

ORDINANCE NO. 1812

AN ORDINANCE AMENDING CHAPTER 50 ARTICLE IV OF THE MUNSTER MUNICIPAL CODE ESTABLISHING PROCEDURES AND STANDARDS FOR SMALL CELL/5G NETWORKS AND FACILITIES

WHEREAS, the Indiana General Assembly has established regulations for the granting of permits to wireless service providers, which are codified in Ind. Code §8-1-32.3 (the "Act");

WHEREAS, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure, the Act allows the permit authority to establish reasonable procedures and regulations and to prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if certain requirements of the Act are met;

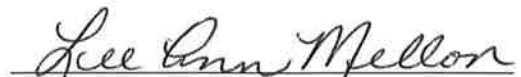
WHEREAS, it is in the best interests of the Town of Munster to regulate small cell infrastructure within the public right-of-way to ensure the health, safety, general welfare, comfort, and convenience of the Town and its residents, in accordance with Ind. Code §8-1-32.3; now, therefore, be it

ORDAINED by the Town Council of the Town of Munster, Lake County, Indiana that the Munster Municipal Code be amended as follows:

1. That Chapter 50 Article IV Small Cell Networks and Facilities, attached hereto as Exhibit "A" to this Ordinance, be and the same is hereby adopted.
2. That this Ordinance shall be in full force and effect after passage and publication in accordance with the law.

ORDAINED and **ADOPTED** this 21st day of December, 2020 by a vote of 5 in favor and 0 opposed.

**TOWN COUNCIL OF THE TOWN OF
MUNSTER, LAKE COUNTY, INDIANA**


Lee Ann Mellon
Council President

ATTEST:

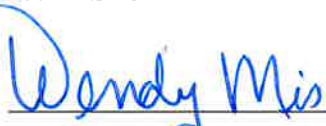

Wendy Mis
Clerk-Treasurer

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Chapter 50 Article IV Small Cell Networks and Facilities

Sec. 50-116. Definitions. This ordinance hereby incorporates the definitions listed in IC 8-1-32.3.

Sec. 50-117. Applicability. The regulations in this section shall apply to small cell networks and facilities located within the public right-of-way of the Town of Munster.

Sec. 50-118. Permitted Use. The placement of a small cell facility and the associated supporting structure in the public right-of-way is considered a permitted use and is exempt from local zoning review if the total height of the structure supporting the small cell facility does not exceed the greater of:

- (a) fifty (50) feet measured from grade; or
- (b) the height of any utility pole in place on July 1, 2017, and within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet.

Sec. 50-119. Application Requirements.

- (a) Contents of Application. An application for a wireless support structure and wireless facility shall include the following.
 - (1) The name, business address, and point of contact for the applicant.
 - (2) The location of the proposed or affected wireless support structure or wireless facility, including location map, address, and latitude and longitude.
 - (3) A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.
 - (4) The location of all existing wireless support structures within 1,500 feet of the proposed wireless support structure.
 - (5) If applicable, evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that co-location of wireless facilities on an existing wireless support structure was not a viable option because co-location:
 - a. Would not result in the same wireless service functionality, coverage, and capacity;
 - b. Is technically infeasible; or
 - c. Is an economic burden to the applicant.
 - (6) Construction plans for the proposed facility shall include the following elements:

