the specific case involved said information is not necessary to process or make a decision on the application being submitted; and
- B. The Zoning Administrator or designated agent is explicitly authorized at his/her discretion to employ on behalf of the Town an independent technical expert to review any technical materials submitted including, but not limited to, those required under this Section and in those cases where a technical demonstration of unavoidable need or unavailability of alternatives is required. The applicant shall pay all the costs of said review, including any administrative costs incurred by the Town. Any proprietary information disclosed to the Town or the expert hired shall remain confidential and shall not be disclosed to any third party.

### 12.13 STANDARD AGREEMENTS REQUIRED

- A. A maintenance/facility removal agreement signed by the applicant shall be submitted to the Zoning Administrator or designated agent prior to approval of the use permit or other entitlement for use authorizing the establishment or modification of any telecommunications facility which includes a telecommunication tower, one (1) or more new buildings/equipment enclosures larger in aggregate than three hundred (300) square feet, more than three (3) satellite dishes of any size, or a satellite dish larger than four feet (4') in diameter. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately removal of the facility in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the Town for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform. It shall also specifically authorize the Town and/or its agents to enter onto the property and undertake said work so long as:

1. The Zoning Administrator or designated agent has first provided the applicant the following written notices:
    - a. An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least forty-five (45) calendar days to complete it; and
    - b. A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the Town's intent to commence the required working with ten (10) working days;
  2. The applicant has not filed an appeal pursuant to Section 12.32 within fourteen (14) working days of the notice required under Section 12.13 above. If an appeal is filed, the Town shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it taken in favor of the Town;
  3. All costs incurred by the Town to undertake any work required to be performed by the applicant pursuant to the agreement referred to in Section 12.13 including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The applicant shall deposit within ten (10) working days of written request therefor such costs as the Town reasonably estimates or has actually incurred to complete such work. When estimates are employed, additional moneys shall be deposited as needed within ten (10) working days of demand to cover actual costs. The agreement shall specifically require the applicant to immediately cease operation of the telecommunication facility involved if the applicant fails to pay the moneys demanded within ten (10) working days. It shall further require that operation remain suspended until such costs are paid in full.
- B. Standard agreement required by Section 12.13 shall be accompanied by the payment of a fee, as established by Resolution of the Town Council, into a trust fund established to cover expenditures for the removal, screening, enhancement or similar activities relating to the existence of telecommunication facilities within the Town.
- C. Standard agreement required by Section 12.13 shall include, but not be limited to, the following stipulations agreed to by the applicant:
1. Telecommunication facilities lessors shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the Town of Ashley. This liability shall include cleanup, intentionally injury or damage to persons or property. Additionally, telecommunication facilities lessors shall be responsible for any sanctions, fines, or other monetary costs imposed as a result of the release of pollutants from their operations. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, include smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic waves and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
  2. The telecommunication facility provider shall defend, indemnify, and hold harmless the Town or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the Town, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable State and/or local statutes. The Town shall promptly notify the provider(s) of any such claim, action or proceeding. The Town shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the Town from participating in a defense of any claim, action, or proceeding if the Town bears its own attorney's fees and costs, and the Town defends the action in good faith.







## 12.14 LIFE OF PERMITS

- A. A use permit issued pursuant to this chapter or a site plan approval issued pursuant to this chapter authorizing establishment of a telecommunication facility, except exempt facilities as defined in Section 2.2 of this Ordinance shall be reviewed every ten (10) years. Costs associated with the review process shall be borne by the telecommunication facility owner/provider. Grounds for revocation of the conditional use permit shall be limited to a finding that (1) the use involved is no longer allowed in the applicable zoning district, (2) the facility fails to comply with the relevant requirements of this chapter as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Zoning Administrator or designated agent that the facility will be brought into compliance within one hundred twenty (120) days, (3) the permittee has failed to comply with the conditions-of-approval imposed, (4) the facility has not been properly maintained, or (5) the facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates. The grounds for appeal of issuance of a renewal shall be limited to a showing that one or more of the situations listed above do in fact exist or that the notice required under Section 12.30 was not provided.
- B. If a use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing ten (10) years after it is issued or upon cessation of use for more than a year and a day, whichever comes first. Unless a new use permit or entitlement of use is issued, within one hundred twenty (120) days thereafter all improvements installed including their foundations down to three feet (3' below ground surface) shall be removed from the property and the site restored to its natural pre-construction state within one hundred eighty (180) days of non-renewal or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Zoning Administrator or designated agent that these sections of road are necessary to serve some other allowed use of the property that is permitted or is currently present or to provide access to adjoining parcels.

