ORDINANCE NO. 09- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, FOR THE PURPOSE OF REVISING REGULATIONS PERTAINING TO COMUNICATION ANTENNAS AND COMUNICATION ANTENNA SUPPORT STRUCTURES AS SET OUT IN 10-6.812, AND AMENDING CHAPTER 10 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, FOR THE PURPOSE OF REVISING REGULATIONS PERTAINING TO BROADCAST ANTENNAS AND BROADCAST ANTENNA SUPPORT STRUCTURES AS SET OUT IN 10-6.81; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA:

SECTION 1. Section 10-6.812 of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

Sec. 10-6.812 [10-1115]. Communication antennas and communication antenna support structures.

(a) Applicability; use of existing structures.

(1) All new communication antennas and communication antenna support structures in the unincorporated areas of the county shall be subject to these land development regulations and all other applicable building and construction codes. In the event of any conflict between other land development regulations and the regulations contained in this section, the provisions of this section shall override and supersede such other

regulations unless otherwise specifically set forth herein.

(2) a. All communication antenna support structures existing on ~~January 28, 1997,~~ (the effective date of this section) shall be allowed to continue to be used as they presently exist, provided that a notice of continuing use is submitted by the communication antenna support structure owner/operator to the department of ~~community development~~ growth and environmental management not later than _____ ~~June 1, 1998, on January 2, 2000 and on January 2 in succeeding even numbered years.~~ and no later than every three years there after. A ~~N~~notice of continuing use shall certify that the structure continues to be used as a communication antenna support structure and that a security or performance bond has been posted in an amount to be determined by the county~~, not to exceed the cost of removal.~~ To cover the cost of removal plus a 25% of cost safety factor. The notice of continuing use shall specify the antenna support structure's use, number of collocated antennas and use, owner and contact information for the antenna support structure and all collocated antennas. Failure to file a notice of continuing use shall constitute abandonment in accordance with subsection (o). Routine maintenance or minor modifications to accommodate the ~~colocation~~collocation of an additional user or users shall be permitted on such existing communication antenna support structures subject to the criteria in

(b) below. New construction, other than routine maintenance and modifications to accommodate ~~colocation~~collocation on an existing communication antenna support structure, shall comply with the requirements of this section.

(3) For purposes of this section, a communication antenna support structure that has received final approval in the form of a building permit for an approved site and development plan or where substantial construction has been completed, shall be considered an existing communication antenna support structure so long as such approval is valid and unexpired as of the effective date of this section.

(4) No rezoning or zoning variance shall be required to locate a communication antenna on an existing nonresidential structure or multi-family residential structure 35 feet in height or greater; provided, however, that the communication antenna does not extend more than 20 feet above the existing structure. Such structures may include, but are not limited to, nonresidential buildings, water towers, existing communications antenna support structures, recreational light fixtures and essential service provider facilities.

(5) A communication antenna support structure may be rebuilt, reconstructed, or replaced, in any zoning district other than residential preservation, except for rebuilding, reconstructing, or replacing non-conforming communication antenna support structures which may be approved only through Type C site and development plan process, when done to accommodate ~~colocation~~collocation of additional users, subject to all review requirements in the land development regulations for Type A site plans, with a notice of pendency that a communication antenna support structure is proposed to be rebuilt, reconstructed, or replaced mailed to all affective property owners at least ten work days prior to the decision on the application as determined from the most recent tax rolls, of all property located within 500 feet of the boundary of the property upon which the communication antenna support structure is located, provided that any such ~~colocation~~collocation is accomplished in a manner consistent with the following:

a. A communication antenna support structure which is modified or reconstructed to accommodate the ~~colocation~~collocation of an additional communication antenna shall comply with all the provisions of this section, except subsections (b) and (c) and shall be of the same communication antenna support structure type as the existing communication antenna support structure, unless reconstructed as a monopole.

b. Height.

1. An existing communication antenna support structure may be modified or rebuilt to a taller height, not to exceed 30 feet or 20 percent of the height of the communication antenna support structure, whichever is greater, over the communication antenna support structure's existing height, to accommodate the ~~colocation~~collocation of an additional communication antenna, but in no case shall the height of the communication antenna support structure and proposed extension be greater than the distance to an existing residential structure.

2. The height change referred to in subsection b.1 may only occur one time per communication antenna support structure.

c. Onsite location.

1. A communication antenna support structure which is being rebuilt to accommodate the ~~colocation~~collocation of an additional communication antenna may be moved onsite

within 50 feet of its existing location, subject to the setback requirements of this section.

2. After the communication antenna support structure is rebuilt to accommodate ~~colocation~~collocation, the existing communication antenna support structure must be dismantled and removed within 60 days after the rebuilding so only one communication antenna support structure may remain on the site.

(6) All communication antenna support structures or communication antennas proposed in the unincorporated areas of the county shall comply with the requirements of Section 10-6.808, "airport regulation," of the zoning code. If there is any conflict between the requirements of this section and Section 10-6.808, the requirements in 10-6.808 shall control. Furthermore, no new communication antenna support structure shall be permitted within 1,000 feet of the landing area of a private airport that has been approved by the county pursuant to the provisions of Section 10-6.803(f) of the zoning code.

(7) The provisions of this section shall not apply to communication antenna support structures or communication antennas located on property owned by the United States, State of Florida, Leon County, or the City of

Tallahassee, provided those communication antenna support structures are owned by those public entities and are used for the provision of fire safety, law enforcement, emergency management, emergency medical services telecommunications, and/or a governmental purpose. Furthermore, the provisions of this section are not intended to apply to the siting of radio and television broadcast antenna support structures licensed by the FCC and used primarily for broadcast purposes.

(b) Location.

