Article 6 Special Use Regulations

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ARTICLE 6 SPECIAL USE REGULATIONS

SECTION 6.1 WIRELESS COMMUNICATIONS FACILITIES

Section 6.1.10 Intent

The purpose of this section is to establish standards for the siting of WIRELESS COMMUNICATIONS TOWERS and ANTENNAS and ancillary facilities. The goals of this section are to:

6.1.11 Protect residential ZONING DISTRICTS, residential USES, historic assets, and educational USES from potential adverse impacts of TOWERS and ANTENNAS;

6.1.12 Encourage the location of TOWERS on City owned property where appropriate or in other non-residential areas;

6.1.13 Minimize the total number of TOWERS throughout the community;

6.1.14 Strongly encourage the joint use of new and existing TOWER sites as a primary option and discourage construction of additional single-use TOWERS;

6.1.15 Encourage the USE of existing BUILDINGS, TELECOMMUNICATION TOWERS, light or utility poles and/or TOWERS, as opposed to construction of new TELECOMMUNICATION TOWERS;

6.1.16 Encourage users of TOWERS and ANTENNAS to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

6.1.17 Ensure that all TELECOMMUNICATION FACILITIES, including TOWERS, ANTENNAS and ANCILLARY FACILITIES are located and designed to minimize the visual impact on the immediate surroundings and throughout the community by encouraging users of TOWERS and ANTENNAS to configure them in a way that minimizes the adverse visual impact of the TOWERS and ANTENNAS through careful design, siting, landscape screening, and innovative camouflaging techniques;

6.1.18 Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

6.1.19 Consider the public health and safety of TELECOMMUNICATION TOWERS; and

6.1.100 Avoid potential damage to adjacent properties from TOWER failure through engineering and careful siting of TOWER STRUCTURES.

6.1.110 In furtherance of these purposes, the City shall give due consideration to its master plan, neighborhood plans, ZONING MAP existing land USES, and environmentally and historically sensitive areas in approving sites for the location of TOWERS and ANTENNAS.

Section 6.1.20 Definitions

As used in this section the following items shall have the meanings indicated:

ALTERNATIVE TOWER STRUCTURE. Man-made trees, clock towers, bell steeples, flag poles, and similar alternative-design mounting structures that camouflage or conceal the presence of ANTENNAS or TOWERS.

ANCILLARY FACILITIES. The BUILDINGS, cabinets, vaults, enclosures and equipment required for operation of telecommunication systems including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.

ANTENNA. Any exterior or interior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), WIRELESS COMMUNICATIONS signals or other communication signals. Parabolic dish ANTENNAS used for satellite communications shall not be included within this definition.

CARRIER. A company that provides WIRELESS COMMUNICATION services.

CO-LOCATION. When two (2) or more WIRELESS COMMUNICATION CARRIERS locate an ANTENNA on the same WIRELESS COMMUNICATION TOWER.

FAA. The Federal Aviation Administration.

FCC. The Federal Communications Commission.

FUNCTIONALLY EQUIVALENT SERVICES. Cellular Radio, Personal Communication Service (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging, Commercial Land Mobile Radio and additional emerging technologies.

GUYED TOWER. A TOWER, which is supported or braced through the use of cables (guy wires) which are permanently anchored.

LATTICE TOWER. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

MONOPOLE. The type of WIRELESS COMMUNICATION TOWER that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel ANTENNAs.

MOUNT. The STRUCTURE or surface upon which ANTENNAs are mounted, including the following three types of mounts:

BUILDING MOUNT. Mounted on or in a BUILDING.

GROUND MOUNT. ANTENNA support (TOWER) mounted on the ground.

STRUCTURE MOUNT. Mounted on or in an existing STRUCTURE other than a BUILDING.

PERSONAL WIRELESS SERVICE FACILITY. A facility for the provision of personal WIRELESS COMMUNICATION services, as defined by the Telecommunications Act of 1996, as amended.

PRE-EXISTING TOWERS AND PRE-EXISTING ANTENNAS. Any TOWER or ANTENNA and ancillary facilities which has been lawfully erected prior to the effective date of this section (November 29, 2001), including permitted TOWERS or ANTENNAS and ANCILLARY FACILITIES that have been approved but have not yet been constructed so long as such approval is current and not expired.

RADIO FREQUENCY (RF) ENGINEER. An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY RADIATION (RFR). For the purposes of this section shall mean the emissions from personal WIRELESS COMMUNICATION FACILITIES or any electromagnetic energy within the frequency range from 0.003 MHZ to 300,000 MHZ.

STEALTH DESIGN. A WIRELESS COMMUNICATION facility that is designed or located in such a way that the facility is not readily recognizable as a WIRELESS COMMUNICATIONS FACILITY (see ALTERNATIVE TOWER STRUCTURE).