## 12.15 STRUCTURAL REQUIREMENTS

No telecommunication facility shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any telecommunication tower, except exempt facilities as defined in Section 2.2 of this Ordinance, located at a distance of less than 110% of its height from a habitable structure, property line, or other tower shall be designed and maintained to withstand without failure the maximum forces expected from wind and earthquakes when the tower is fully loaded with antennas, transmitters and other equipment, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Zoning Administrator or designated agent prepared by a structural engineer licensed by the State of Indiana describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the Zoning Administrator or designated agent at least every five (5) (self-supporting and guyed towers)/ten (10) (monopoles) years of an inspection report prepared by an Indiana-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Zoning Administrator or designated agent may require repair or, if a serious safety problem exists, removal of the tower.

## 12.16 BASIC TOWER AND BUILDING DESIGN

All telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:

- A. Telecommunication towers shall be constructed out of metal or other non-flammable material, unless specifically conditioned by the Town to be otherwise.
- B. Telecommunication towers taller than thirty-five feet (35') shall be monopoles or guyed/lattice towers except where satisfactory evidence is submitted to the Zoning Administrator or designated agent or Planning Commission, as appropriate, that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunication use to minimize the need for screening from adjacent properties, or to reduce the potential for bird strikes.
- C. Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Zoning Administrator or designated agent or Planning Commission, as appropriate, is submitted showing that this is infeasible.
- D. Telecommunication support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only) and shall be placed in underground vaults to all extent possible.
- E. Telecommunication support facilities shall be no taller than one story (fifteen feet) in height and shall be treated to look like a building or facility typically found in the area.
- F. Telecommunication support facilities in areas of high visibility shall, where possible, be sited below the ridgeline or designed (i.e., placed underground, depressed, or located behind earth berms) to minimize their profile.
- G. All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunication site shall be initially painted and thereafter repainted as necessary with a flat paint. The color selected shall be one that in the opinion of the Zoning Administrator or designated agent or Planning Commission, as appropriate, will minimize their visibility to the greatest extent feasible. To this end, improvements which will be primarily viewed against soils, trees or grasslands shall be painted colors matching these landscapes while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location.
- H. The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility. The silhouette shall be measured from the "worst case" elevation perspective.
- I. The Town shall have the authority to require special design of the telecommunication facilities where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features).
- J. Telecommunication facilities shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

**12.17 CRITICAL DISASTER RESPONSE FACILITIES**

- A. All radio, television and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation. To this end all the following measures shall be implemented:
  - 1. Non-flammable exterior wall and roof covering shall be used in the construction of all buildings;
  - 2. Openings in all buildings shall be protected against penetration by fire and windblown embers;
  - 3. The telecommunication tower when fully loaded with antennas, transmitters, other equipment and camouflaging shall be designed to withstand the forces expected during the maximum credible earthquake. All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it;
  - 4. All connections between various components of the facility and with necessary power and telephone lines shall be protected against damage by fire, flooding, and earthquake; and
  - 5. Measures shall be taken to keep the facility operation in the event of disaster.
- B. Demonstration of compliance with requirements A.1., 2., 4. and 5. (fire only) shall be evidenced by a certified signed by the Town Fire Chief on the building plans submitted.
- C. Demonstration of compliance with requirements A.3. through 5. (earthquake only) shall be provided via a second certification on said plans signed by a structural engineer or other appropriate professional licensed by the State of Indiana.

**12.18 LOCATION**

All telecommunication facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented for all telecommunications facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. No telecommunication facility shall be installed within the safety zone of any airport or any helipad unless the airport owner/operator indicates in writing that it will not adversely affect the operation of the airport or helipad;
- B. No telecommunication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence acceptable to the Zoning Administrator or designated agent or Planning Commission, as appropriate, is submitted showing that this is the only technically feasible location for this facility;
- C. No telecommunication facility that is readily visible from off-site shall be installed closer than one-half mile from another readily visible uncamouflaged or unscreened telecommunication facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the Zoning Administrator or designated agent or Planning Commission, as appropriate, is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one of these former sites;

- D. No telecommunication facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and man-made environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the Zoning Administrator or designated agent or Planning Commission, as appropriate, is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one of these former sites; and
- E. Telecommunication towers shall be set back at least twenty percent (20%) of the tower height from all property lines and at least one hundred feet (100') from any public trail, park or outdoor recreation area. Guy wire anchors shall be set back at least twenty feet (20') from any property line.

**12.19 HEIGHT**

The height of a telecommunication tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of crank-up or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

**12.20 CO-LOCATED AND MULTIPLE USER FACILITIES**

- A. An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision making body, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the Town and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the decision making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The Town may require independent verification of this analysis at the applicant's expense.

