ESTABLISHING PERMIT PROCEDURES FOR WIRELESS FACILITIES

Whereas, the Town of Cumberland has adopted zoning regulations for wireless facilities in compliance with new Federal and State laws; and

Whereas, these new laws make substantial changes to permit procedures applicable to wireless facilities; and

Whereas, in order to comply with these new permit procedures, the Town Council finds that the Town Code should be amended in order to codify the procedures for the consideration of permits for construction of new wireless support structures, substantial modifications of a wireless support structure, and collocations of wireless facilities on existing structures;

Whereas, Indiana Code §8-1-32.3 provides for certain procedures, and these procedures should be incorporated into the Town Code; and

Therefore, it is ordained that three new sections, Section 00-09-95-63, Section 00-09-95-64, and Section 00-09-95-65, are hereby added to the Cumberland Code of Ordinances establishing a permit procedure for wireless facilities, and these sections shall read as follows:

“§ 00-09-95-63 PERMIT FOR CONSTRUCTION OF NEW WIRELESS SUPPORT STRUCTURES
(A) **Definitions.** As used in this Section, the following definitions apply:

(1) “Antenna” means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.

(2) “Base Station” means a station located at a specific site that is Authorized to communicate with mobile stations. The term includes all radio transceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.

(3) “Collocation” means the placement or installation of wireless facilities On existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement or modification or wireless facilities within an approved equipment compound.

(4) “Existing Structure” does not include a utility pole or and electrical transmission tower.

(5) “Small Cell Facility” means:
   (a) a personal wireless service facility, as defined by the Federal Telecommunications Act of 1996 as in effect July 1, 2015; or
   (b) a wireless service facility that satisfies the following requirements:
      (i) each antenna, including exposed elements, has a volume of three cubic feet or less;
      (ii) all antennas, including exposed elements, have a total volume of six cubic feet or less;
      (iii) the primary equipment enclosure located with the facility has a volume of seventeen cubic feet or less.

For purposes of this definition, the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure: electric meters, concealment equipment, telecommunications demarcation boxes, ground based enclosures, backup power systems, ground equipment, power transfer switches or cutoff switches.
(6) “Small Cell Network” means a collection of interrelated small cell facilities designed to deliver wireless service.

(7) “Substantial Modification of a Wireless Support Structure” means the mounting of a wireless facility on a wireless support structure in a manner that:

(a) increases the height of the wireless support structure by the greater of:
   (i) ten percent of the original height of the wireless support structure; or
   (ii) twenty fees;
(b) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure the greater of:
   (i) twenty fees; or
   (ii) the width of the wireless support structure at the location of the appurtenance; or
(c) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred square feet.

The term does not include increasing the height of a wireless support structure to avoid interfering with an existing antenna, increasing the diameter or area of a wireless support structure to either shelter the antenna from inclement weather or connect an antenna to the wireless support structure by cable.

(8) “Utility Pole” means a structure that is owned or operated by a public utility, a communications service provider, a municipality, an electric membership corporation or rural electric cooperative and is designed and used to carry lines, cables, or wires for telephony, cable television, or electricity or provide lighting. This term does not include a wireless support structure or an electrical transmission tower.

(9) “Wireless Facility” means a set of equipment and network components necessary to provide wireless communications service. This term does not include a wireless support structure.

(10) “Wireless Support Structure” means a freestanding structure designed to support wireless facilities. This term does not include a utility pole or an electrical transmission tower.
(B) **Permit Required.** Any person or entity seeking to construct a new wireless support structure must obtain from the Town of Cumberland a Telecommunications Facility Permit.

(C) **Compliance with Zoning Code Required.** All applicants for a Telecommunications Facility Permit must demonstrate compliance with all provisions of the Cumberland Zoning Code, including but not limited to Section 00-15-153-13.13.

(D) **Contents of Application for Permit.** The application for a permit under this section includes the following information:

1. The name, business address and point of contact of the applicant;
2. The location of the proposed or affected wireless support structure or wireless facility;
3. A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling and related equipment;
4. Evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless structure is not a viable option because collocation:
   a. would not result in the same wireless service functionality, coverage and capacity;
   b. is technically infeasible; or
   c. is an economic burden to the applicant.
5. If the Cumberland Zoning Ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed wireless support structure in accordance with Indiana Code 36-7-4-918.2, evidence showing that the applicant complies with the criteria set forth in the Zoning Ordinance with respect to such special exception, special use, contingent use, or conditional use.
6. If the proposed wireless support structure is not a permitted use under the Cumberland Zoning Ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the Zoning Ordinance in accordance with Indiana Code 36-7-4-918.4.

