

## CHAPTER 157: COMMUNICATIONS FACILITIES

### Section

- 157.01 Short title
- 157.02 Purpose
- 157.03 Definitions
- 157.04 General requirements
- 157.05 Registration of communications carriers and providers
- 157.06 Agreement
- 157.07 Nonexclusive grant
- 157.08 Rights granted
- 157.09 Exempt facilities – basic requirements
- 157.10 Mini facilities – basic requirements
- 157.11 Minor facilities – basic requirements
- 157.12 Minor facilities – referral
- 157.13 Application requirements
- 157.14 Standard agreements required
- 157.15 Life of permits
- 157.16 Structural requirements
- 157.17 Basic tower and building design
- 157.18 Critical disaster response facilities
- 157.19 Location
- 157.20 Height
- 157.21 Co-located and multiple user facilities
- 157.22 Lighting
- 157.23 Access and parking
- 157.24 Vegetation protection and screening
- 157.25 Fire prevention
- 157.26 Environmental resource protection
- 157.27 Noise and traffic
- 157.28 Visual compatibility
- 157.29 NIER exposure
- 157.30 Communications facilities – Exceptions
- 157.31 Public Notice
- 157.32 Appeal
- 157.33 Severability

### § 157.01 SHORT TITLE.

The ordinances, as amended, comprising Chapter 157 of the Batesville Code, shall hereafter be referred to as the Communications Facilities Code of Batesville, Indiana, 2004 or Communications Code. (Ord. 11-2004, passed 1-10-2005)

### § 157.02 PURPOSE.

(A) The purpose and intent of this chapter is to provide a uniform set of standards for the development of communication facilities and installation of antennas. The regulations contained herein are designed to protect and promote the public health, safety, community welfare and the aesthetic quality of Batesville; while at the same time not unduly restricting the development of needed communications facilities and important amateur radio installations; and encouraging managed development of communications infrastructure to promote Batesville's role in the evolution of communications technology. It is also the intent of this chapter to provide a public forum to ensure a balance between public concerns and private interests in establishing communications and related facilities.

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

(1) Protect the visual character and quality of the city from the potentially adverse effects of communication facility development and minor antenna installation;

(2) Attenuate unnecessary visual blight;

(3) Retain local responsibility for and control over the use of public rights of way to protect citizens and enhance the quality of their lives;

(4) Protect the residents of Batesville from any possible adverse health effects associated with exposure to high levels of NIER (nonionizing electromagnetic radiation);

(5) Protect the environmental and natural resources of Batesville;

(6) Promote a competitive and broad range of communications services and high quality communications infrastructure to serve the Batesville community;

(7) Create and preserve communication facilities that will serve as an important and effective part of Batesville's current or future emergency response network;

(8) Simplify the process for obtaining necessary permits for communication facilities, while at the same time protecting the legitimate interests of Batesville citizens; and

(9) Provide for the charging of reasonable, competitively neutral, and non discriminatory fees for use of the public right-of-way by communication providers.

(Ord. 11-2004, passed 1-10-2005)

### § 157.03 DEFINITIONS.

For the purpose of this chapter, words and phrases used herein shall have the meaning respectively ascribed to them in Chapter 158 of the Batesville Code.

(Ord. 11-2004, passed 1-10-2005)

### § 157.04 GENERAL REQUIREMENTS.

The following general requirements shall be met for all communications facilities in any zoning district:

(A) Any applicable permit or review requirements of any agencies which may have jurisdiction over the project or site;

(B) Any requirements established by the other chapters of the Batesville Code and Batesville Zoning Code 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 planned unit development standards or provisions;

(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 encroachment of the antenna array into airspace over the 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 communication facilities and minor antennae shall comply at all times with all FCC rules, regulations, and standards;

(H) All communication facilities shall maintain in place a security program, when determined necessary by and subject to the review and approval of the Batesville Police Chief that will prevent unauthorized access and vandalism;

(I) Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising function; and

(J) All communications carriers and providers engaged in the business of transmitting, supplying or furnishing of communications originating or terminating in the City of Batesville shall register with the city pursuant to § 157.05 of this chapter. (Ord. 11-2004, passed 1-10-2005)

#### **§ 157.05 REGISTRATION OF COMMUNICATIONS CARRIERS AND PROVIDERS.**

(A) *Registration required.* All communications carriers and providers that offer or provide any communications services for a fee directly to the public, either within the City of Batesville, or outside the corporate limits from communications facilities within the city, shall register with the city pursuant to this section on forms to be provided by the Plan Commission 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 description and accompanying map of registrant's existing and proposed communications facilities within the planning jurisdiction of the City of Batesville;

(4) A description of the communications services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the city;

(5) Information sufficient to determine that the applicant has applied for and received any certificate of authority, construction permit, operating license, or other approvals required by the State of Indiana and the Federal Communications Commission (FCC) to provide communications services or facilities within the city; and

(6) Other information as the Plan Commission may reasonably require.