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- a. A written plan for construction of a new wireless support structure which demonstrates that the aesthetics of the wireless support structure is substantially similar to the streetlights located nearest the proposed location;
 - b. Includes the total height and width of the wireless facility and wireless support structure, including cross section and elevation, footing, foundation and wind speed details;
 - c. A structural analysis indicating the capacity for future and existing antennas, including a geotechnical report and calculations for the foundation's capacity;
 - d. The identity and qualifications of each person directly responsible for the design and construction; and
 - e. Signed and sealed documentation from a professional engineer that shows the proposed location of the wireless facility and wireless support structure and all easement and existing structures within 200 feet of the wireless facility or wireless support structure, including the distances from roadways, sidewalks, trails, driveways, and entrances.
 - f. For a substantial modification of an existing wireless facility or wireless support structure, a plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment, along with any relevant engineering information relating to the support structure.
- (b) An applicant may submit one application for multiple wireless support structures and wireless service facilities that are located within the Town. A single permit shall be issued for the small cell network rather than multiple permits for each small cell facility.
- (c) Fees. The total of any application fees allowed under this section may not exceed the lesser of:
- (1) the amount charged by the permit authority for an application for a building permit for any similar type of commercial construction, activity, or land use development within the jurisdiction of the permit authority; or
 - (2) one hundred dollars (\$100) per small cell facility included in the application.
- (d) With respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure at a location where a supporting structure does not exist the Town of Munster may propose, as an alternative location for the proposed small cell facility, that the small cell facility be collocated on an existing utility pole or on an existing wireless support structure, if the existing utility pole or the existing wireless support structure is located within fifty (50) feet of the location proposed in the application. The applicant shall use the alternative location proposed by the Town of Munster if:

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- (1) the applicant's right to use the alternative location is subject to reasonable terms and conditions; and
- (2) the alternative location will not result in technical limitations or additional costs, as determined by the applicant.

Sec. 50-120. Review Procedure.

- (a) The Town of Munster shall review an application within ten (10) business days of its receipt to determine if the application is complete. If the permit authority determines that an application is not complete, the Town of Munster shall notify the applicant in writing of all defects in the application. If the Town of Munster does not notify an applicant in writing of all defects in the application, the application is considered complete.
- (b) An applicant that receives a written notice under subsection (a) may cure the defects set forth in the notice and resubmit the corrected application to the Town of Munster within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the Town of Munster of the additional time the applicant requires to cure the defects.
- (c) Not more than forty-five (45) days after making an initial determination of completeness under subsection (a) the Town of Munster shall:
 - (1) review the application to determine its conformity with applicable building permit requirements; and
 - (2) notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time under subsection b. to cure defects in the application, the forty-five (45) day period is extended for a corresponding amount of time.
 - (3) A written notice of decision shall state clearly the basis to approve or deny an application. If the Town of Munster denies an application, the written notice must include substantial evidence in support of the denial.
 - (4) For purposes of this section, a notice is considered written if it is included in the minutes of a public meeting of a permit authority.
 - (5) If a permit authority fails to act on an application within the applicable deadline of this chapter, the application is considered approved.

Sec. 50-121. Specifications. New wireless facilities and wireless support structures shall meet the following specifications.

- (a) **Maximum Height.** The wireless support structure shall not be taller than the greater of:
 - (1) fifty (50) feet measured from grade; or
 - (2) the height of any utility pole in place on July 1, 2017, and within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet.