(1) A communication antenna support structure or communication antenna may be located in any zoning district so long as it meets the requirements of this section, except a communication antenna support structure or communication antenna shall not be located on or within 400 feet of property designed as historic preservation overlay. Any application for a communication antenna on or within 400 feet of property designated as historic preservation overlay shall request a Certificate of Appropriateness from the county's Architectural Review Board pursuant to Section 10-6.807 of the Zoning Code.

(2) A communication antenna support structure may be located on a sub-parcel used for other principal uses on a parcel smaller than the minimum lot size required in the zoning district. This parcel shall be considered as

the "communication antenna support structure site." The communication antenna support structure site, but not the entire lot, shall be subject to all of the requirements of this section, except as specifically provided herein.

(c) Minimum distance of communication antenna support structures from residential lots.

(1) a. If a communication antenna support structure is located on residential or multi-family residential structure of 35 feet in height or greater, the tower shall be at least 250 feet, but not less than the height of the proposed communication antenna support structure itself, from the nearest residential lot zoned for or constructed with single-family residences or multi-family residences of less than 35 feet in height.

b. All other communication antenna support structures shall be located at least 300 feet, but not less than the height of the proposed communication antenna support structure itself, from the nearest residential lot zoned for or constructed with single-family residences or multi-family residences of less than 35 feet in height.

c. Variances from these setback requirements may be granted consistent with the standards contained in subsection (v) of this

section.

(2) Distances shall be measured from the center of the base of the communication antenna support structure to the residential lot line.

(3) Notwithstanding anything to the contrary in the land development regulations, no communication antenna support structure other than a monopole (freestanding) shall be located in any location adjacent to a residential lot.

(d) Communication antenna support structure permitting.

(1) Feasibility of ~~colocation~~collocation. ~~Colocation~~Collocation shall be deemed to be feasible for purposes of this subsection where all of the following are met:

a. The owner or person who otherwise controls the communication antenna support structure or other structure under consideration for ~~colocation~~collocation will undertake to charge fair and reasonable market rent or other fair and reasonable market compensation for ~~colocation~~collocation.

b. The site on which ~~colocation~~collocation is being considered, taking

into consideration reasonable or replacement of a facility, is able to provide sufficient structural support.

c. The ~~colocation~~collocation being considered is technologically reasonable, e.g. the ~~colocation~~collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure and antennas.

d. The height of the structure necessary for ~~colocation~~collocation will not be increased beyond a point deemed to be permissible by the County Administrator or designee, taking into consideration the several standards contained in this section.

(2) New communication antenna support structures.

a. A communication antenna support structure permit for the location and use of a communication antenna support structure shall not be granted unless and until the applicant demonstrates that a feasible ~~colocation~~collocation is not available for the coverage area and capacity needs.

b. The county shall maintain a list of all communication antenna support structures and shall make such list available to new communication antenna support structure applicants. No new

communication tower shall be permitted unless the applicant demonstrates, in writing, that no existing communication antenna support structure or structure can accommodate the applicant's proposed antenna, consistent with the requirements of Section (d)(4)f. of this section.

c. If a party who owns or otherwise controls a new or existing communication antenna support structure shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible ~~colocation~~collocation, such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded, or extended in any respect.

(3) Applications for ~~colocation~~collocation of communication antennas or location of communication antennas on existing Leon County facilities shall be given expedited review.

(4) Communication antenna support structure application and provisions governing the issuance of permits.

a. In granting a permit, the county shall require the posting of a security or performance bond, in an amount to be determined by the county, not to exceed the cost of removal, to ensure removal of

such communication antenna support structure(s) if it becomes abandoned as described in subsection (o) of this section.

b. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer, as otherwise required by law.

c. An applicant for a communication antenna support structure permit shall submit the information described in this section and a non-refundable fee as established by the resolution of the county commissioners to reimburse the county for the costs of reviewing the application.

d. Information required. In addition to any information required by the land development regulations for Type B site plans, applicants for a communication antenna support structure permit shall submit the following information:

1. A scaled site plan clearly indicating the location, type, and height of the proposed communication antenna support structure, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), master plan classification of the site and all

properties within the applicable setback areas, adjacent roadways, proposed means of access, setbacks for property lines, elevation drawings of the proposed communication antenna support structure and any other structures, topography, parking, and other information deemed by the county to be necessary to assess compliance with this section.

2. Legal description of the parent tract and leased parcel (if applicable).

3. The setback distance between proposed communication antenna support structure and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

4. The location of all communication antenna support structure and communication antennas within a one mile radius of the location of the proposed structure.

5. A landscape plan showing specific landscape materials.

6. Method of fencing, and finished color and, if applicable,

the method of camouflage and illumination.

7. A description of compliance with the requirements of this section and all applicable federal, state, or local laws.

8. A notarized statement by the applicant as to whether construction of the tower will accommodate ~~colocation~~collocation of additional antennas for future users.

9. A description of the suitability of the use of existing communication antenna support structure(s) or other structures to provide the services to be provided through the use of the proposed new structure.

10. The location of the proposed communication antenna support structure in digital format compatible with the county's GIS system.

e. The county shall consider the following factors in determining whether to issue a permit, although the county may waive or reduce the burden on the applicant of one or more of these criteria if the county concludes that the goals of this section are better

served thereby:

1. Height of the proposed communication antenna support structure;

2. Proximity of the communication antenna support structure to residential structures and residential district boundaries;

3. Nature of uses on adjacent and nearby properties, within 500 feet of the communication antenna support structure site property line;

4. Surrounding topography;

5. Surrounding tree coverage and foliage;

6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

7. Proposed ingress and egress; and

8. Availability of suitable existing communication antenna support structure or other structures.

f. No new communication antenna support structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the county that no existing communication antenna support structure or structure can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the county related to the availability of suitable existing communication antenna support structure(s) or other structures. Evidence submitted to demonstrate that no existing communication antenna support structure or other structure can accommodate the applicant's proposed communication antenna may consist of any of the following:

1. No existing communication antenna support structure or other structures are located within the geographic area which meet applicant's engineering requirements.