TELECOMMUNICATIONS BUFFER AREA. The area surrounding a telecommunications TOWER and ANCILLARY FACILITIES which lies between the TOWER and adjacent LOT LINEs and/or land uses.

TELECOMMUNICATIONS FACILITY. A facility designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various WIRELESS COMMUNICATION devices including transmission TOWERS, ANTENNAS and ANCILLARY FACILITIES. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio broadcasts are not TELECOMMUNICATION FACILITIES.

TELECOMMUNICATIONS OR TRANSMISSION TOWER or TOWER. The monopole or lattice framework designed to support transmitting and receiving ANTENNAS. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not TRANSMISSION TOWERS.

TOWER HEIGHT. When referring to a TOWER, the vertical distance measured from the lowest finished grade at the base of the TOWER to the highest point on the TOWER, even if said highest point is an ANTENNA.

WIRELESS COMMUNICATIONS. Any personal WIRELESS COMMUNICATION services as defined in the Federal Telecommunications Act of 1996, as amended, which includes FCC licensed commercial WIRELESS COMMUNICATIONS services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed. It does not include any amateur radio facility that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only ANTENNAs, nor does it include non-cellular telephone service.

WIRELESS COMMUNICATIONS FACILITY or WIRELESS FACILITY. The same thing as a TELECOMMUNICATIONS FACILITY.

Section 6.1.30 Applicability

6.1.31 New Towers and Antennas

All new WIRELESS COMMUNICATIONS TOWERS or ANTENNAS shall be subject to these regulations.

6.1.32 Pre-Existing Towers or Antennas

PRE-EXISTING WIRELESS COMMUNICATIONS TOWERS, PRE-EXISTING ANTENNAS AND ANCILLARY FACILITIES shall not be required to meet the requirements of this section absent any enlargement or structural modification or the addition of any ANTENNAS.

6.1.33 Public Property

ANTENNAS or TOWERS located on property owned, leased or otherwise controlled by the City shall be encouraged, provided that a license or lease authorizing such ANTENNA or TOWER has been approved by the City Council. Said approved publicly owned sites utilized for the purpose of constructing TOWERS and/or ANTENNAS shall be treated as a USE by right, subject to Tier 2 Site Plan Review by the Planning Board. All information required for submission in a Special Permit application shall be required in such cases.

6.1.34 Amateur Radio Station Operators/Receive Only Antennas

This section shall not govern any TOWER, or the installation of any ANTENNA, that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only ANTENNAS.

6.1.35 Satellite Dish Antennas

This section shall not govern any parabolic dish ANTENNAS used for transmission or reception of radio signals associated with satellites.

Section 6.2.40 General Requirements

6.1.41 Principal or Accessory Use

A different existing STRUCTURE or USE on the same LOT shall not preclude the installation of a WIRELESS COMMUNICATION facility on such LOT. If a TOWER and its ancillary facilities constitute the sole USE of the LOT, the TOWER shall be deemed to be the PRINCIPAL USE otherwise, the USE shall be considered accessory.

6.1.42 Leased Area

For purposes of determining whether the installation of a TOWER or ANTENNA complies with zoning regulations, including but not limited to setback requirements, LOT COVERAGE requirements, and other such requirements, the dimensions of the entire LOT shall control, even though the ANTENNAS or TOWERS may be located on leased parcels within such LOT.

6.1.43 State or Federal Requirements

All TOWERs must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate TOWERs and ANTENNAs. If such standards and regulations are changed, the owners of the TOWERs and ANTENNAs governed by this Section shall bring such TOWERs and ANTENNAs into compliance with such revised standards and regulations within ninety (90) days of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring TOWERs and ANTENNAs into compliance with such revised standards and regulations shall constitute grounds for the removal of the TOWER or ANTENNA at the owner's expense.

6.1.44 Building Codes: Safety Standards

To ensure the structural integrity of TOWERS, the owner of a TOWER shall ensure that it is maintained in compliance with standards contained in Massachusetts State Building Code 780 C.M.R., et. seq., as amended. If, upon inspection, the BUILDING COMMISSIONER concludes that a TOWER fails to comply with such codes and standards and constitutes a danger to persons 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 shall constitute grounds for the removal of the TOWER or ANTENNA at the owner's expense.

6.1.45 Non-Regulated Services

WIRELESS COMMUNICATIONS TOWERS and ANTENNAS shall be regulated and permitted pursuant to this Section and shall not be regulated or permitted as public utilities or private utilities.

6.1.46 Co-Location Required

This section mandates that carriers CO-LOCATE ANTENNAS on TOWERS and other STRUCTUREs whenever possible. See Section 6.1.90 for CO-LOCATION requirements.