(E) **Consolidated Applications.** Applicants may apply for a single consolidated application for small cell facilities that constitute a single small cell network that are located in the Town, and the Town will issue a single permit for all small cell facilities
included in the application rather than individual permits for each small cell facility if the applicant meets the requirements for the permit.

(F) Determination of Completeness of Application. Within ten (10) days of receipt of the application by the Town of Cumberland, the Town will determine whether the application is complete. If the Town determines that the application is not complete, it will provide to the applicant within this 10-day period written notice of its determination of incompleteness. This notice will contain a description of all defects in the application, including all Town Code, ordinances, permit application instruction or other publicly-stated procedures that require the applicant to submit additional information. If the Town does not notify the applicant within this 10-day period that the application is incomplete, the application is considered complete.

(G) Provision of Additional Information by Applicant. If the Town notifies the applicant that the application is incomplete, the applicant may either cure the defects set forth in the notice of incompleteness and resubmit the corrected application within 30 days of receiving the notice of incompleteness or notify the Town that the applicant of the need for additional time needed to cure the defects.

(H) Time for Permit Decision. Within 90 days after making an initial determination of completeness regarding the application, the Town will review the application to determine whether it complies with applicable laws and ordinances governing land use and zoning and notify the applicant in writing whether the application is approved or denied. If the applicant requested additional time to cure defects in the application, the 90-day period for the permit decision is extended for a corresponding amount of time.

(I) Permit Fee. The permit fee is $______________.

(J) Protection of Confidential or Proprietary Information. The Town has established guidelines to protect confidential and proprietary information disclosed in an application. Applicants must designate such information on the application or other submittals.
§ 00-09-95-64 PERMIT FOR SUBSTANTIAL MODIFICATION OF A WIRELESS SUPPORT STRUCTURE

(A) Definitions. As used in this Section, the following definitions apply:

(1) “Antenna” means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.

(2) “Base Station” means a station located at a specific site that is Authorized to communicate with mobile stations. The term includes all radio transreceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.

(3) “Collocation” means the placement or installation of wireless facilities On existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement or modification or wireless facilities within an approved equipment compound.

(4) “Existing Structure” does not include a utility pole or and electrical transmission tower.

(5) “Small Cell Facility” means:
   (a) a personal wireless service facility, as defined by the Federal Telecommunications Act of 1996 as in effect July 1, 2015; or
   (b) a wireless service facility that satisfies the following requirements:
      (i) each antenna, including exposed elements, has a volume of three cubic feet or less;
      (ii) all antennas, including exposed elements, have a total volume of six cubic feet or less;
      (iii) the primary equipment enclosure located with the facility has a volume of seventeen cubic feet or less.

For purposes of this definition, the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure: electric meters, concealment equipment, telecommunications demarcation boxes, ground
based enclosures, backup power systems, ground equipment, power transfer switches or cutoff switches.

(6) “Small Cell Network” means a collection of interrelated small cell facilities designed to deliver wireless service.

(7) “Substantial Modification of a Wireless Support Structure” means the mounting of a wireless facility on a wireless support structure in a manner that:
   (a) increases the height of the wireless support structure by the greater of:
       (i) ten percent of the original height of the wireless support structure; or
       (ii) twenty fees;
   (b) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure the greater of:
       (i) twenty fees; or
       (ii) the width of the wireless support structure at the location of the appurtenance; or
   (c) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred square feet.

The term does not include increasing the height of a wireless support structure to avoid interfering with an existing antenna, increasing the diameter or area of a wireless support structure to either shelter the antenna from inclement weather or connect an antenna to the wireless support structure by cable.

(8) “Utility Pole” means a structure that is owned or operated by a public utility, a communications service provider, a municipality, an electric membership corporation or rural electric cooperative and is designed and used to carry lines, cables, or wires for telephony, cable television, or electricity or provide lighting. This term does not include a wireless support structure or an electrical transmission tower.