(B) *Registration fee.* Each application for registration as a communications carrier or provider shall be accompanied by a fee as set forth in the *Official Fee Schedule of Batesville*.

(C) *Purpose of registration.* The purpose of registration under this section is to:

(1) Provide the city with accurate and current information concerning the communications carriers and providers who offer or provide communications services within the city, or that own or operate communication facilities with the city;

(2) Assist the city in enforcement of this chapter; and

(3) Assist the city in the collection and enforcement of any license fees or charges that may be due the city.

(D) *Amendment.* Registrant shall provide the city with written notice at least 60 days prior to any proposed changes to any information required under this section.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.06 AGREEMENT.**

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

(Ord. 11-2004, passed 1-10-2005)

**§ 157.07 NONEXCLUSIVE GRANT.**

No approval granted hereunder shall confer any exclusive right, privilege, license or franchise to occupy or use any public ways or facilities of the city for delivery of communications services or any other purposes, unless specifically established by mutual written agreement in accordance with the provisions of § 157.06.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.08 RIGHTS GRANTED.**

No approval granted under this chapter shall convey any right, title or interest in the city's public ways or facilities, but shall be deemed as approval only to use or occupy the public ways or facilities for the limited purposes and terms stated in the approval and subsequent agreement. Further, no approval shall be construed as any warranty of title.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.09 EXEMPT FACILITIES - BASIC REQUIREMENTS.**

Exempt facilities defined in Chapter 158 of the Batesville Code may be installed, erected, maintained and/or operated in any residential zoning district, except recognized Historic Districts, where antennas are permitted under this chapter, without a building permit or other entitlement process, so long as all of the following conditions are met:

(A) The antenna use involved is accessory to the primary use of the property which shall not itself be a communications facility; and

(B) In a residential zone, no more than 1 compliant support structure for licensed amateur radio operator, and 1 compliant satellite dish 8 feet or less in diameter, is allowed on the parcel.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.10 MINI FACILITIES - BASIC REQUIREMENTS.**

Mini facilities defined in Chapter 158 of the Batesville Code may be installed, erected, maintained and/or operated in any residential, commercial or industrial zoning district where antennae are permitted under this chapter, upon the issuance of a duly approved building permit, so long as all of the following conditions are met:

(A) In a business or industrial zone, no more than 3 antennae and/or satellite dishes 8 feet or less in diameter, in combination; where adequate screening, at the discretion of the Plan Commission or its designated agent, is provided; and the communication facilities are solely for the use of the project site tenants. The location(s) of the facilities shall be subject to the review and approval of the Plan Commission or its designated agent;

(B) Replacement of pre-existing communication facilities, installed lawfully prior to the approval under this chapter, when proposed for replacement by equipment of identical or smaller size, at the discretion of the Plan Commission or its designated agent; and

(C) In any residential zone, where more than 1, but no more than 3 antenna or satellite dishes (3 feet or less in diameter) in combination are proposed.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.11 MINOR FACILITIES - BASIC REQUIREMENTS.**

Minor facilities as defined in Chapter 158 of the Batesville Code may be installed, erected, maintained and/or operated in any business or industrial zoning district where antennae or facilities are permitted under this chapter, upon the issuance of a minor conditional use permit, so long as all of the following conditions are met:

(A) The minor antenna use involved is accessory to the primary use of the property which itself shall not be a communications facility;



(B) The combined effective power radiated by all the antennae present on the parcel is less than 1,500 watts;

(C) The combined NIER levels produced by all the antennae present on the parcel do not exceed the NIER standard established in § 157.29 of this chapter;

(D) The antennae are 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 antennae are located outside all applicable street setbacks for the zoning district in which the antennae are to be located, and no closer than 20 feet 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 antennae 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 10 feet of separation exists between any portion of the antenna and array and any power lines, unless more separation is required to meet any other regulatory standards;

(I) All towers, arrays, 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;