6.1.47 Site Plan Required

Approval of the Site Plan shall be required for all new WIRELESS COMMUNICATIONS FACILITIES including modifications to or the addition of new WIRELESS COMMUNICATIONS FACILITIES to pre-existing TOWERS, BUILDINGS or other STRUCTURES. Site plans for WIRELESS COMMUNICATION facilities allowed by right shall be reviewed by the Office of Planning and Economic Development through a Tier 1 Administrative Site Plan Review (Section 12.2). Site plans for WIRELESS COMMUNICATION facilities requiring a Special Permit shall be reviewed by the City Council as SPECIAL PERMIT GRANTING AUTHORITY through the Tier 3 City Council Special Permit Review (Section 12.4).

Section 6.1.50 Wireless Communication Facilities Allowed by Right Subject to Tier 1 Administrative Site Plan Review

6.1.51 Ground mounted WIRELESS COMMUNICATIONS facilities are allowed by right subject to Tier 1 Site Plan Review in Business A, Business B, Business B-1, Industrial A, and Industrial Park ZONING DISTRICTs provided the following conditions are met:

6.1.52 The facility does not exceed a height of sixty (60) feet in Business A, Business B, Business B-1, and Industrial Park; one hundred (100) feet in Industrial A.

6.1.53 The facility does not obstruct a public view of scenic interest, such as the Connecticut River, properties located within historic districts and/or listed on the National Register of Historic Places as determined by the Office of Planning & Economic Development.

6.1.54 The facility is not within three hundred (300) feet of, and visible from, the property boundaries of a school, place of worship, COLLEGE, public library, public conservation area, museum, CEMETERY, or property or district listed on the State Register of Historic Places, or from an American Heritage River.

6.1.55 The facility is not within three hundred (300) feet of, and visible from, a residential ZONING DISTRICT or a BUILDING containing one (1) or more DWELLING UNITS within a nonresidential ZONING DISTRICT.

6.1.56 WIRELESS COMMUNICATIONS FACILITIES mounted to an existing BUILDING or STRUCTURE are allowed by right in Business A, Business B, Business B-1, Business C, Industrial A, and Industrial Park ZONING DISTRICTS provided the facility and the BUILDING or STRUCTURE to which the facility is mounted does not exceed sixty (60) feet in Business A, Business B, Business B-1, and Industrial Park; one hundred (100) feet in Industrial A; four hundred (400) feet in Business C and provided the facility does not exceed the height of the BUILDING to which it is attached by more than twelve (12) feet.

Section 6.1.60 Wireless Communication Facilities Allowed By Special Permit

6.1.61 WIRELESS COMMUNICATIONS FACILITIES not allowed by right may be allowed by a Special Permit from the City Council pursuant to Section 12.4, except that:

A. WIRELESS COMMUNICATION TOWERS are not allowed in Business C.

B. Such facilities shall not obstruct a view of scenic interest as determined by the SPECIAL PERMIT GRANTING AUTHORITY.

C. Such facilities shall not be located within three hundred (300) feet of any STRUCTURE containing one (1) or more residences.

6.1.62 All ground mounted WIRELESS COMMUNICATION facilities shall be designed to accommodate at least three (3) carriers and shall not exceed the height of one hundred forty (140) feet in a residential zone and in Commercial A, one hundred fifty (150) feet in Business A and Business B, and two hundred (200) feet in Industrial A and Industrial Park.

6.1.63 All Special Permits are subject to the Review Criteria, Section 6.2.70, and Site Design Standards Applicable to all WIRELESS COMMUNICATION Facilities, Section 6.1.80, as well as to generally applicable standards for Special Permits and Site Plan Review, if relevant to an application.

Section 6.1.70 Special Permit Review Criteria

6.1.71 In addition to the above standards, the SPECIAL PERMIT GRANTING AUTHORITY upon the granting or denial of an application for a Special Permit shall cause those members voting with the prevailing side to set forth clearly the reason(s) for its decision, taking into consideration all of but not limited to the following factors:

A. Proximity of the telecommunications facility to residential STRUCTURES, residential district boundaries, the property boundaries of a school, place of worship, college, public library, public conservation area, museum, cemetery, property or district listed on the State Register of Historic Places, or an American Heritage River.

B. Nature of uses on adjacent and nearby properties;

C. Surrounding topography;

D. Surrounding tree coverage and foliage;

E. Design of the TOWER, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness including STEALTH DESIGNS which are encouraged;

F. Availability of suitable existing TOWERS, alternative TOWER STRUCTURES, other STRUCTURES or alternative technologies not requiring the use of TOWERS or STRUCTURES;

G. Availability of proposed TOWER to other potential carriers.

H. Adequacy of the setback or design of the facility to ensure the safety of persons or property in the event of collapse.