(9) “Wireless Facility” means a set of equipment and network components necessary to provide wireless communications service. This term does not include a wireless support structure.

(10) “Wireless Support Structure” means a freestanding structure designed to support wireless facilities. This term does not include a utility pole or an electrical transmission tower.
(B) **Permit Required.** Any person or entity seeking to make a substantial modification of a wireless support structure must obtain from the Town of Cumberland a Telecommunications Facility Permit.

(C) **Compliance with Zoning Code Required.** All applicants for a Telecommunications Facility Permit must demonstrate compliance with all provisions of the Cumberland Zoning Code, including but not limited to Section 00-15-153-13.13.

(D) **Contents of Application for Permit.** The application for a permit under this section includes the following information:

   (1) The name, business address and point of contact of the applicant;
   (2) The location of the proposed or affected wireless support structure or wireless facility;
   (3) A construction plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling and related equipment;
   (4) If the Cumberland Zoning Ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed wireless support structure in accordance with Indiana Code 36-7-4-918.2, evidence showing that the applicant complies with the criteria set forth in the Zoning Ordinance with respect to such special exception, special use, contingent use, or conditional use.
   (6) If the proposed wireless support structure is not a permitted use under the Cumberland Zoning Ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the Zoning Ordinance in accordance with Indiana Code 36-7-4-918.4.

(E) **Consolidated Applications.** Applicants may apply for a single consolidated application for small cell facilities that constitute a single small cell network that are located in the Town, and the Town will issue a single permit for all small cell facilities included in the application rather than individual permits for each small cell facility if the applicant meets the requirements for the permit.

(F) **Determination of Completeness of Application.** Within ten (10) days of receipt of the application by the Town of Cumberland, the Town will determine whether the application is complete. If the Town determines that the application is not complete, it will provide to the applicant within this 10-day period written notice of its determination of incompleteness. This notice will contain a description of all defects in the application, including all Town Code, ordinances, permit application instruction or other publicly-stated procedures that require the applicant to submit additional
information. If the Town does not notify the applicant within this 10-day period that the application is incomplete, the application is considered complete.

(G) **Provision of Additional Information by Applicant.** If the Town notifies the applicant that the application is incomplete, the applicant may either cure the defects set forth in the notice of incompleteness and resubmit the corrected application within 30 days of receiving the notice of incompleteness or notify the Town that the applicant of the need for additional time needed to cure the defects.

(H) **Time for Permit Decision.** Within 90 days after making an initial determination of completeness regarding the application, the Town will review the application to determine whether it complies with applicable laws and ordinances governing land use and zoning and notify the applicant in writing whether the application is approved or denied. If the applicant requested additional time to cure defects in the application, the 90-day period for the permit decision is extended for a corresponding amount of time.

(I) **Permit Fee.** The permit fee is $______________.

(J) **Protection of Confidential or Proprietary Information.** The Town has established guidelines to protect confidential and proprietary information disclosed in an application. Applicants must designate such information on the application or other submittals.

§ 00-09-95-65 PERMIT FOR COLLOCATION OF WIRELESS FACILITIES

(A) **Definitions.** As used in this Section, the following definitions apply:

(1) “Antenna” means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.

(2) “Base Station” means a station located at a specific site that is Authorized to communicate with mobile stations. The term includes all radio transreceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.

(3) “Collocation” means the placement or installation of wireless facilities
On existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement or modification or wireless facilities within an approved equipment compound.

(4) “Existing Structure” does not include a utility pole or an electrical transmission tower.

(5) “Small Cell Facility” means:
(a) a personal wireless service facility, as defined by the Federal Telecommunications Act of 1996 as in effect July 1, 2015; or
(b) a wireless service facility that satisfies the following requirements:
   (i) each antenna, including exposed elements, has a volume of three cubic feet or less;
   (ii) all antennas, including exposed elements, have a total volume of six cubic feet or less;
   (iii) the primary equipment enclosure located with the facility has a volume of seventeen cubic feet or less.

For purposes of this definition, the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure: electric meters, concealment equipment, telecommunications demarcation boxes, ground based enclosures, backup power systems, ground equipment, power transfer switches or cutoff switches.

(6) “Small Cell Network” means a collection of interrelated small cell facilities designed to deliver wireless service.

(7) “Substantial Modification of a Wireless Support Structure” means the mounting of a wireless facility on a wireless support structure in a manner that:
(a) increases the height of the wireless support structure by the greater of:
   (i) ten percent of the original height of the wireless support structure; or
   (ii) twenty feet;
(b) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure the greater of:
   (i) twenty feet; or
(ii) the width of the wireless support structure at the location of the appurtenance; or
(c) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred square feet.

The term does not include increasing the height of a wireless support structure to avoid interfering with an existing antenna, increasing the diameter or area of a wireless support structure to either shelter the antenna from inclement weather or connect an antenna to the wireless support structure by cable.

(8) “Utility Pole” means a structure that is owned or operated by a public utility, a communications service provider, a municipality, an electric membership corporation or rural electric cooperative and is designed and used to carry lines, cables, or wires for telephony, cable television, or electricity or provide lighting. This term does not include a wireless support structure or an electrical transmission tower.

(9) “Wireless Facility” means a set of equipment and network components necessary to provide wireless communications service. This term does not include a wireless support structure.

(10) “Wireless Support Structure” means a freestanding structure designed to support wireless facilities. This term does not include a utility pole or an electrical transmission tower.

(B) Permit Required. Any person or entity seeking to collocate wireless facilities on an existing structure must obtain from the Town of Cumberland a Telecommunications Facility Permit.

(C) Compliance with Zoning Code Not Required. An application for a permit for collocation is not required to comply with zoning or land use requirements and is not subject to a public hearing.

(D) Contents of Application for Permit. The application for a permit under this section includes the following information:

(1) The name, business address and point of contact of the applicant;
(2) The location of the proposed or affected wireless support structure or wireless facility; and
(3) Evidence of conformance with applicable building permit Requirements.
(E) **Consolidated Applications.** Applicants may apply for a single consolidated application to collocate multiple wireless facilities and small cell facilities that constitute a single small cell network that are located in the Town, and the Town will issue a single permit for all wireless service facilities or small cell facilities included in the application rather than individual permits for each wireless service facility or small cell facility if the applicant meets the requirements for the permit.

(F) **Determination of Completeness of Application.** Within ten (10) days of receipt of the application by the Town of Cumberland, the Town will determine whether the application is complete. If the Town determines that the application is not complete, it will provide to the applicant within this 10-day period written notice of its determination of incompleteness. This notice will contain a description of all defects in the application, including all Town Code, ordinances, permit application instruction or other publicly-stated procedures that require the applicant to submit additional information. If the Town does not notify the applicant within this 10-day period that the application is incomplete, the application is considered complete.

(G) **Provision of Additional Information by Applicant.** If the Town notifies the applicant that the application is incomplete, the applicant may either cure the defects set forth in the notice of incompleteness and resubmit the corrected application within 15 days of receiving the notice of incompleteness or notify the Town that the applicant of the need for additional time needed to cure the defects.

(H) **Time for Permit Decision.** Within 45 days after making an initial determination of completeness regarding the application, the Town will review the application to determine whether it complies with applicable laws and ordinances governing land use and zoning and notify the applicant in writing whether the application is approved or denied. If the applicant requested additional time to cure defects in the application, the 45-day period for the permit decision is extended for a corresponding amount of time.

(I) **Permit Fee.** The permit fee is $____________.

(J) **Protection of Confidential or Proprietary Information.** The Town has established guidelines to protect confidential and proprietary information disclosed in an application. Applicants must designate such information on the application or other submittals.

(K) **No Regulation of Utility Poles or Electrical Transmission Towers.** This section is not intended to regulate the installation, location, or use of wireless service facilities on utility poles or electrical transmission towers.”
It is further ordained that this ordinance shall be effective upon adoption.

It is further ordained that all other provisions of the Cumberland Code of Ordinances which are not specifically amended by this ordinance shall remain in full force and effect. If any part of this ordinance is determined to be unenforceable, the remaining provisions of the ordinance remain in effect.

Adopted this 5th day of March, 2017.

Cumberland Town Council:

Anna Pea, President

Joe Seifker, Vice-President

Brian Gritter, Member

Nicole Bell, Member

Mark Reynold, Member

Attest:

Erica Salmon, Clerk-Treasurer