Facilities which are not proposed to be co-located with another telecommunication facility shall provide a written explanation why the subject facility is not a candidate for co-location.

- B. All co-located and multiple-user telecommunication facilities shall be designed to promote facility and site sharing. To this end telecommunication towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and equipment buildings shall be shared by site users when in the determination of the Zoning Administrator or designated agent or Planning Commission, as appropriate, this will minimize overall visual impact to the community.
- C. The facility shall make available unutilized space for co-location of other telecommunication facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the Town's permit files. Unresolved disputes may be mediated by the Planning Commission or Town Council. Co-location is not required in cases

where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it became necessary for the host to go off-line for a significant period of time.

- D. Approval for the establishment of facilities improved with an existing microwave band or other public service use or facility, which creates interference or interference is anticipated as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities.

### 12.21 LIGHTING

All telecommunication facilities shall be unlit except for the following:

- A. A manually-operated or motion-detector controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night; and
- B. the minimum tower lighting required under FAA regulation; and
- C. where tower lighting is required, it shall be shielded or directed to the greatest extent possible in such a manner as to minimize the amount of light that falls onto nearby properties, particularly residences.

### 12.22 ACCESS AND PARKING

All telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance, shall be served by the minimum roads and parking areas necessary. To this end all the following measures shall be implemented:

- A. Existing roads shall be used for access, whenever possible, and be upgraded the minimum amount necessary to meet standards specified by the Fire Chief and Town's Engineer. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunication facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the Fire Chief and Town's Engineer;
- B. Existing parking areas shall, whenever possible, be used; and
- C. Any new parking areas constructed shall be no larger than three hundred fifty (350) square feet.

### 12.23 VEGETATION PROTECTION AND SCREENING

All telecommunications facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all of the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas. The landscape plan shall be subject to review and approval of the Plan Commission. All trees, larger than four inches (4") in diameter shall be identified in the landscape plan with indication of species type, diameter at four and one-half feet (4 1/2') high, and whether it is to be retained or removed with project development;

- B. Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunication line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:
1. A Tree Protection Plan shall be submitted with building permit or improvement plan. This Plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction;
  2. Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas to be protected and the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Zoning Administrator or designated agent or Commission, as appropriate. Trash, debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the Zoning Administrator or designated agent; and
  3. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.
- C. All areas disturbed during project construction other than the access road and parking areas required under Section 12.22 shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Zoning Administrator or designated agent;
- D. Any existing trees or significant vegetation, on the facilities site or along the affected access area that die shall be replaced with native trees and vegetation of a size and species acceptable to the Zoning Administrator or designated agent;
- E. No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunication lines serving it.

## 12.24 FIRE PREVENTION

- A. All telecommunication facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. To this end all of the following measures shall be implemented for all telecommunication facilities, when determined necessary by the Fire Chief, except exempt facilities as defined in Section 2.2 of this Ordinance:
1. At least one-hour fire resistant interior surfaces shall be used in the construction of all buildings;
  2. Monitored automatic fire extinguishing systems approved by the Fire Chief shall be installed in all equipment buildings and enclosures;
  3. Rapid entry (KNOX) systems shall be installed as required by the Fire Chief;
  4. Type and location of vegetation and other materials within ten feet (10') of the facility and all new structures, including telecommunication towers, shall have review for fire safety purposes by the Fire Chief. Requirements established by the Fire Chief shall be followed; and
  5. All tree trimmings and trash generated by construction of the facility shall be

removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first.

- B. Demonstration of compliance with requirements A.1. through A.5. shall be evidenced by a certificate signed by the Fire Chief on the building plans submitted.

## 12.25 ENVIRONMENTAL RESOURCE PROTECTION

All telecommunication facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. No telecommunications facility or related improvements including but not limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species;
- B. No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
- C. No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;
- D. The facility shall comply with all applicable Floodplain, Floodway and Storm Drainage and Erosion Control regulations;
- E. Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;
- F. Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and
- G. Drainage, erosion, and sediment controls shall be required as necessary to abate soil erosion and sedimentation of waterways. Structures and roads on slopes of 10% or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over 10%. Natural vegetation and topography shall be retained to the extent feasible.

## 12.26 NOISE AND TRAFFIC

All telecommunication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. To that end all the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times by the Plan Commission;
- B. Backup generators shall only be operated during power outages and for testing and maintenance purposes. If the facility is located within one hundred feet (100') of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least a Ldn of 60 dB at the property line and an interior noise level



of a Ldn of 45 dB. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.; and

- C. Traffic, at all times, shall be kept to an absolute minimum, but in no case more than two round trips per day on an average annualized basis once construction is complete.