I. Availability of sites in other municipalities to meet the coverage requirements of those municipalities, if more than fifty percent (50%) of the coverage area is outside the City.

J. The visual impact of the proposed facilities, as documented by a visual impact analysis. See Section 6.1.111.B.(8).

Section 6.1.80 Site Design Standards Applicable to all Wireless Communication Facilities

The following site design standards shall apply to WIRELESS COMMUNICATIONS FACILITIES:

6.1.81 New Towers

A. LATTICE TOWERS and guyed TOWERS are prohibited.

B. Setbacks:

1. GROUND MOUNTED WIRELESS COMMUNICATIONS FACILITIES shall be set back two hundred (200%) percent of the TOWER HEIGHT from the property boundaries of a school, place of worship, COLLEGE, public library, public conservation area, museum, CEMETERY, property or district listed on the State Register of Historic Places, an American Heritage River, a residential ZONING DISTRICT or a BUILDING containing one or more DWELLING UNITS within a nonresidential ZONING DISTRICT.

2. If the TOWER is of STEALTH DESIGN, the SPECIAL PERMIT GRANTING AUTHORITY may reduce the required setback but not less than one hundred (100%) percent of TOWER HEIGHT.

3. In no case shall a ground-mounted facility built as an ACCESSORY USE be allowed on any portion of the LOT between the PRINCIPAL BUILDING and the STREET.

C. Security fencing. TOWERS shall be enclosed by security fencing not less than eight (8) feet in height. Towers shall also be equipped with appropriate anti-climbing measures.

D. Landscaping. The following requirements shall govern the landscaping surrounding the TOWERS:

1. The BUFFER PLANTING STRIP shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound and be planted with evergreens at least six (6) feet high at planting and planted in staggered double rows five (5) feet on center.

2. In locations where the visual impact of the TOWER would be minimal, the landscaping requirement may be substituted elsewhere on the property or eliminated at the sole discretion of the SPECIAL PERMIT GRANTING AUTHORITY.

3. All landscape plantings must be continually maintained.

6.1.82 Ancillary Facilities

Any proposed ANCILLARY FACILITY shall not be more than twelve feet (12) in height. The ANCILLARY FACILITY shall be no more than three hundred sixty (360) square feet in area, and there shall be no more than three (3) such facilities located on the site. In the case of CO-LOCATION, a shared ANCILLARY FACILITY may be built to a height not to exceed twenty (20) feet and may contain a maximum of three hundred and sixty (360) square feet for each provider. Such ANCILLARY FACILITIES must satisfy the minimum ZONING DISTRICT setback requirements for ACCESSORY STRUCTURES.

6.1.83 TOWERS shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

6.1.84 At a TOWER site, the design of the ANCILLARY FACILITIES shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding BUILDINGS.

6.1.85 Lighting

No exterior lighting is permitted except as follows:

A. The ANCILLARY FACILITIES enclosing electronic equipment may have one (1) light at the entrance to the BUILDING, provided that the light is attached to the BUILDING, is focused downward and is switched so that the light is turned on only when workers are at the BUILDING; and

B. No lighting is permitted on a TOWER except lighting that specifically is required by the FAA.

6.1.86 No SIGNS are permitted except those required by the FCC or by law, such as warning and equipment information SIGNS. Signs shall not exceed four (4) square feet.

6.1.87 Antennas Mounted on Existing Structures or Roof Tops

A. ANTENNAS on existing STRUCTURES. Any ANTENNA which is not attached to a TOWER may be attached to any existing BUILDING or STRUCTURE.

B. Side- and roof-mounted WIRELESS COMMUNICATION FACILITIES shall not project more than twelve (12) feet above the height of an existing BUILDING or STRUCTURE. WIRELESS COMMUNICATION facilities may be located on a BUILDING or STRUCTURE that is legally NONCONFORMING with respect to height, provided that the facilities do not project above the existing BUILDING or STRUCTURE HEIGHT.

C. The ANTENNA shall comply with all applicable FCC and FAA regulations.

D. The ANTENNA and ANCILLARY FACILITIES shall comply with the Massachusetts State Building Code 780 C.M.R., as amended.

E. The ANCILLARY FACILITY shall not contain more than three hundred sixty (360) square feet of gross FLOOR AREA or be more than twelve (12) feet in height.

F. The ANTENNA and ancillary facilities must be of a neutral color that is identical to, or closely compatible with the color of the supporting STRUCTURE so as to make the ANTENNA and related equipment as visually unobtrusive as possible.

G. ANTENNAS on existing TOWERS. An ANTENNA may be attached to an existing TOWER to minimize adverse visual impacts associated with the proliferation and clustering of TOWERS. CO-LOCATION of ANTENNAS by more than one (1) CARRIER on existing TOWERS shall take precedence over the construction of new TOWERS, provided such CO-LOCATION is accomplished in a manner consistent with the following:

1. A TOWER which is modified or reconstructed to accommodate the co-location of an additional ANTENNA shall be of the same TOWER

type as the existing TOWER, unless reconstruction as a MONOPOLE is proposed.