2. Existing communication antenna support structure(s) or other structures are not of sufficient height to meet applicant's engineering requirements.

3. Existing communication antenna support structures or other structures do not have sufficient structural strength to

support applicant's proposed communication antenna and related equipment.

4. The applicant's proposed communication antenna would cause electromagnetic interference with the communication antenna on the existing communication antenna support structures or other structures, or the communication antenna on the existing communication antenna support structures or other structures would cause interference with the applicant's proposed communication antenna.

5. The fees, costs, or contractual provisions required by the owner in order to share an existing communication antenna support structure or other structure or to adapt an existing communication antenna support structure or other structure for sharing renders ~~colocation~~collocation infeasible or unreasonable.

6. The applicant demonstrates that there are other limiting factors that render existing communication antenna support structure(s) or other structures unsuitable.

g. The applicant shall provide the county with a sealed statement that

the proposed communication antenna support structure is required because the applicant has demonstrated compliance with all applicable ~~colocation~~collocation requirements of this section as outlined above, and that no existing communication antenna support structure or other structure can accommodate the applicant's proposed antenna.

(e) Maximum height. Notwithstanding anything to the contrary in the land development regulations, the maximum height of communication towers shall be 150 feet except in rural, urban fringe, industrial, M-1 limited industrial and activity center districts or in planned unit developments, critical planning areas or target planning areas which include community services, light or heavy infrastructure, or light or heavy industrial uses, in which the maximum height shall be 250 feet. Measurements of communication tower height shall include the base pad, and other appurtenances and shall be measured from the finished grade at the tower base.

(f) Minimum yard requirements. There are no minimum yard requirements for communication antenna support structures.

(g) Illumination. Communication antenna support structures shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).

(h) Finished color. Communication antenna support structures not requiring FAA painting/marking shall have either a galvanized finish or painted a dull blue, gray, or black finish.

(i) Structural design. Communication antenna support structures shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard, according to the EIA/TIA 222-E Standards, to adjoining properties. Communication antenna support structures shall be constructed to the EIA/TIA 222-E Standards, as published by the Electronic Industries Association, which may be amended from time to time, and all applicable county building codes. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing communication antenna support structures shall require submission of site plans sealed and verified by a professional engineer, which demonstrate compliance with the EIA/TIA 222-E Standards in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed and approved by the Growth and Environmental Management Department at the time building permits are requested.

(j) Fencing. A minimum eight feet finished masonry wall or an eight-foot fence with less than 85 percent opacity shall be required around all communication antenna support structure sites. Access to the tower shall be through a locked gate.

(k) No advertising. Neither the communication antenna support structure nor the communication antenna support structure site shall be used for advertising purposes

and shall not contain any signs for the purpose of advertising.

(l) Landscaping. The visual impacts of residentially or commercially located communication antenna support structures shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures as follows:

(1) A 20-foot landscape buffer which meets the landscape requirements of Section 10-7.522 of the zoning code shall be required around the perimeter of the communication antenna support structure and any accessory structures located outside the required wall or fence;

(2) All required landscaping shall be of the evergreen variety;

(3) All required landscaping shall be xeriscape tolerant or irrigated and properly maintained to ensure good health and vitality;

(4) Required landscaping shall be installed outside the fence or wall; and

(5) Existing vegetation shall be preserved to the maximum extent practicable and may be credited as appropriate toward meeting landscaping requirements.

(6) An applicant may request deviation to the standards in this section in

accordance with Section 10-1.106.

(m) Leon County encourages the users of communication antenna support structures and communication antennas to submit a single application for approval of multiple communication antenna support structures and/or communication antenna sites, and to utilize existing public facilities owned by Leon County through lease situations as sites. Applications for approval of multiple sites or sites utilizing existing Leon County facilities shall be given priority in the review process.

(n) Nonconforming communication antenna support structures. To the extent set forth herein, the restrictions on nonconforming uses and structures contained in Division 3 of Article VI of the Leon County Code of Laws are modified and supplemented by this section. Bona fide nonconforming communication antenna support structures or communication antennas that are damaged or destroyed maybe rebuilt and all such communication antenna support structures or communication antennas may be modified or replaced without meeting the minimum distance requirements specified in paragraph (c) hereinabove. The type, height, and location of the communication antenna support structure on the site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the tower shall comply with the applicable county codes and shall be obtained within 180 days from the date the communication antenna support structure is damaged or destroyed. If no permit is applied for, or obtained, or if said permit expires, the communication antenna support structure shall be deemed abandoned as specified in paragraph (n) hereinafter.

(o) Abandonment. In the event the use of any communication antenna support structure has been discontinued for a period of 180 consecutive days, the communication antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the County Administrator or designee, based upon documentation and/or affidavits from the communication antenna support structure owner/operator regarding the issue of usage. Upon the determination of such abandonment, the owners/operator of the communication antenna support structure shall have an additional 180 days within which to: (1) reactivate the use of the communication antenna support structure or transfer the structure to another owner/operator who makes actual use of the structure, or (2) dismantle and remove the structure. At the earlier of 180 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any exception and/or variance approval for the communication antenna support structure shall automatically expire.

(p) Certification of compliance with Federal Communication Commission (FCC) NIER Standards. Prior to receiving final inspection, adequate proof shall be submitted to the community development department documenting that the communication antenna support structure complies with all current FCC regulations for non-ionizing electromagnetic radiation (NIER). The County Administrator or designee shall indicate on the site plan approval that this certification has been received.