## 12.27 VISUAL COMPATIBILITY

- A. Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunication service and the need to be compatible with neighboring residences and the character of the community.
- B. The facility is designed to blend with the any existing supporting structure and does not substantially alter the character of the structure or local area.
- C. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and
- D. A visual analysis, which may include photo montage, field mock up, or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Zoning Administrator or designated agent. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

## 12.28 NIER EXPOSURE

- A. No telecommunication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no telecommunication facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in Section 2.2 of this Ordinance that exceed the ANSI (American National Standards Institute) C95.1-1992 standard for human exposure or any more restrictive standard subsequently adopted or promulgated by the Town, County, the State of Indiana, or the federal government.
- B. Initial compliance with this requirement shall be demonstrated for any facility within four hundred feet (400') of residential uses or sensitive receptors such as schools, churches, hospitals, etc. and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, of NIER (Nonionizing Electromagnetic Radiation calculations) specifying NIER levels in the inhabited area where the levels produced are projected to be highest. If these calculated NIER levels exceed 80% of the NIER standard established by this Section, the applicant shall hire a qualified electrical engineer licensed by the State of Indiana to measure NIER levels at said location after the facility is in operation. A report of these measurements and his/her findings with respect to compliance with the established NIER standard shall be submitted to the Zoning Administrator or designated agent. Said facility shall not commence normal operations until it complies with, or has been modified, to comply with this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the Town may require, at the applicant's expense, independent verification of the results of the analysis.

- C. Every telecommunication facility within four hundred feet (400') of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with the NIER standard established by this Section. Every five (5) years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Zoning Administrator or designated agent. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed 80% of the standard established by this Section, the operator of the facility shall hire a qualified electrical engineer licensed by the State of Indiana to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Zoning Administrator or designated agent within five (5) years of facility approval and every five (5) years thereafter. In the case of a change in the standard, the required report shall be submitted within ninety (90) days of the date said change becomes effective.
- D. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by this Section shall be grounds for revocation of the use permit or other entitlement.

#### 12.29 TELECOMMUNICATIONS FACILITIES - EXCEPTIONS

- A. Exceptions to the requirements specified within this Chapter may be granted through issuance of a conditional use permit by the Plan Commission. Such a permit may only be approved if the Plan Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.
- B. An exception to the requirements of Sections 12.17 and 12.24 may only be granted upon written concurrence by the Fire Chief.
- C. Tower setback requirements may be waived under any of the following circumstances:
1. The facility is proposed to be co-located onto an existing, legally-established telecommunication tower; and
  2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

#### 12.30 PUBLIC NOTICE

In addition to the public notice required within this Chapter, the following special noticing shall be provided:

- A. Notice of consideration or a public hearing, as appropriate, on a minor or major use permit authorizing the establishment or modification of a telecommunication facility shall be provided to the operators of all telecommunication facilities, registered with the Town of Ashley pursuant to Section 12.4, within one mile of the subject parcel via mailing of the standard legal notice prepared, and

- B. Notice of the approval of a minor use permit by the Zoning Administrator or designated agent authorizing the establishment or modification of, or the renewal of a permit for, a telecommunication facility or minor antenna needing site plan review, shall be mailed to all adjacent property owners within three hundred feet (300'). Mailing of said notice shall start a fourteen (14) calendar day appeal period.

### 12.31 APPEAL

Any person who disagrees with a ruling or interpretation of the Zoning Administrator or designated agent regarding this Chapter may appeal the matter to the Plan Commission. Such appeal shall be made in writing and filed with the Town Clerk within fourteen (14) calendar days of the ruling or interpretation. The Town Clerk will then transmit the appeal to the Zoning Administrator or designated agent, who will cause the matter to be placed on the agenda of the Plan Commission. If no appeal is made within that time, the ruling or interpretation shall be final. The appeal shall be addressed to the Town Clerk and shall set forth in writing the grounds for the appeal and the relief sought by the appellant. The hearing shall be scheduled within two regularly scheduled meetings. The Zoning Administrator or designated agent shall notify in writing all persons who have demonstrated their interest in this matter of the time and place of the meeting on the appeal at least ten (10) calendar days prior to the meeting. The Zoning Administrator or designated agent shall transmit the application and all exhibits therewith to the Plan Commission for consideration. For the purposes of this section, a ruling is a discretionary action and an interpretation refers to the determination of the intent and application of provisions of this Chapter. Application or enforcement of provisions of this Chapter shall not be considered interpretations or rulings and are not subject to appeal. Notwithstanding this section, an individual may file for an exception from the provisions of this Chapter pursuant to Section 12.29.

### 12.32 SEVERABILITY

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Ashley hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.