(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 Batesville 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 2 satellite dishes are allowed on the parcel, one of which may be over 3 feet in diameter, but no larger than 8 feet in diameter, with adequate screening, at the discretion of the Plan Commission or its designated agent;

(N) Any ground mounted satellite dish with a diameter greater than 4 feet that is situated less than 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 3-1/2 square feet shall be located so as to be effectively unnoticeable from the street;

(P) Sufficient anti-climbing measures have been incorporated into the facility, as approved by the Plan Commission or its designated agent, to minimize potential for trespass and injury;

(Q) The facility is located more than 75 feet from any residential dwelling unit, unless recognized as an exempt facility as set forth in § 157.09 of this chapter;

(R) Any new building(s), structure(s), control panel(s), and the like shall be effectively screened from view from off-site as approved by the Plan Commission or its designated agent;

(S) The site has an average cross slope of 10% or less;

(T) All utility lines leading into and out of the facility site shall be underground;

(U) If located within a recognized Historic District, or on a structure recognized as a historic landmark, adequate screening shall be provided as determined by the Plan Commission or its designated agent; and

(V) The general criteria set forth in § 157.04 of this chapter are met.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.12 MAJOR AND MINOR FACILITIES - REFERRAL.**

In the event that the Plan Commission delegates authority to its designated agent under any of the various provisions of this chapter, its designated agent may refer a conditional use permit for a minor communications facility that meets all of the above standards back to the Plan Commission if he or she determines, in his or her sole discretion, that the public interest would be furthered by having the Planning Commission review the matter. Major facilities shall be referred to the Plan Commission for review and approval. In this case and the case of any proposed facility that fails to meet one or more of the standards listed in § 157.11 above, a use permit approved by the Planning Commission shall be required to construct the facility in question.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.13 APPLICATION REQUIREMENTS.**

The following are the minimum criteria applicable to all communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code. In the event that a project is subject to discretionary and/or environmental review, mitigation measures or other conditions may also be necessary. All communications facilities shall comply with the following:

(A) The Plan Commission or its designated agent shall establish and maintain a list of information that must accompany every application for the installation of a communications facility. The 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 (nonionizing electromagnetic radiation) exposure studies, title reports identifying legal access, security considerations, lists of other nearby communication facilities known to the city, master plan for all related facilities within the planning jurisdiction of Batesville; and facility design alternatives to the proposal and deposits for peer review. The Plan Commission or its designated agent may release an applicant from having to provide 1 or more of the pieces of information on this list upon a finding that in the specific case involved the information is not necessary to process or make a decision on the application being submitted; and

(B) The Plan Commission or its designated agent is explicitly authorized to employ on behalf of the city 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 the review, including any administrative costs incurred by the city. Any proprietary information disclosed to the city or the expert hired shall remain confidential and shall not be disclosed to any third party.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.14 STANDARD AGREEMENTS REQUIRED.**

(A) A maintenance/facility removal agreement signed by the applicant shall be submitted to the Plan Commission or its designated agent prior to approval of the use permit or other entitlement for use authorizing the establishment or modification of any communications facility which includes a communication tower, one or more new buildings/equipment enclosures larger in aggregate than 300 square feet, more than 3 satellite dishes of any size, or a satellite dish larger than 4 feet in diameter. The agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of, and ultimate 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 city for all costs incurred to perform any work required of the applicant by the agreement that the applicant may fail to perform. It shall also specifically authorize the city and/or its agents to enter onto the property and undertake the work so long as:

(1) The Plan Commission or its 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 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 city's intent to commence the required work within 10 calendar days;

(2) The applicant has not filed an appeal pursuant to § 157.32 of this chapter. If an appeal is duly filed, the city shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or settled in favor of the city; and

(3) All costs incurred by the city to undertake any work required to be performed by the applicant pursuant to the maintenance/facility removal agreement including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The applicant shall deposit within 10 calendar days of written request therefore the costs as the city reasonably estimates or has actually incurred to complete the work. When estimates are employed, additional moneys shall be deposited as needed within 10 calendar days of demand to cover actual costs. The agreement shall specifically require the applicant to immediately cease operation of the communication facility involved if the applicant fails to pay the moneys demanded within 10 calendar days. It shall further require that operation remain suspended until the costs are paid by the applicant in full.

(B) Maintenance/facility removal agreement shall be accompanied by the payment of a fee, as established by resolution of the Common Council, into a fund established to cover expenditures for the removal, screening, enhancement or similar activities relating to the existence of communication facilities within the city.