(q) Collocation. Communication antenna support structures shall be

structurally designed to accommodate the collocation of communication antennas as follows:

(1) All communication antenna support structures, except camouflaged structures, over 80 feet and up to and including 125 feet in height shall be structurally designed to accommodate at least two service providers.

(2) All communication antenna support structures, except camouflaged structures, over 125 feet and up to and including 150 feet in height shall be structurally designed to accommodate at least three service providers.

(3) All communication antenna support structures, except camouflaged structures, exceeding 150 feet in height shall be structurally designed to accommodate at least four service providers.

(r) Camouflaged structures.

(1). Criteria to be considered in determining whether a communication antenna support structure qualifies as a camouflaged structure:

a. The communication antenna support structure: (i) resembles a natural object or a manmade structure; (an example of a natural object is a tree; examples of a manmade structure are bell and

clock towers, church steeples, detached or attached sigh structures or a lookout station); or (ii) serves a purpose other than supporting communication antennas, for example, lighting of sports facilities, transmission of electrical and/or telephone lines; flag poles;

b. The communications antenna support structure is designed to be compatible with the architectural elements, such as bulk, massing, and scale of the surrounding properties or structures; and

c. The communication antenna support structure is designed to compliment or to blend with the principal onsite use or structure, if any.

(2) Upon receipt of a completed site and development plan application where a camouflaged structure is being proposed, the County Administrator or designee shall make a determination based on a recommendation of the staff Technical Review Committee whether the proposed communication antenna support structure qualifies as a camouflaged structure based on the criteria outlined in subsection (r)(1). The determination may be appealed pursuant to the formal proceedings under Division 7 of Article VII of Chapter 10.

(3) Proposed communication antenna support structures determined to be

camouflaged structures pursuant to the provisions of this subsection shall be permitted in all zoning districts, provided, however, that no antenna support structure may be located on a residential property used as single-family attached, single-family detached, two-family (duplex) dwellings, or multi-family units containing four or less dwelling units. Furthermore, for camouflaged structures, the required setback from the nearest existing building and/or structure shall be equal to the height of the communication antenna support structure. Variances to the setback requirement may be granted pursuant to the provisions of subsection (v).

(4) All proposed camouflaged structures are subject to all site and development plan review requirements for communication antenna support structures as outlined in this section.

(5) All proposed camouflaged structures are subject to the applicable building codes.

(s) A Permitted Use Verification, pursuant to Section 10-7.402, 1. of the Land Development Regulations shall be required for siting all communication antenna support structures and communication antennas.

(t) Site plan review. All site plan applications requests for communication antenna support structures and communication antennas shall be subject to a Type B site plan review and shall be subject to all review requirements in the land development

1 regulations for Type B site plans.

2

3 (u) Judicial review. For purposes of seeking judicial review, county action on
4 a permit application shall not be final until the applicant has exhausted its right to formal
5 proceedings under Division 7 of Article VII of Chapter 10. Any person adversely
6 affected by any final action or failure to act on a permit application may, within 30 days
7 after final action or failure to act by the county, file a petition for writ of certiorari in the
8 Leon County Circuit Court.

9

10 (v) Variances. Applications for variances under this section shall be
11 submitted to and reviewed by the Board of Adjustment and Appeals. Applications for
12 variances must meet the requirements of this section. No variances to height, setbacks,
13 fencing, or buffer requirements shall be granted for communication antenna support
14 structures and communication antennas located in any residential preservation future land
15 use category, except for proposed antenna support structures that have been determined
16 to be in compliance with subsection (r), camouflaged structures. Variance requests for
17 proposed antenna support structures that have been determined to be in compliance with
18 subsection (r) shall be reviewed and approved as appropriate by the entity with the
19 authority to approved the proposed project, and shall not be required to complete the
20 Board of Adjustment and Appeals variance process as established by this section.

21

22 (w) Supplemental information required for applications for variances. The
23 following information shall be included with all applications for variances. The applicant

may use any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

(1) A scaled site plan clearly indicating the communication antenna support structure site, type and height of the proposed tower, the location of the accessory building, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, distances from property lines, elevation drawings of the proposed communication antenna support structure, and any other proposed structures;

(2) A current zoning or tax map or aerial, as maintained by the Leon County Property Appraiser's Office, showing the location of the proposed communication antenna support structure;

(3) A legal description of the parent tract and communication antenna support structure site (if applicable);

(4) If the proposed communication antenna support structure site meets the required minimum distance from residential lot lines, approximate distance between the proposed antenna support structure and the nearest residential lot line, platted residential properties, or unplatted residential properties. If the proposed communication antenna support structure site does not meet the minimum distance requirements, then exact distances, locations and identifications of said properties shall be shown on an

updated zoning or tax map.

(5) A landscape plan showing specific landscape materials;

(6) The method of fencing, finished color and, if applicable, the method of aesthetic mitigation and illumination;

(7) If the applicant is not co-locating (sharing space) on the proposed or existing communication antenna support structure of another communications provider, evidence that it has made diligent but unsuccessful efforts to co-locate its antenna and associated equipment on an existing structure;

(8) Evidence that the applicant has made diligent but unsuccessful efforts to locate the proposed communication antenna support structure on suitable government-owned property;

(9) The written consent by the applicant that any such exception or variance shall be conditioned upon requiring the applicant to (a) construct the proposed communication antenna support structure so as to provide sufficient excess capacity over the initial loading and (b) permit at least one other comparable communication provider to use the proposed structure.

(10) Certification by the applicant that the proposed communication antenna support structure is reasonably necessary to serve an adjacent or nearby residential area or areas.