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- (b) Support structures must be metal or fiberglass poles matching the Town's standard streetlight poles and all attachments must be of the same color as the streetlight poles. The Town of Munster reserves the right to amend the specifications for its standard streetlight pole from time to time, at which time all support structures shall be replaced with a light pole identical to the nearest Town streetlight pole, or the Town's standard streetlight pole.
- (c) All facility equipment at a single facility, with the exception of the antenna itself, shall be ground-mounted in a cabinet having an area not to exceed 40 cubic feet, and no greater than 48 inches overall height. Under special circumstances based on a mutual agreement, the Town may allow a pole-mounted cabinet, with dimensions not exceeding 20 inches by 20 inches by six inches, and a ground-mounted cabinet not exceeding two feet by two feet by one foot. If a pole-mounted cabinet is permitted, the facility will need to include additional shrouding and/or landscaping to mitigate the visual impact of the equipment.
- (d) Antenna equipment shall be top mounted, flush with the pole, rather than side mounted on an arm.
- (e) No logos or illumination shall be permitted on the equipment.
- (f) The background colors of any informational stickers shall be the same color as the existing pole and placed as close to the top of the pole as possible.
- (g) All other equipment not mentioned above shall be the same color as the light pole.
- (h) Handhole boxes and covers shall match the color of the surrounding landscape.
- (i) All support structures shall have a plaque identifying the structure, the owner, and the owner's contact information. This plaque shall not exceed 0.25 square feet.
- (j) All wiring and fiber for the facility shall be concealed within the support structure. All conduit, wiring, and fiber shall be buried between structures and/or structures and ground-mounted cabinets. All service lines, including fiber optic and electric lines, to the support structure must also be buried, unless service lines in the area of the support structure are aerial. If the aerial service lines are located on the opposite side of the street or roadway, the service drop crossing would need to be bored and placed under the street or roadway. No aerial crossings or pavement cuts are permitted.
- (k) If relocation of wireless support structures is necessary to accommodate vehicular and/or pedestrian transportation improvements, the wireless support structure is to be moved at the utility company's expense.
- (l) Wireless support structures must be separated from existing underground utility facilities per industry standards. For larger diameter pipes (water, gas, sewer, and the like) the support structure must be offset the depth of the pipe, with a minimum of three feet separation.
- (m) The wireless support structure and wireless facilities shall comply with the requirements of the Building Code of the State of Indiana, as amended, the Federal Aviation

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Administration (FAA) and the Federal Communications Commission (FCC), when applicable.

- (n) All wireless facilities and support structures shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind-loading requirements of the Building Code of the State of Indiana, as amended, and the Electronics Industry Association.
- (o) All wireless facilities and support structures shall be designed to conform to accepted electrical engineering methods and practices, and to comply with the provisions of the National Electrical Code, as amended.
- (p) All wireless facilities and support structures shall be constructed to conform to the requirements of the Occupational Safety and Health Administration (OSHA).
- (q) All wireless facilities and support structures shall be designed and constructed to all applicable standards of the American National Standards Institute (ANSI) manual, as amended.
- (r) Any wireless support structure that ceases to be used for a period of 6 months is deemed abandoned. The Communications Service Provider shall remove the structure from the public right-of-way and restore the right-of-way to its original condition, including the removal of all underground equipment, wires, conduit, or similar, within 30 days of abandonment. If the Communications Service Provider fails to do so, the Town of Munster may do so and shall be reimbursed by the Communications Service Provider 115% of any costs incurred.

Sec. 50-122. Additional general terms and conditions for small cell facilities on utility poles owned by the Town of Munster. In addition to the standards listed in Section 50-121, the following terms and conditions are applicable to small cell facilities on utility poles owned by the Town of Munster.

- (a) The rate for the construction, placement, or use of small cell facilities on a utility pole owned by the Town of Munster shall be fifty dollars (\$50) per utility pole per year.
- (b) A Wireless Support Structure that has replaced a Town of Munster streetlight shall become the property of the Town of Munster.
- (c) In no instance shall the Town of Munster be responsible for the electricity or other costs of operating the telecommunications equipment.
- (d) A Wireless Support Structure must be a metal or fiberglass pole matching the Town's standard streetlight poles and all attachments must be of the same color as the streetlight poles.
- (e) The Town of Munster reserves the right to amend the specifications for its standard streetlight pole from time to time, at which time, after reasonable notice, all support structures shall be replaced with a light pole identical to the nearest Town streetlight pole or the Town's standard streetlight pole. The Communications Service Provider may replace the support structure upon the issuance of a building permit from the Town of

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Munster. If after a reasonable amount of time, the Communications Service Provider has not replaced the support structure, the Town of Munster may replace the support structure and shall be reimbursed the cost of replacement by the Communications Service Provider at a rate of 115% of any direct costs incurred. In no instance shall the Town of Munster shall be responsible for, repairing, restoring, or replacing any telecommunications equipment.