(C) Maintenance/facility removal agreement shall include, but not be limited to, the following stipulations agreed to by the applicant.

(1) Communication facilities lessors shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the City of Batesville. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, communication 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 communication facility provider shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when the claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any claim, action or proceeding. The city shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.  
(Ord. 11-2004, passed 1-10-2005)



**§ 157.15 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 communication facility, except exempt facilities as defined in Chapter 158 of the Batesville Code shall be reviewed every 10 years. Costs associated with the review process shall be borne by the communication facility owner/provider.

(B) (1) Grounds for revocation of the conditional use permit shall be limited to a finding that:

(a) The use involved is no longer allowed in the applicable zoning district;

(b) 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 Plan Commission or its designated agent that the facility will be brought into compliance within 120 calendar days;

(c) The permittee has failed to comply with the conditions of approval as established and imposed;

(d) The facility has not been properly maintained; or

(e) 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.

(2) The grounds for appeal of issuance of a renewal shall be limited to a showing that 1 or more of the situations listed above do in fact exist or that the notice required under § 157.31 was not provided.

(C) If a use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing 10 years after it is issued or upon cessation of use for a period of more

than 1 year, whichever comes first. Unless a new use permit or entitlement of use is issued, within 120 calendar days thereafter, all improvements installed including their foundations down to 3 feet below ground surface shall be removed from the property and the site restored to its natural pre-construction state within 180 calendar 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 Plan Commission or its designated agent that these sections of road are necessary to serve some other use of the property that is permitted or currently present or to provide access to adjoining parcels.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.16 STRUCTURAL REQUIREMENTS.**

No communication facility shall be designed and/or sited so that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any communication tower, except exempt facilities as defined in Chapter 158 of the Batesville Code, located at a distance of less than 110% of its height from a habitable structure, property line, public street, 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 antennae, transmitters and other equipment. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Plan Commission or its designated agent prepared and certified by a structural engineer licensed by the State of Indiana describing the tower structure, specifying the number and type of antennae 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 Plan Commission or its designated agent at least every 5 (self-supporting lattice and guyed towers)/10 (monopoles) years of an inspection report prepared and certified by a structural engineer licensed by the State of Indiana indicating the number and types of antennae and related equipment



actually present and assessing the structural integrity of the tower. Based on this report, the Plan Commission or its designated agent may require repair or, if a serious safety problem exists, removal of the tower.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.17 BASIC TOWER AND BUILDING DESIGN.**

All communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all of the following measures shall be implemented.

(A) Communication towers shall be constructed out of metal or other nonflammable material.

(B) Communication towers taller than 35 feet shall be monopoles or guyed/lattice towers, except where satisfactory evidence is submitted to the Plan Commission or its designated agent that a self-supporting tower is required to:

(1) Provide the height and/or capacity necessary for the proposed communication use;

(2) To minimize the need for screening from adjacent properties; or

(3) To reduce the potential for bird strikes.

(C) Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence acceptable to the Plan Commission or its designated agent is submitted showing that this is infeasible.

(D) Communication 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 underground when possible.

(E) Communication support facilities shall be no taller than 1 story (15 feet) in height and shall be treated to look like a building or facility typically found in the area.

(F) Communication support facilities in areas of high visibility shall, where possible, be sited below the ridgeline (i.e., placed underground, depressed, or located behind earth berms) or otherwise designed to minimize their profile.

(G) All buildings, poles, towers, antenna supports, antennae, and other components of each communications site shall be initially painted or finished and thereafter repainted or refinished as necessary to maintain a flat, non-glare finish. The color selected shall be one that in the opinion of the Plan Commission or its designated agent will minimize visibility to the greatest extent feasible.

(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 city shall have the authority to require special design of the communication facilities where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or unique or significant community features).

(J) Communication facilities shall ensure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.18 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 of the following measures shall be implemented:

(1) Non-flammable exterior wall and roof coverings 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 communication tower when fully loaded with antennae, 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 a manner that 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, tornado, and earthquake; and

(5) Measures shall be taken to keep the facility in operation in the event of disaster.

(B) Demonstration of compliance with the above requirements shall be provided via certification by the Batesville Fire Chief (fire only) and a certification on the plans signed by a structural engineer or other appropriate professional licensed by the State of Indiana.