(x) Variance standards and criteria for communication antenna support structure. In addition to the variance criteria in the land development regulations, with respect to action upon applications for zoning variances, the Board of Adjustment and Appeals shall grant a variance only if it finds from a preponderance of the evidence that the variance meets the following standards and criteria:

(1) The deviation will not be detrimental to the public good or to the surrounding properties;

(2) The location of existing uses, structures or other features on or adjacent to the property create a need for the variance;

(3) The variance sought is the minimum necessary to address the need for the variance, subsequent to exploring all reasonable siting alternatives;

(4) The location of the proposed communication antenna support structure in relation to existing structures, trees, and other visual buffers shall minimize, to the greatest extent reasonably practicable under the

circumstances, any impacts on an affected residential lot;

(5) The location of the communication antenna support structure will not have a significant detrimental impact on adjacent property values;

(6) The communication antenna support structure will be compatible with the existing contiguous uses or zoning and compatible with the general character and aesthetics of the neighborhood or the area, considering the design and height of the communication antenna support structure, the mitigating effect of any existing or proposed landscaping, fencing or other structures in the area, the proximity of the communications antenna support structure to existing or proposed buildings or structures, and similar factors; and

(7) The strict application of the requirements of this section will constitute a substantial hardship to the applicant, which hardship is not self-created or self-imposed; and,

(8) The granting of the deviation is consistent with the intent and purpose of this section, the zoning code, and the Comprehensive Plan.

(y) Ownership marking. All communication antenna support structures shall be marked with proper indicia of ownership, located at the entry gate.

(z) Definitions.

[Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this section its most effective application:]

Communication antenna means an antenna, appurtenant to a structure, designed to transmit and/or receive communications authorized by the Federal Communications Commission (FCC). The term, "communication antenna," shall not include antennas utilized by amateur radio operators licensed by the FCC.

Communication antenna support structure means a principal structure which is intended to support communication equipment for telephone, radio and similar communication purposes. The term is not intended to apply to radio and television broadcast antenna support structures that are licensed by the Federal Communications Commission (FCC) and used primarily for broadcast purposes. Also, the term, "communication antenna support structure" shall not include structures utilized by amateur radio operators licensed by the FCC or towers not exceeding 75 feet in height utilized by essential service providers on a site containing an essential service facility, such as but not limited to fire stations, law enforcement facilities including jails, electrical substations, wastewater treatment plants, sewer lift stations, overhead water storage tanks, water wells and utility operation or service centers, for the provision of

telemetry data only. Communication antenna support structures are generally described as either monopole (freestanding), lattice (self-supporting), or guyed (anchored with guy wires or cables).

Communication antenna support structure site means a parcel of land smaller than the minimum lot size required in the zoning district completely contained within a lot meeting the requirements of the zoning district for the purposes of locating a communication antenna support structure.

Essential service means the provision, by a public utility, of communication services to the public related to fire safety; law enforcement; weather; provision of electric, natural gas, water, or sanitary sewer service; or other circumstances affecting the health, safety, or welfare of the public.

Public utility means a utility owned or operated by the United States, the State of Florida, Leon County or the City of Tallahassee.

Residential lot means any parcel of land upon which one or more dwelling units are located; which is designated on the county's official zoning map as a zoning district that allows residential development; upon which a residential subdivision plat (preliminary or final) has been approved; or which has been designated for residential uses by any other unexpired development order (i.e., Planned Unit Development Area, Critical Planning Area, Target Planning Area, Chapter 163 Development agreement, with

a residential component).

Sub-parcel means a portion of a larger parcel that is used to support the development of a communication antenna support structure. A sub-parcel shall only be created and used for the sole purpose of developing a communication antenna support structure. A sub-parcel is not required to be consistent with the minimum lot size of the zoning district within which it is located. A sub-parcel shall only be created with approval by the county though the appropriate development review and approval process as established by code.

SECTION 2. Section 10-6.813 of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

Sec. 10-6.813 [10-1116]. Broadcast antennas and broadcast antenna support structures.

(a) *Applicability; use of existing structures.*

(1) All new broadcast antennas and broadcast antenna support structures in the unincorporated areas of the county shall be subject to these land development regulations and all other applicable building and construction codes. In the event of any conflict between other land development regulations and the regulations contained in this section, the provisions of

this section shall override and supersede such other regulations unless otherwise specifically set forth herein.

(2) a. All broadcast antennas and broadcast antenna support structures existing on (the effective date of this section) shall be allowed to continue to be used as they presently exist, provided that a notice of continuing use is submitted by the broadcast antenna support structure owner/operator to the department of growth and environmental management not later than _____ ~~January 2, 2003, and on January 2 in succeeding odd-numbered years.~~and no later than every three years there after. A notice of continuing use shall certify that the structure continues to be used as a broadcast antenna or broadcast antenna support structure and that a security or performance bond has been posted in an amount to be determined by the county~~, not to exceed the cost of removal.~~ to cover the cost of removal plus a 25% of cost safety factor. The notice of continuing use shall specify the antenna support structure's use, number of collocated antennas and use, owner and contact information for the antenna support structure and all collocated antennas. Failure to file a notice of continuing use shall constitute abandonment in accordance with paragraph (p). Routine maintenance or minor modifications to accommodate additional or new broadcast antennas shall be permitted on such existing

broadcast antenna support structures. New construction, other than routine maintenance and modifications, shall comply with the requirements of this section.

b. Replacement of antennas on a broadcast antenna support structure with a different antenna shall be considered routine maintenance or a minor modification to accommodate a new or additional antenna, provided such maintenance or minor modification does not increase the height of any broadcast antenna support structure more than 25 feet or ten percent, whichever is less, above the initially constructed height.

