

Petition #: 2012-_____

Petitioner: Berkley Group, LLC

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A
OF THE CITY CODE – ZONING ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A, “Zoning” of the Code of the City of Charlotte is hereby amended as follows:

A. CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY

1. PART 1: SUPPLEMENTAL DEVELOPMENT STANDARDS

- a. Amend Section 12.108, “Height Limitations,” subsections (8), (8)(a), (8)(b) and (8)(c) by deleting these existing subsections in their entirety and adding new subsections (8), (8)(a), (8)(b) and (8)(c) in lieu thereof. Amended subsections (8), (8)(a), (8)(b) and (8)(c) shall read as follows:

- (8) Subject to the terms and conditions of this Section 12.108(8), wireless communications transmission facilities including, but not limited to, towers, masts, antenna and related antenna support structures are permitted in any zoning district. All wireless communications transmission facilities located on a lot in a residential zoning district (residential zoning districts: R-3, R-4, R-5, R-6, R-8, MX-1, MX-2, MX-3, R-MH, R-8MF, R-12MF, R-17MF, R-22MF, R-43MF, UR-1, UR-2, UR-3, and all of their parallel conditional districts plus any parallel conditional residential districts approved prior to January 1, 1992) or on a lot located within 400 feet of a residential zoning district shall conform to the concealment standards specified in Section 12.108(8)(j) provided, however, that a wireless communications transmission facility located on a lot devoted to an institutional use shall either conform to the concealment standards set out in Section 12.108(8)(j) or shall be a monopole design. A monopole is a single, freestanding pole-type structure supporting one or more antenna.

All wireless communications transmission facilities up to 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least two wireless communications carriers. All wireless communications transmission facilities over 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least three wireless communication carriers.

The facility plant and/or any related support buildings shall be allowed in accordance with the provisions of Section 12.504. The replacement of existing wireless communications transmission facilities to increase the height of such facilities shall be allowed in accordance with the separate provisions of subsection (d) below.

- (8)(a) A wireless communications transmission facility may be the principal use of a lot and in such case, the lot must comply with the minimum lot area and lot width requirements of the underlying zoning district, and any facility plant or related support buildings must comply with the minimum setback, side yard and rear yard requirements of the underlying zoning district as well as the requirements of Section 12.108(8)(f). Any accessory buildings located on the lot must comply with the setback, side yard and rear yard requirements of the underlying zoning district as well as the height requirements.

The height limitations and separation requirements for a wireless communications transmission facility that is the principal use of a lot are set out below in Section 12.108(8)(c).

- (8)(b) Wireless communications transmission facilities are permitted in any zoning district as an ancillary or secondary use on a lot where another use (other than a single family or duplex use) is already established as the principal use of the lot. In this case, the wireless communications transmission facility shall not be required to separately comply with the underlying zoning district's development standards relating to lot area, lot width and frontage on a public street or the subdivision regulations, so long as the principal use complies with such requirements for the underlying zoning district. Additionally, the wireless communications transmission facility shall not be required to comply with requirements of the Tree Ordinance. Any facility plant or related support buildings must comply with the minimum setback, side yard and rear yard requirements of the underlying zoning district as well as the requirements of Section 12.108(8)(f).

A properly permitted wireless communications transmission facility established as an ancillary or secondary use may remain in its present location if the principal use of the lot is abandoned, demolished or removed. However, if the wireless communications transmission facility is replaced, it must then comply with all applicable yard, setback and separation requirements as a principal use in the underlying zoning district. The changing of, additions to or removal of antenna on the wireless communications transmission facility as well as the co-location of additional carriers thereon shall be permitted and shall not require the wireless communications transmission facility to be brought into compliance with current separation requirements.

The height limitations and separation requirements for such wireless communications transmission facilities are set out below in Section 12.108(8)(c).

(8)(c)

1. A wireless communications transmission facility located on a lot in any zoning district that is not adjacent to a lot or lots located in a residential zoning district may be constructed to any height and shall only be required to meet the separation requirements of the underlying zoning district with respect to setback, side yards and rear yard.
2. A wireless communications transmission facility located on a lot in any zoning district that is adjacent to a lot or lots located in a residential zoning district may be constructed to a height of 40 feet and need only comply with the underlying zoning district's separation requirements regarding setback, side yards and rear yard.
3. A wireless communications transmission facility located on a lot in any zoning district that is adjacent to a lot or lots located in a residential zoning district may be constructed to a height in excess of 40 feet provided that the requirements of either subsection a. or b. below are satisfied.
 - a.. The minimum setback, side yard and rear yard adjacent to the residentially zoned lot or lots are increased by one foot for each one foot of facility height over 40 feet up to a maximum separation of 200 feet.
 - b. The wireless communications transmission facility may be constructed to a maximum height of 195 feet provided that the following standards are met:
 - (i) The wireless communications transmission facility is located a minimum of 100 feet from each property line adjacent to a lot or lots located in a residential zoning district. This 100 foot distance shall be measured from the base of the tower to the relevant property line. The wireless communications transmission facility need only comply with the underlying zoning district's setback, side yard or rear yard requirements with respect to each property line adjacent to a lot or lots located in a non-residential zoning district.
 - (ii) The wireless communications transmission facility, the facility plant and any related support buildings shall be located within an area that is enclosed with a minimum 6 foot wooden fence and an access gate (the "Facility Compound Area"), and the Facility Compound Area shall contain a minimum of 4,200 square feet of area.
 - (iii) The wireless communications transmission facility must be designed to land within the Facility Compound Area in the event of a fall as certified by a North Carolina registered professional engineer.

- (iv) The wireless communications transmission facility is a monopole.
- b. Amend Section 12.108, "Height Limitations," subsection (8)(j) by inserting the phrase "excluding monopoles" in the second sentence thereof. Amended subsection (8)(j) shall read as follows:
 - (8)(j) All new wireless communications transmission facilities located in or within 400 feet of a residential zoning district, excluding monopoles located on lots devoted to institutional uses, are subject to the following additional standards:
 - 1. The tower must be designed, constructed or integrated into or as a structure in such a manner that it no longer appears to be a wireless communication tower, for example, locate in other towers on buildings, in steeples or be disguised as trees.
 - 2. The tower must have indiscernible antennae.
 - 3. Concealment measures used on any given facility (tower, antennae, and building structures at base) must blend into the character of the area or neighborhood by using architectural treatment similar in design to existing structures.
 - 4. The use of a flagpole as the concealment measure shall only be applicable on a site used for institutional or non-residential uses. Any wireless communication transmission facility lawfully operating as a conforming use shall not be rendered a non-conforming use by the subsequent rezoning to a residential district within 400 feet of such facility. This subsection (j) shall not apply to Section 12.108(8) (d) and (e).

Section 2. That this ordinance shall become effective upon its adoption

Approved as to form:

City Attorney

I, _____ City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the ____ day of _____, 20__, the reference having been made in Minute Book _____, and recorded in full in Ordinance Book _____, Page(s)_____.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the ____ day of _____, 20__.