(Ord. 11-2004, passed 1-10-2005)

**§ 157.19 LOCATION.**

All communication 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 communications facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code:

(A) No communication 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 communication facility shall be installed at a location where special painting or lighting will be required by FAA regulations unless technical evidence acceptable to the Plan Commission or its designated agent is submitted showing that this is the only technically feasible location for the facility;

(C) No communication facility that is readily visible from off-site shall be installed closer than 1/2 mile from another readily visible, uncamouflaged, or unscreened communication 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 a manner as to be effectively unnoticeable; or technical evidence acceptable to the Plan Commission or its designated agent is submitted showing that this is the only technically feasible location for the facility;

(D) No communication facility that is readily visible from off-site shall be installed on a site that is not already developed with communication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and man-made environment in a manner so as to be effectively unnoticeable or technical evidence acceptable to the Plan Commission or its designated agent is submitted showing that this is the only technically feasible location for the facility; and

(E) Communication towers shall be set back at least 20% of the tower height from all property lines and at least 100 feet from any public trail, park or outdoor recreation area. Guy wire anchors shall be set back at least 20 feet from any property line.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.20 HEIGHT.**

The height of a communication tower shall be measured from the natural undisturbed ground surface below the center of the base of the 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 or structure on which it is mounted. In the case of crank-up or other similar towers where height can be adjusted, the height of the tower shall be considered to be the maximum height to which it is capable of being raised.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.21 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 communication 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 city and surrounding 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 city may require independent verification of this analysis at the applicant's expense. Facilities which are not proposed to be co-located with another communication facility shall provide a written explanation as to why the subject facility is not a candidate for co-location.

(B) (1) All co-located and multiple-user communication facilities shall be designed to promote facility and site sharing.

(2) To this end, communication 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 Plan Commission or its designated agent this will minimize overall visual impact to the community.

(C) The facility shall make available unutilized space for co-location of other communication 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 these requests shall be made in a timely manner and in writing and copies shall be provided to the city's permit files. Unresolved disputes may be mediated by the City of Batesville. 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 the establishment of additional facilities, shall include provisions for the relocation of the existing public use facilities. All costs associated with the relocation shall be borne by the applicant for the additional facilities.  
(Ord. 11-2004, passed 1-10-2005)

**§ 157.22 LIGHTING.**

All communication 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;

(B) The minimum tower lighting as may be required under FAA regulation; and

(C) Where tower lighting is required, it shall be shielded or directed to the greatest extent possible in a manner as to minimize the amount of light that falls onto nearby properties, particularly residences.  
(Ord. 11-2004, passed 1-10-2005)

**§ 157.23 ACCESS AND PARKING.**

All communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code, 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 City Engineer. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent communication facilities and/or other permitted uses. In addition, they shall meet the requirements of the *City of Batesville Development and Construction Standards Manual*, latest edition; and

(B) Existing parking areas shall, whenever possible, be used.  
(Ord. 11-2004, passed 1-10-2005)

**§ 157.24 VEGETATION PROTECTION AND SCREENING.**

All communications facilities shall be installed in 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 communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code:

(A) A landscape plan shall be submitted with the project application 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 4 inches in diameter shall be identified in the landscape plan with indication of species type, diameter at 4-1/2 feet high, and whether it is to be retained or removed;

(B) Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/communication line routes shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:

(1) 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. Trash, debris, or spoils shall not be placed within these area; and

(2) All underground lines shall be routed so that a minimum amount of damage is done to tree root systems.

(C) All areas disturbed during project construction shall be revegetated in a manner compatible with the vegetation in the surrounding area and the approved landscape plan (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Plan Commission or its designated agent; and



(D) Any existing trees or significant vegetation, on the facilities site or along the affected access area that die as a result of construction activities shall be replaced with native trees and/or vegetation of a size and species consistent with the approved landscape plan.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.25 FIRE PREVENTION.**

(A) All communication facilities shall be designed and operated in a manner 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 communication facilities, when determined necessary by the Fire Chief, except exempt facilities as defined in Chapter 158 of the Batesville Code:

(1) At least 1-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; and

(4) All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to the commencement of operation.