2. An existing TOWER may be modified or rebuilt to a taller height, not to exceed the maximum TOWER HEIGHT established by this Section, with approval from the SPECIAL PERMIT GRANTING AUTHORITY.

3. All ANTENNA mounts installed on existing TOWERS shall, to the extent technically feasible, match both style and type of the existing ANTENNA mounts.

SECTION 6.1.90 CO-LOCATION

6.1.91 The CITY requires that LICENSED CARRIERS share WIRELESS COMMUNICATION facilities and sites where feasible and appropriate, thereby reducing the number of WIRELESS COMMUNICATION facilities that are stand-alone facilities. All applicants for a special permit for a new WIRELESS COMMUNICATION facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

A. A survey of all existing STRUCTURES that may be feasible sites for CO-LOCATING WIRELESS COMMUNICATION facilities;

B. Notification by certified mail of intent to seek a Special Permit to all the other licensed carriers for commercial mobile radio services operating within five (5) miles of the site;

C Sharing information necessary to determine if CO-LOCATION is feasible under the design configuration most accommodating to co-location; and

D. A copy of a notice of Lease and affidavit of compliance with this section.

6.1.92 In the event that CO-LOCATION is claimed to be not technically feasible, a written statement of the reasons for the infeasibility shall be submitted to the Office of Planning and Economic Development. The Office of Planning and Economic Development may retain a technical expert in the field of RF ENGINEERING to verify if CO-LOCATION is not feasible or is feasible. The cost for such a technical expert will be paid by the applicant. The SPECIAL PERMIT GRANTING AUTHORITY may deny approval to an applicant that has not demonstrated a good faith effort to provide for co-location or CO-LOCATE on an existing WIRELESS COMMUNICATION TOWER.

6.1.93 If the applicant does intend to CO-LOCATE or to permit co-location, plans and elevations, which show the ultimate appearance and operation of the WIRELESS COMMUNICATION facility at full build-out shall be submitted.

6.1.94 All documentation shall be submitted with the application.

Section 6.1.100 Location Priorities

6.1.101 WIRELESS COMMUNICATION facilities shall be located and approved in accordance with the following prioritized locations listed below. Applicants shall demonstrate a good faith effort to locate a WIRELESS COMMUNICATION facility in a higher priority location in order to justify applying for a lower priority location.

A. The first priority shall be an existing BUILDING.

B. The second priority shall be an existing TOWER.

C. The third priority shall be a new TOWER on land owned by the City of Springfield.

D. The fourth priority shall be a tower on land in an Industrial District.

E. The fifth priority shall be a new TOWER on land zoned for business uses, excluding land in the Business C district

Section 6.1.110 Site Plan Submission Requirements

6.1.111 In addition to the submission requirements of Article 12, the following information shall be submitted:

A. Comprehensive Service Plan: In order to provide proper evidence that any proposed location of WIRELESS COMMUNICATIONS ANTENNAS (and any supporting TOWER and/or ANCILLARY FACILITIES enclosing related electronic equipment) has been planned to result in the fewest number of TOWERS within the City at the time full service is provided by the applicant throughout the City, the applicant shall submit a "Comprehensive Service Plan." Said Comprehensive Service Plan shall indicate how the applicant proposes to provide full service throughout the city. The Comprehensive Service Plan shall indicate the following:

1. Whether the applicant's subscribers can receive adequate service from existing ANTENNAS located inside or adjacent to the City;

2. How the proposed location of the ANTENNAS relates to the location of any existing network TOWERS within and/or near the City;

3. How the proposed location of the ANTENNAS relates to the anticipated need for additional ANTENNAS and supporting TOWERS within and/or near the City by the applicant;

4. How the proposed location of the ANTENNAS relates to the objective of CO-LOCATING the ANTENNAS of different service carriers on the same TOWER; and

5. How the proposed location of the ANTENNAS relates to the applicants overall objective of providing full WIRELESS COMMUNICATION services within the City while, at the same, limiting the number of TOWERS to the fewest possible.

B. A scaled site plan and other siting documents. The submittal documents shall clearly indicate the location, type and height of the proposed TOWER, on-site land USES and ZONING DISTRICT, adjacent land USES and ZONING DISTRICTS, adjacent STREETS, proposed means of access, setbacks from property lines, elevation drawings of the proposed WIRELESS COMMUNICATIONS facility and any other STRUCTURE, topography, parking and other information deemed by the SPECIAL PERMIT GRANTING AUTHORITY to be necessary to assess compliance with this section. In addition, the application shall contain the following:

1. Legal description of the entire tract and leased parcel (if applicable).

2. The setback distance between the proposed TOWER and the nearest DWELLING UNIT, residentially zoned properties, the property boundaries of a school, place of worship, COLLEGE, public library, public park, public conservation area, museum, CEMETERY, or property or district listed on the State Register of Historic Places, or American Heritage River.