(3) For purposes of this section, a broadcast antenna support structure that has received final approval in the form of a building permit for an approved site and development plan or where substantial construction has been completed, shall be considered an existing broadcast antenna support structure, provided such approval is valid and unexpired as of the effective date of this section.

(4) A broadcast antenna support structure may be rebuilt, reconstructed, or replaced, in any zoning district other than Residential Preservation, R-1, R-2, R-3, R-4, R-5, or in a recorded or unrecorded subdivision, regardless of the zoning designation. Broadcast antenna support structures proposed

inside the Urban Service Area shall use construction techniques that do not require guy wires (e.g., lattice or monopole structures).

(5) All broadcast antenna support structures proposed in the unincorporated areas of the county shall comply with the requirements of Section 10-6.808, "airport regulation," of the Zoning Code. If there is any conflict between the requirements of this Section and Section 10-6.808, the requirements in 10-6.808 shall apply. Furthermore, no new broadcast antenna support structure shall be permitted within 1,000 feet of the landing area of a private airport that has been approved by the county pursuant to the provisions of Section 10-6.803(f) of the Zoning Code.

(b) *Location and setback requirements.*

(1) Broadcast antenna support structures may be located in any zoning district other than Residential Preservation, R-1, R-2, R-3, R-4, R-5, or in a recorded or unrecorded residential subdivision, regardless of the zoning designation.

(2) All broadcast antenna support structures shall be located not less than the height of the proposed broadcast antenna support structure itself, from the nearest residential lot line zoned for or constructed with single or multi-family residences.

(3) Variances from these location and setback requirements may be granted consistent with the procedures and standards contained in subsections (t), (u), and (v) of this section.

(4) Distances shall be measured from the center of the base of the broadcast antenna support structure to the residential lot line, or as the case may be, to the lot line of the nearest occupied structure.

(5) Towers should not be sited in or near wetlands, other known bird concentration areas (e.g., state or federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species. Construction is prohibited in areas habitually containing a significant number of breeding, feeding, or roosting birds.

(6) Broadcast antenna support structures and guy wires shall not be sited in or adjacent wetlands.

(7) Anchors and guy wires shall be oriented to provide the maximum distance to the nearest residentially-zoned lot line.

(c) *Broadcast antenna support structure permitting.*

(1) New broadcast antenna support structures.

a. Broadcast antenna support structure applications.

1. In granting a broadcast antenna support structure permit, the county shall require the posting of a security or performance bond, in an amount to be determined by the county, not to exceed the cost of removal, to ensure removal of such broadcast antenna support structure, if it becomes abandoned as described in subsection (n) of this section.

2. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a professional engineer licensed in the State of Florida, as otherwise required by law.

3. An applicant for a broadcast antenna support structure permit shall submit the information described in this section and a non-refundable fee as established by the county to reimburse the county for the costs of reviewing the application.

4. The applicant for a broadcast antenna support structure permit shall be required to obtain type C site and development plan approval, in accordance with the Land Development Code.

5. Information required. In addition to any information required by the land development regulations for Type C site and development plans, applicants for a broadcast antenna support structure permit shall submit the following information:

(i) A scaled site plan clearly indicating the location, type, and height of the proposed broadcast antenna support structure, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), master plan classification of the site and all properties within the applicable setback areas, adjacent roadways, proposed means of access, property lines, elevation drawings of the proposed broadcast antenna support structure and any other structures, topography, parking, and other information deemed by the county to be necessary to assess compliance with

this ordinance.

(ii) A sealed survey performed by a Florida professional land surveyor, and a legal description of the parent tract and leased parcel (if applicable).

(iii) The setback distance between the proposed broadcast antenna support structure and the nearest residential unit or residentially zoned property line.

(iv) The location of all broadcast antenna support structures within a one mile radius of the location of the proposed broadcast antenna support structure, currently existing or closed and filed with the FAA, FCC or both.

(v) A landscape plan showing specific landscape materials.

(vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(vii) A description of compliance with the requirements of this section and all applicable federal, state, or local laws.

(viii) The location of the proposed broadcast antenna support structure in digital format compatible with the county's GIS system.

(ix) Federal Aviation Administration (FAA) and Federal Communication Commission (FCC) licenses, permits, or approvals, if applicable.

(x) The names and addresses of all property owners within 2,640 feet of the proposed broadcast antenna support structure if the proposed site is outside the Urban Service Area, and 500 feet if inside the Urban Service Area. The county will verify this information, and notify all identified property owners of the proposal's required pre-application meeting.

(xi) Proof that the applicant owns the broadcast antenna support structure site or has a leasehold interest in

the proposed site. If a leasehold interest, the lease must evidence a term of at least ten years, and the fee simple property owner must consent in writing to the proposed use of the broadcast antenna support structure location.

b. Provisions governing the issuance of permits. The county may consider the following factors in determining whether to issue a broadcast antenna support structure permit, although the county may waive or reduce the burden on the applicant of one or more of these criteria if the county concludes that the goals of this ordinance are better served as determined pursuant to the variance provision of this ordinance:

1. Height of the proposed broadcast antenna support structure;

2. Proximity of the broadcast antenna support structure to residential structures and residential zoning district boundaries;

3. Nature of uses on adjacent and nearby properties, within 2,640 feet of the broadcast antenna support structure site property line;

4. Surrounding topography;

5. Surrounding tree coverage and foliage;

6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

7. Proposed ingress and egress.

8. Co-location options.

(d) *Height.* The permitted height of a broadcast antenna support structure is to be determined in accordance with the setback regulations contained in subsection (b)(2) of this section.

(e) *Minimum yard requirements.* There are no minimum yard requirements for broadcast antenna support structures.