(B) Demonstration of compliance with the above requirements shall be evidenced by a certificate of compliance signed by the Fire Chief.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.26 ENVIRONMENTAL RESOURCE PROTECTION.**

All communication facilities shall be sited so as to minimize the effect on environmental resources. To that end, the following measures shall be

implemented for all communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code:

(A) No communications facility or related improvements including but not limited to access roads and power lines shall be sited to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species;

(B) No communications facility or related improvements shall be sited so that their construction will damage an archaeological site or have an adverse effect on the historic character of an historic or cultural resource;

(C) No communications facility shall be sited so that its presence threatens the health or safety of migratory birds;

(D) The facility and its construction shall comply with all applicable flood plain, floodway, storm drainage, and erosion control regulations; and

(E) Potential adverse impacts to nearby public use areas such as parks or trails shall be minimized.  
(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.27 NOISE AND TRAFFIC.**

All communication facilities shall be constructed and operated in a manner 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 of the following measures shall be implemented for all communication facilities, except exempt facilities as defined in Chapter 158 of the Batesville Code:

(A) Outdoor noise producing construction activities shall only take place on weekdays between the hours of 7:30 a.m. and 5:30 p.m. unless otherwise requested and permitted 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 100 feet of a

residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of no greater than 60 dB at the property line. Testing and maintenance shall only take place on weekdays between the hours of 7:30 a.m. and 5:30 p.m.; and

(C) Traffic, at all times, shall be kept to an absolute minimum, but in no case more than 2 round trips per day on an average annualized basis once construction is complete.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.28 VISUAL COMPATIBILITY.**

(A) Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings to reduce visual impacts to the extent feasible considering the technological requirements of the proposed communication service and the need to be compatible with neighboring residences and the character of the community.

(B) The facility shall be designed to blend with the any existing supporting structure and shall not substantially alter the character of the structure or local area.

(C) 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 Plan Commission or its 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 communication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed communication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

(Ord. 11-2004, passed 1-10-2005)

#### **§ 157.29 NIER EXPOSURE.**

(A) No communication facility shall be sited or operated in a manner that it poses, either by itself or in combination with other facilities, a potential threat to public health. To that end no communication facility or combination of facilities shall produce at any time power densities in any inhabited area 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 city, county, State of Indiana, or the federal government.

(B) Initial compliance with this requirement shall be demonstrated for any non-exempt facility within 400 feet of residential uses or sensitive receptors such as schools, churches, hospitals, and the like 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 the location after the facility is in operation. A report of these measurements and his or her findings with respect to compliance with the established NIER standard shall be submitted to the Plan Commission or its designated agent. The facility shall not commence normal operations until it complies with, or has been modified, to comply with this standard. Proof of compliance shall be a certification provided by the engineer who prepared the original report.

(C) Every non-exempt communication facility within 400 feet of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with the NIER standard established by this section. Every 5 years a report listing each transmitter and antenna present at the facility and the effective radiated power shall be submitted to the Plan Commission or its designated

agent. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where the 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 Plan Commission or its designated agent. In the case of a change in the standard, the required report shall be submitted within 90 days of the date the 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. (Ord. 11-2004, passed 1-10-2005)

### **§ 157.30 COMMUNICATIONS 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. 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 §§ 157.18 and 157.25 may only be granted upon written concurrence by the Fire Chief.

(C) Tower setback requirements may be waived under either of the following findings by the Plan Commission or its designated agent:

(1) The facility is proposed to be co-located onto an existing, legally established communication tower; and

(2) Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

(Ord. 11-2004, passed 1-10-2005)

### **§ 157.31 PUBLIC NOTICE.**

In addition to any other public notice required under the Batesville Code, 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 communication facility shall be provided to the operators of all communication facilities, registered with the City of Batesville pursuant to § 157.14, within 1 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 Plan Commission or its designated agent authorizing the establishment or modification of, or the renewal of a permit for, a communication facility or minor antenna needing site plan review, shall be mailed to all adjacent property owners within 300 feet. Mailing of the notice shall start a 14 calendar day comment period.

(Ord. 11-2004, passed 1-10-2005)

### **§ 157.32 APPEAL.**

Any person who disagrees with a ruling or interpretation of the Plan Commission's designated agent regarding this chapter may appeal the matter to the Plan Commission. The appeal shall be made in writing and filed with the City Clerk within 14 calendar days of the ruling or interpretation. The City Clerk-Treasurer will then transmit the appeal to the 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 City Clerk-Treasurer and shall set

forth in writing the grounds for the appeal and the relief sought by the appellant. The hearing shall be scheduled within 2 regularly scheduled meetings. The 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 10 calendar days prior to the meeting. The 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 § 157.30. (Ord. 11-2004, passed 1-10-2005)

#### **§ 157.33 SEVERABILITY.**

If any section, sentence, clause, phrase or word of this chapter is for any reason held to be unconstitutional by a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter or the Batesville Code. (Ord. 11-2004, passed 1-10-2005)