3. The separation distance, within one (1) mile, from other TOWERS and ANTENNAS.

4. A landscape plan showing specific landscape materials including, but not limited to, species type, size, spacing and existing vegetation to be removed or retained.

5. Method of fencing and finished color and, if applicable, the method of camouflage.

6. A notarized statement by the applicant as to whether construction of the TOWER will accommodate co-location of additional ANTENNAS for future users.

7. A letter of commitment to lease excess space to potential CARRIERS at prevailing market rates and conditions. The letter of commitment shall be filed with the Office of Planning and Economic Development prior to the issuance of any permit and shall commit the TOWER owner(s), property owner(s) and their successors in interest.

8. A visual impact study containing, at a minimum, a photographic simulation showing the appearance of the proposed TOWER, ANTENNAS, and ANCILLARY FACILITIES and sight lines from at least five points within a one (1) mile radius. Such points shall be chosen by the CARRIER with review and approval by the Office of Planning and Economic Development designee to ensure that various potential views are represented. Sight lines and photographs shall be shown as follows:

   a. Sight line representation. Sight line representations shall be drawn from the closest public roads and the closest residential BUILDINGS (viewpoint) to the highest point (visible point) of the WIRELESS COMMUNICATION facility. Each sight line shall be depicted in profile, drawn at one inch equals forty (40) feet. The profiles shall show all intervening trees and BUILDINGS.

   b. Existing (before condition) photographs. Each sight line shall be illustrated by one (1) four-inch by six-inch (4" x 6") color photograph of what can currently be seen.

   c. Proposed (after condition). Each of the existing condition photographs should have the proposed WIRELESS COMMUNICATION facility superimposed on it to show what will be seen from public roads if the proposed WIRELESS COMMUNICATION facility is built, including ANTENNA(s), mount(s), equipment shelters,

cables as well as cable runs, and security barriers, if any, for the total height, width and breadth.

C. An analysis of the RADIO FREQUENCY RADIATION (RFR) levels at the facility as a means of assessing compliance with the FCC Radio Frequency safety criteria. This analysis shall:

1. Take into consideration all co-located radio transmitting ANTENNAS and/or nearby ANTENNAS that could contribute to RFR levels at the facility.

2. Be performed and stamped by a RF ENGINEER.

3. Follow current methods recommended by the FCC for performing such analyses.

Section 6.1.120 Monitoring and Maintenance

6.1.121 After the WIRELESS COMMUNICATIONS TOWER is operational, the applicant shall submit, within ninety (90) days of beginning operations, and at annual intervals from the date of issuance of the BUILDING PERMIT, existing measurements of RFR from the WIRELESS COMMUNICATIONS facility. Such measurements shall be signed and certified by a RF ENGINEER, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radio Frequency Standards section of this section, as amended.

6.1.122 The applicant and co-applicant shall maintain the WIRELESS COMMUNICATIONS facilities in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

Section 6.1.130 Abandonment or Discontinuation of Use

6.1.131 At such time that a licensed CARRIER plans to ABANDON or discontinue operation of a WIRELESS COMMUNICATIONS facility, such CARRIER shall notify the BUILDING COMMISSIONER 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 WIRELESS COMMUNICATIONS facility shall be considered abandoned upon discontinuation of operations.

6.1.132 Upon ABANDONMENT or discontinuation of use, at the option of the BUILDING COMMISSIONER, the CARRIER shall physically remove the WIRELESS COMMUNICATIONS facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not limited to:

A. Removal of ANTENNAS, mount, ANCILLARY FACILITIES and security barriers for the subject property.

B. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

C. Restoring the location of the WIRELESS COMMUNICATIONS facility to its pre-development condition, except that any landscaping and grading shall remain in the after-condition.

D. If a CARRIER fails to remove a WIRELESS COMMUNICATIONS facility in accordance with this section, the BUILDING COMMISSIONER shall have the authority to enter the subject property and physically remove the facility. The BUILDING COMMISSIONER shall require the applicant to submit an Irrevocable Letter of Credit prior to issuing a BUILDING PERMIT to cover costs for the removal of the WIRELESS COMMUNICATIONS facility in the event the City must remove the facility.

SECTION 6.2 ADULT ENTERTAINMENT

Section 6.2.10 Purpose and Findings

6.2.11 Purpose

The purpose of this Section is to regulate adult entertainment and sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of Springfield and surrounding communities. The provisions of this Section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is neither the intent nor the effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment.