- (f) A Wireless Support Structure that has replaced a Town of Munster streetlight that becomes damaged or ceases to function properly as a light source is hereby deemed a public safety hazard and may be replaced or repaired by the Town of Munster. The Town of Munster shall be reimbursed the cost of replacement or repair by the Communications Service Provider at a rate of 115% of any direct costs incurred. In no instance shall the Town of Munster shall be responsible for, repairing, restoring, or replacing any telecommunications equipment.
- (g) In the event that any Town of Munster light pole that has been removed, replaced, or modified by a Communications Service Provider is not used for a period of six (6) consecutive months, the Communications Service Provider shall remove the telecommunications equipment and support structure, restore the site to its original condition at the Communication Service Provider's sole cost and expense, and replace the light pole with a light pole identical to the nearest Town streetlight pole, or the Town's standard street light pole, per engineering specifications as may be amended from time to time by the Town of Munster. Should such owner fail to remove the wireless support structure or wireless facilities within thirty (30) days from the date a Notice of Violation is issued by the Town, the Town may remove such structure or facilities and bill the owner for the costs of removal and cleanup of the site and any administrative fees incurred.

Sec. 50-123. New Utility Poles and New Wireless Support Structures Prohibited in Residential Districts

- (a) Designated Underground Utility Area: On or around April 28, 2017, the Town of Munster designated certain Town right-of-way within the Town strictly for underground or buried utilities (individually or collectively, "Underground Utility Area") and prohibited the construction, placement or use of a new utility pole or new wireless support structure within the Underground Utility Area. In accordance with Ind. Code §8-1-32.3 (P.L. 23-2018), the Town's Underground Utility Area applies to areas zoned strictly for residential land use before May 1, 2017. This prohibition does not restrict the collocation of small cell facilities on existing utility poles and wireless support structures within the Underground Utility Area or the replacement of existing utility poles and wireless support structures within the Underground Utility Area.
- (b) Waivers- General Standards. A person that provides wireless communications service or otherwise makes available infrastructure for wireless communications services may

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apply for a waiver to install new utility poles or new wireless support structures within the Underground Utility Area. All confidential information submitted by an applicant shall be maintained to the extent authorized by Ind. Code § 5-14-3 et. seq. When considering a proposed waiver, the permit authority shall consider, in addition to whether the applicant can demonstrate that it can satisfy the applicable construction requirements included in this section following, among other applicable factors:

- (1) Collocation Preference. Applicants seeking a waiver to install a new utility pole or new wireless support structures within the Underground Utility Area shall consider the Town's preference for collocation on existing facilities and shall endeavor to demonstrate the following:
 - a. At a minimum, new wireless facilities shall be a monopole constructed to support the initial user plus loading of at least one (1) potential, additional, user.
 - b. The site of the initial wireless facility at any location shall be of sufficient area to allow for the location of one (1) potential, additional wireless facility.
 - c. Any proposed wireless support structure shall be designed, and engineered structurally, electrically and in all other respects, to accommodate both the initial wireless facility and one potential, additional wireless facility support structure and shall be designed to allow for future rearrangement of cellular communication equipment and antennas upon the structure and to accept cellular communication equipment and antennas mounted at varying heights.
 - d. A waiver for a new wireless support structure will not be approved unless the applicant submits verification that the telecommunication equipment planned for the proposed wireless support structure cannot be accommodated on an existing or approved utility pole or electrical transmission tower or other structure due to one (1) or more of the following reasons:
 - i. The planned telecommunication equipment would exceed the structural capacity of the existing or approved utility pole or electrical transmission tower, buildings, or structures as documented by a qualified and licensed professional engineer, and the existing or approved utility pole or electrical transmission tower, buildings or structures cannot be reinforced, modified, or replaced to accommodate the planned telecommunication equipment at a reasonable cost, or
 - ii. The planned telecommunication equipment would cause interference impacting the usability of other existing telecommunication equipment at the site if placed on existing structures. Supportive documentation by a qualified and licensed professional engineer indicating that the interference cannot be prevented at a reasonable cost; or
 - iii. The existing or approved utility pole or electrical transmission tower, buildings or structures within the search radius cannot accommodate the planned telecommunication equipment at a height necessary to function