(f) *Illumination.* Broadcast antenna support structure shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).

(1) Broadcast antenna support structures exceeding 200 feet in height must use the minimum number of lights having the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) permitted by the FAA (i.e., daytime high intensity and night time low intensity). The use of solid red or pulsating red warning lights shall be prohibited at night.

(2) On broadcast antenna support structures exceeding 200 feet in height, only white strobe lights shall be used at night, where permissible by the FAA. All tower lighting shall automatically switch to the lowest luminance allowed at different times of day or circumstances as defined by FAA advisories.

(3) All lights on broadcast antenna support structures of any height shall be up-shielded and directed upwards to the maximum extent allowed by FAA regulations, eliminating luminescence toward the ground.

(4) Guyed broadcast antenna support structures shall use daytime visual markers (e.g., bird diverter devices) on the guy wires to reduce collisions by migratory birds.

(5) Security lighting for on-ground facilities and equipment shall be down-

shielded to keep light within the boundaries of the site and to minimize its potential attraction for birds and impact on adjacent land uses.

(g) *Finished color.* Broadcast antenna support structures not requiring FAA painting/marking shall have either a galvanized finish or painted a dull blue, gray, or black finish.

(h) *Structural design.* Broadcast antenna support structures shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard, according to the most current EIA/TIA 222 Standards, to adjoining properties. Broadcast antenna support structures shall be constructed to the EIA/TIA 222 Standards, as published by the Electronic Industries Association, which may be amended from time to time, and all applicable county building codes. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing broadcast antenna support structures shall require submission of site plans sealed and verified by a professional engineer, which demonstrate compliance with the most current EIA/TIA 222 Standards in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed for approval by the department of growth and environmental management and shall incorporate the following:

(1) The proposed antenna support structure and all apertures shall be designed and built to withstand 125 mph winds. All proposed apertures shall include planned and future antennas, antenna mounts, tower lights,

transmission lines, guy wires and other equipment mounted on the tower.

(2) The proposed antenna support structure shall be designed and constructed with adequate antenna load for planned and future antennas, including planned antennas for public safety (law enforcement, fire, EMS, etc.). At a minimum, the proposed antenna support structure shall be designed and constructed to include five additional antenna spaces with five square foot of loading space per antenna. All proposed future antenna allocations should be at 25 foot intervals on the support structure. A 1 5/8 transmission line shall be allocated for each antenna.

(3) The proposed antenna support structure shall be designed and constructed to include a space allocation at the 150-foot and 135-foot level for cellular/PCS antennas on each tower face.

(i) *Fencing.* A minimum eight-foot finished masonry wall or an eight-foot fence with less than 85 percent opacity shall be required around all broadcast antenna support structure sites. Access to the tower shall be through a locked gate.

(j) *No advertising.* Neither the broadcast antenna support structure nor the broadcast antenna support structure site shall be used for advertising purposes and shall not contain any signs for the purpose of advertising.

(k) *Landscaping.* The visual impacts of residentially or commercially located broadcast antenna support structures shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures as follows:

(1) A 20-foot landscape buffer which meets the landscape requirements of Section 10-7.522 of the Zoning Code shall be required around the perimeter of the broadcast antenna support structure and any accessory structures located outside the required wall or fence;

(2) All required landscaping shall be of the native evergreen variety;

(3) All required landscaping shall be xeriscape tolerant or irrigated and properly maintained to ensure good health and vitality;

(4) Required landscaping shall be installed outside the fence or wall;

(5) Existing vegetation shall be preserved to the maximum extent practicable and may be credited as appropriate toward meeting landscaping requirements.

(l) *Access.* The operator of a broadcast antenna shall allow reasonable access to all qualified researchers for the purpose of investigating the impact of the broadcast antenna on wildlife.

(m) *Operation of antenna.* The proposed or future broadcast antennas shall not impact or interfere with the operation of adjacent or nearby electrical devices. The applicant shall demonstrate compliance with this provision during the site plan review process. Any corrective action shall be at the tower owner's expense.

(n) An applicant may request deviation to the standards in this section from the Board of County Commissioners as part of the Type C review process and shall meet Section 10-1.106, including the setback standards contained in Subsection (b)(2) of this section.

(o) *Nonconforming broadcast antenna support structures.* To the extent set forth herein, the restrictions on nonconforming uses and structures contained in Division 3 of Article VI of the Leon County Code of Laws are modified and supplemented by this section. Bona fide nonconforming broadcast antenna support structures or broadcast antennas that are damaged or destroyed may be rebuilt and all such broadcast antenna support structures or broadcast antennas may be modified or replaced without meeting the minimum distance requirements specified in paragraph (c) herein above. The type, height, and location of the broadcast antenna support structure on the site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the tower shall comply with the applicable county codes and shall be obtained within 180 days from the date the broadcast antenna support structure is damaged or destroyed. If no permit is applied for, or obtained, or if said permit expires, the broadcast antenna support structure shall be deemed abandoned as specified in paragraph (p) hereinafter.

(p) *Abandonment.* In the event the use of any broadcast antenna support structure has been discontinued for a period of 180 consecutive days, the broadcast antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the County Administrator or his/her designee, based upon documentation and/or affidavits from the broadcast antenna support structure owner/operator regarding the issue of usage. Upon the determination of such abandonment, the owner/operator of the broadcast antenna support structure shall have an additional 180 days within which to: (1) reactivate the use of the broadcast antenna support structure or transfer the structure to another owner/operator who makes actual use of the structure, or (2) dismantle and remove the structure and all facilities, returning the property to its pre-development state. Upon the expiration of 180 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any exception and/or variance approval for the broadcast antenna support structure shall automatically expire.