6.2.12 Findings

Based on evidence concerning the adverse secondary effects of ADULT ENTERTAINMENT uses on the community presented in hearings and reports made available to the City Council, and on findings incorporated in the cases of City Council of Erie v. Pap's A.M., 529 U.S. 277 (2000); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); City of Renton v. Paytime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, U.S. 50 (1976); and other studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis, Minnesota; St. Paul,

Minnesota; Houston, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin, the City Council finds:

A. Adult entertainment and sexually oriented businesses lend themselves to ancillary, unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.

B. Employees of adult entertainment and sexually oriented businesses engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

C. Sexual acts occur at adult entertainment and sexually oriented businesses.

D. Adult entertainment and sexually oriented businesses encourage illicit sexual acts which create unhealthy conditions.

E. At least fifty (50) communicable diseases may be spread by activities occurring in adult entertainment and sexually orientated businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus (HIV-AIDS), genital herpes, hepatitis B, salmonella infections and shingella infections.

F. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (Acquired Immunodeficiency Syndrome) caused by the human immunodeficiency virus (HIV) in the United States.

G. The findings noted in subsections A. through F. raise substantial governmental concerns.

H. Adult entertainment and sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns and, where necessary, should be banned or eliminated where they are or have been causing effects which are harmful to the health, safety and welfare of the citizens of Springfield and the surrounding communities.

I. The general welfare, health and safety of the citizens of the City will be promoted by the enactment of this Ordinance.

Section 6.2.20 General

Uses listed in Section 6.2.30 are allowed by Special Permit in accordance with Tier 3 process described in Section 12.4. in Business A, Business B, and Business C and no other districts, subject to provisions of this Section and the Table of Uses in Table 4-4.

Section 6.2.30 Definitions

ADULT ENTERTAINMENT. A USE which is intended to provide sexual stimulation or gratification, including but not limited to, all of the following:

ADULT BOOKSTORE. An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., Chapter 272, Section 31. For the purpose of this Ordinance, the term "substantial or significant portion" means that more than ten (10) percent of the total FLOOR AREA or stock is devoted to the items listed above.

ADULT BOOTH. An enclosed or partitioned area inside an adult oriented establishment which is: (a) designed or used for the viewing or listening of adult material by one (1) or more persons and (b) is accessible to any person, regardless of whether a fee is charged for access. The term "Adult Booth" includes, but is not limited to, a "peep show" booth or other booth used to view or listen to adult material (including, but not limited to, videotapes, audiotapes, films, CD-ROMs, DVDs or internet access).

ADULT CABARET. See ADULT DANCING /ENTERTAINMENT ESTABLISHMENTS.

ADULT DANCING. Any dancing which exposes to view by patrons or spectators on the premises at any time the specified anatomical areas and/or specified sexual activities, as defined in this Ordinance.

ADULT DANCING /ENTERTAINMENT ESTABLISHMENTS. An establishment, including but not limited to, a restaurant (eating and drinking establishments), lounge, dance hall, nightclub or other such place whose business includes the offering to customers of live entertainment wherein employees, agents, servants, independent contractors or other customers perform dance routines and/or display or expose specified anatomical areas, offered as adult oriented entertainment for viewing by patrons or spectators on the premises and characterized by the emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT MOTEL. A motel or similar establishment with the word "adult" or otherwise that advertises the presentation of adult material, offering public accommodations for any form or consideration which provides patrons with closed circuit television transmission, internet access, films, motion pictures, video cassettes, slides, CD-ROMs, DVDs or other photographic

reproductions for the primary purpose of sexual gratification or as related to specified sexual activities.

ADULT MOTION PICTURE THEATER. An enclosed BUILDING used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L, Chapter 272, Section 31. This definition includes, but is not limited to, adult arcade, adult mini-motion picture theater, adult booth(s), and adult drive-in theaters.

ADULT PARAPHERNALIA STORE. An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

ADULT VIDEO STORE. An establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

MASSAGE PARLOR. An establishment providing massages by persons other than a licensed health care professional, including activities that rub, stroke, knead or tap the body with the hand or an instrument or both for the purpose of or engaging in sexual gratification or as related to specified sexual activities. This definition also includes those activities listed within "Sexual Encounter Center". However, massages as used in this Ordinance shall not apply to the activity of any person who is registered or licensed by the United States Government or any agency thereof or by the Commonwealth of Massachusetts or any agency thereof, while such person so registered or licensed is performing the services for which the registration or license was issued and during the period of time said registration or license is in effect.

SEXUAL ENCOUNTER CENTER. An establishment whose primary or accessory business is the provision on premises where customers either congregate, associate or consort with employees, agents, servants, independent contractors or other customers who engage in specified sexual activities in the presence of such customers or who display specified anatomical areas in the presence of such customers with the intent of providing sexual stimulation or sexual gratification appealing to adult sexual interests.

SPECIFIED ANATOMICAL AREAS. Including, but not limited to, less than completely and opaquely covered: (a) human genitals or pubic region; (b) the cleavage of the human buttock; (c) any portion of the human female breasts below a horizontal line across the top of the areola at its highest point, the entire lower half of the human female breast, not including cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing

apparel provided that the areola is not exposed in whole or in part; and (d) human male genitals in a discernable turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Including, but not limited to, human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks or human breast(s); flagellation or torture on the context of a sexual relationship; masochism, erotic or sexually oriented torture, beating or the infliction of pain; erotic touching, fondling or other such contact with an animal by a human being; excretory functions as part of or in connection with any of the activities listed herein.

Section 6.2.40 Location

6.2.41 Required Separation from Districts and Uses

No LOT occupied, or to be occupied, by an ADULT ENTERTAINMENT use shall be located within a seven hundred (700) foot radius from any of the following:

A. Any Residential ZONING DISTRICT;

B. A BUILDING containing residences;

C. A school, place of worship, public library or public park; or

D. Any other ADULT ENTERTAINMENT use as defined herein.

6.2.42 Method of Measurement of Distances

The distances required by this section shall be measured from the closest property line occupied, or to be occupied, by an ADULT ENTERTAINMENT use to the closest property line occupied by a protected use, ZONING DISTRICT or another ADULT ENTERTAINMENT use. For the purpose of this Section, the term protected USE includes, but is not limited to, residential ZONING DISTRICTS, BUILDINGS containing residences, grounds of a school, place of worship, public library or public park.

SECTION 6.2.50 ADULT ENTERTAINMENT REGULATIONS

6.2.51 Prohibition of Physical Contact

While on the premises of an ADULT ENTERTAINMENT use, no employee, agent, servant, independent contractor or other customer shall be permitted to have physical contact with any other ADULT ENTERTAINMENT employee, other employee, patron or spectator while the employee, agent, servant, independent contractor or other customer is entertaining, dancing or otherwise involved in the display of or exhibition of SPECIFIED ANATOMICAL AREAS or SPECIFIED SEXUAL ACTIVITIES.

6.2.52 Exterior Display

No ADULT ENTERTAINMENT use shall be conducted in any manner that permits the observation of any material depicting or relating to SPECIFIED ANATOMICAL AREAS or SPECIFIED SEXUAL ACTIVITIES from any public or private way, parking area or adjacent properties. This provision shall apply to any display, signage, show window or opening.

6.2.53 Sign Requirements

SIGN content shall identify the name of the establishment only and shall contain no advertisement in addition to the identification of the use. Only one (1) identification SIGN, to be mounted on the BUILDING wall face, shall be allowed for an ADULT ENTERTAINMENT use. All other SIGNS whether on the exterior of the BUILDING or visible from the exterior of the BUILDING are prohibited. No ADULT ENTERTAINMENT use shall have any flashing lights visible from the exterior of the use. Furthermore, no SIGN shall rotate or contain reflective or florescent elements. See Article 9 for additional SIGN regulations.

6.2.54 Non-Conforming Uses

Any ADULT ENTERTAINMENT use in existence as of the effective date of this ordinance, which is in violation hereof, shall be deemed a non-conforming use. Such non-conforming uses shall not in any manor be enlarged, altered or rebuilt.

Section 6.2.60 Limitation for Minors

Any now existing retailer who is engaged in the sale and/or rental of ADULT ENTERTAINMENT books, periodicals, magazines, films, video tapes, CD-ROMs, DVDs, audiotapes or other printed or pictorial materials shall cover the front page of said books, periodicals, magazines, films, video tapes, CD-ROMs, DVDs, audiotapes or other printed or pictorial materials or shall maintain a separate viewing and sales area for the rental and/or sale of said books, periodicals, magazines, films, video tapes, CD-ROMs, DVDs, audiotapes or other printed or pictorial materials as defined by this Ordinance so as to prevent minors from viewing or entering said ADULT ENTERTAINMENT area.

Section 6.2.70 Violation

Whoever disseminates to a minor any matter harmful to minors, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to minors, shall be in violation of this Ordinance. For the purposes of this Ordinance, "a minor" is a person under eighteen years of age. Matter is harmful to minors if it is obscene or if taken as a whole, it (a) describes or represents nudity, sexual conduct or sexual excitement, so as to appeal predominantly to the prurient interest of minors; (b) is patently contrary to prevailing standards of adults in the county where the offense was committed as to suitable material for such minors;

and (c) lacks serious literary, artistic, political or scientific values for minors. It shall be a defense under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense that the defendant was a bonafide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.