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reasonably as documented by a qualified and licensed professional engineer;
or

- iv. Other unforeseen reasons that make it unfeasible or impossible to locate the planned telecommunication equipment upon an existing or approved utility pole or electrical transmission tower, building or structure; or
- v. The person has been unable to enter a commonly reasonable lease term with the owners of existing utility pole or electrical transmission tower, buildings, or structures.

(2) Specifications. Applicants seeking a waiver to install a new utility pole or new wireless support structures within the Underground Utility Area shall meet the following specifications:

- a. Maximum Tower Height: The tower shall be no taller than the nearest Town of Munster streetlight pole.
- b. Support structures must match to the greatest extent possible, either
 - i. existing light structures of the neighborhood, or
 - ii. the Town's streetlight poles, per engineering specifications as may be amended from time to time by the Town of Munster. Support structures shall include luminaires that match the Town's specifications for lighting and be maintained in good working order at the cost of the applicant, including the cost of electricity. This specification may be eliminated at the discretion of the Permit Authority or through the Applicant's collaboration with the applicable neighborhood/community association. Any antenna equipment mounted to the support structures (antenna or other permitted equipment) shall also be matching in color to the support structure.
- c. All facility equipment at a single facility, with the exception of the antenna itself, shall be either (i) ground mounted in a cabinet having dimensions no greater than a volume of 28 cubic feet or less, or (ii) within the pole. Maximum Antenna dimensions, including exposed elements are a volume of 6 cubic feet.
- d. New utility poles should, to the greatest extent possible, be located at or near intersections, right-of-way adjacent to common areas, entrances of neighborhoods, or be utilized to replace existing light facilities within a neighborhood.
- e. All support structures shall have a plaque identifying the structure, the owner and the owner's contact information, said plaque shall not exceed 0.25 square feet.
- f. All wiring and fiber shall be concealed within the support structure and all conduit, wiring and fiber shall be buried between structures and/or structures and ground mounted cabinets.

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- g. Wireless support structures and facilities shall be designed to blend into the surrounding environment through the use of color, camouflaging and architectural treatment and the entire facility shall be aesthetically and architecturally compatible with its environment. The use of materials compatible with the surrounding environment is required for associated support structures, which shall be designed to architecturally match the exterior of residential or commercial structures within the neighborhood or area. Specific requirements for aesthetics of the wireless support structures and facilities shall be in accordance with standards established by the Town of Munster, from time to time.
 - h. Antenna equipment shall be top mounted, flush with the pole, rather than side mounted on an arm.
 - i. No logos or illumination shall be permitted on the equipment.
 - j. The background colors of any informational stickers shall be the same color as the existing pole and placed as close to the top of the pole as possible.
 - k. All other equipment not mentioned above shall be the same color as the light pole.
 - l. Handhole boxes and covers shall match the color of the surrounding landscape.
- (3) Continued Operation. A person receiving a waiver for (1) construction of a new wireless support structure; or (2) substantial modification of a wireless support structure; that is not used for a period of six (6) consecutive months shall remove the facility and restore the site to its original condition at the owner's sole cost and expense. Should such owner fail to remove the wireless support structure or wireless facilities within thirty (30) days from the date a Notice of Violation is issued by the Town, the Town may remove such structure or facilities and bill the owner for the costs of removal and cleanup of the site including administrative fees. The owner of any facility who has been granted a waiver under this Section shall annually file a copy of any inspections completed on such wireless support structure or wireless facilities with the permit authority for continued operation and use of the wireless support structure or wireless facilities.
- (4) Community Input. When considering each waiver, the Town shall consider the general welfare of its community, including, without limitation, comments received from adjacent property owner(s) through its community or neighborhood association. The permit authority shall allow a neighborhood association or homeowners association to register with the permit authority to receive notice by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association.

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(c) Contents of Waiver Application to Install New Utility Pole or New Wireless Support Structure, Substantial Modification of a Wireless Support Structure, or Collocation:

- (1) Pre-File Process.** Prior to submitting a waiver to (a) install a new utility pole or new wireless support structure, (b) Substantial Modification of a Wireless Support Structure, or (c) Collocation within the Underground Utility Area, the Applicant shall submit a masterplan for each neighborhood in which it seeks a waiver to install a new utility pole. The neighborhood masterplan should show, to the greatest extent possible, all proposed locations of new utility poles or new wireless support structures that the Applicant is either (i) currently requesting a waiver to install or (ii) reasonably predicts that it will soon request a waiver to install in the near future. The neighborhood masterplan should be submitted either in a “kmz” file or in spreadsheet format.
- (2) Request for Address.** After Applicant has submitted its neighborhood masterplan, it must request an address for its newly proposed utility pole from the Town, which includes but is not limited to supplying the Town with latitude/longitude coordinates of the proposed new utility pole.
- (3) Submit Waiver Application/ Review Process.** Upon submittal of a neighborhood masterplan and an address for its proposed facility, the Applicant may submit a waiver application to Community Development Department. An application for a waiver shall include the following:
 - a. The name, business address, and point of contact for the applicant;
 - b. The location of the proposed or affected wireless support structure or wireless facility;
 - c. A construction plan, as defined herein, that describes the proposed wireless, support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.
 - d. Evidence supporting the choice of location, including, without limitation
 - i. maps or plats showing the proposed location(s) of applicant’s proposed wireless support structure; and
 - ii. a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option.
 - e. An applicant may submit one (1) application for multiple wireless service facilities that are located within Underground Utility Area. The waiver authority may issue a single waiver for all wireless support structures and service facilities included in the application rather than individual waivers for each wireless support structure and service facility.

(4) Town Review

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- a. **Determination of Completion/Defects.** Within ten (10) days of receipt of an application, the permit authority shall review the application to determine if the application is complete. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the application within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects. Upon receiving a complete application, the Town will inform the effected neighborhood/community association or property management group of a proposed permit(s), if they have registered to receive notice.
- b. **Decision by Permit Authority.** Not more than forty-five (45) days after the permit authority makes an initial determination of completeness, the permit authority shall: (1) review the application to determine if it complies with applicable requirements of this Section; (2) review comments received from any effected neighborhood/community association or property management groups; (2) review the application to determine if it complies with standards required as established by the permit authority, and (3) notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time to cure defects in the application, the forty-five (45) days shall be extended for a corresponding, reasonable amount of time. A written determination shall clearly state the basis for the decision to approve or deny an application. If the permit authority denies an application, the written notice will include substantial evidence in support of the denial. A notice is considered written if it is included in the minutes of a public meeting of the permit authority.
- (d) **Construction Requirements:** All antennas, telecommunication towers, accessory structures and any other wiring constructed within the Town of Munster shall comply with the following requirements:
 - (1) All applicable provisions of the Building Code of the State of Indiana as amended, and the Federal Communications Commission (FCC) when applicable.
 - (2) All wireless facilities and support structures shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code, as amended, and the Electronics Industry Association.
 - (3) All wireless facilities and support structures shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code, as amended.
 - (4) All wireless facilities and support structures shall be constructed to conform with the requirements of the Occupational Safety and Health Administration (OSHA).

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- (5) All wireless facilities and support structures shall be designed and constructed to all applicable standards of the American National Standards Institute (ANSI) manual, as amended.
- (6) All wireless facilities and support structures shall be designed and constructed, at a minimum, to withstand wind gusts of at least eighty (80) miles per hour with one-half ($\frac{1}{2}$) inch of ice and to accommodate all collocation sites as required by this ordinance.