(q) *Certification of compliance with Federal Communication Commission (FCC) NIER standards.* Prior to receiving final inspection, documentation shall be submitted to the department of growth and environmental management, building inspection division, demonstrating that the broadcast antenna support structure complies with all current FCC regulations for non-ionizing electromagnetic radiation (NIER). The County Administrator or designee shall indicate on the site plan approval that this certification has been received. Future use of this structure for additional broadcast

antennas shall be governed by this requirement as well.

(r) *Permitted Use Verification.* A Permitted Use Verification pursuant to Section 10-7.402, 1. of the Land Development Regulations shall be required for all proposed broadcast antenna support structures and broadcast antennas.

(s) *Site plan review.* All site plan applications for broadcast antenna support structures and broadcast antennas shall be subject to a Type C site plan review and shall be subject to all review requirements in the Land Development Regulations for Type C site plans.

(t) *Variances.* Applications for variances from setback requirements under this section shall be submitted to and reviewed by the Board of County Commissioners. Applications for variances must meet the requirements of this section. Variance requests for proposed broadcast antenna support structures that have been determined to be in compliance with subsection (u) of this section shall be reviewed and approved as appropriate by the Board of County Commissioners.

(u) *Supplemental information required for applications for variances.* The following information shall be included with all applications for variances. The applicant must submit 12 copies of the application and may use any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

(1) A scaled site plan clearly indicating the broadcast antenna support structure site, type and height of the proposed tower, the location of the accessory building, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, distances from property lines, elevation drawings of the proposed broadcast antenna support structure, and any other proposed structures;

(2) A current zoning or tax map or aerial, as maintained by the Leon County Property Appraiser's Office, showing the location of the proposed broadcast antenna support structure;

(3) A sealed survey performed by a Florida professional land surveyor, and a legal description of the parent tract and broadcast antenna support structure site (if applicable);

(4) The exact distance between the proposed broadcast antenna support structure and the nearest residential lot line zoned for or constructed with single or multi-family residences, as well as the locations and identifications of said properties, to be shown on an updated zoning or tax map;

(5) A landscape plan showing specific landscape materials; and

(6) The method of fencing, finished color and, if applicable, the method of aesthetic mitigation and illumination.

(v) *Variance standards and criteria for broadcast antenna support structures.* In addition to the variance criteria in the Land Development Regulations, with respect to action upon applications for zoning variances, the Board of County Commissioners may grant a variance only if it finds from a preponderance of the evidence that the variance meets the following standards and criteria:

(1) The deviation will not be detrimental to the public good, the surrounding property values, or wildlife;

(2) The location of existing uses, structures or other features on or adjacent to the property create a need for the variance;

(3) The variance sought is the minimum necessary to address the need for the variance. An analysis of all reasonable siting alternatives shall be provided to the Board of County Commissioners for consideration;

(4) The location of the proposed broadcast antenna support structure in relation to existing structures, trees, and other visual buffers shall minimize, to the greatest extent reasonably practicable under the

circumstances, any impacts on an affected residential lot;

(5) The location of the broadcast antenna support structure will not have a significant detrimental impact on adjacent property values;

(6) The broadcast antenna support structure will be compatible with the existing contiguous uses or zoning and the general character and aesthetics of the neighborhood or the area by considering the following:

(a) The design and height of the broadcast antenna support structure;

(b) The mitigating effect of any existing or proposed landscaping;

(c) Fencing or other structures in the area;

(d) The proximity of the broadcast antenna support structure to existing or proposed buildings or structures, and similar factors;

(7) The granting of the deviation is consistent with the intent and purpose of this section, the Zoning Code, and the Comprehensive Plan.

(w) *Ownership marking.* All broadcast antenna support structures shall be marked with proper indicia of ownership, including a 24-hour telephone number of the

facility's owner or owner's designee located at the entry gate.

(x) *Definitions.* As used in this section:

Broadcast antenna means an antenna, appurtenant to a structure, designed to transmit and/or receive communications authorized by the Federal Communications Commission (FCC). The term, "broadcast antenna," shall not include antennas utilized by amateur radio operators licensed by the FCC.

Broadcast antenna support structure means a principal structure which is intended to support communication equipment related to radio and television broadcasting that is licensed by the Federal Communications Commission (FCC) and used primarily for broadcast purposes. Broadcast antenna support structures are generally described as either monopole (free standing), lattice (self-supporting), or guyed (anchored with guy wires or cables).

Broadcast antenna support structure site means a parcel of land smaller than the minimum lot size required in the zoning district completely contained within a lot meeting the requirements of the zoning district for the purposes of locating a broadcast antenna support structure.

Residential lot means any parcel of land upon which one or more dwelling units are located; which is designated on the county's official zoning map as a

zoning district that allows residential development; upon which a residential subdivision plat (preliminary or final) has been approved; or which has been designated for residential uses by any other unexpired development order (i.e., planned unit development area, critical planning area, target planning area, Chapter 163 Development Agreement, with a residential component).

Sub-parcel means a portion of a larger parcel that is used to support the development of a broadcast antenna support structure. A sub-parcel shall only be created and used for the sole purpose of developing a communication antenna support structure. A sub-parcel is not required to be consistent with the minimum lot size of the zoning district within which it is located. A sub-parcel shall only be created with approval by the county though the appropriate development review and approval process as established by code.

SECTION 3. Conflicts. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict, as of the effective date of this Ordinance, except to the extent of any conflicts with the Tallahassee-Leon County Comprehensive Plan, as amended, which provisions shall prevail over any parts of this Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Effective date. This ordinance shall be effective according to law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this ____ day of _____, 2009.

LEON COUNTY, FLORIDA

BY: _____
BRYAN DESLOGE,CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

BY: _____

APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

BY: _____
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY